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FILED
San Francisco County Superior Court

JAN 16 2024

CLERK OF THE COURT
BY:  Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 SPORTSMAN'S WAREHOUSE, INC.,

15 Defendant.

Case No.: CGC-23-603874

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: January 16, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 9, 2023

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Sportsman’s
4 Warehouse, Inc. (“Sportsman’s Warehouse” or “Defendant”) with Espinoza and Defendant
5 collectively referred to as the “Parties” and each of them as a “Party.” Espinoza is an individual
6 residing in California that seeks to promote awareness of exposures to toxic chemicals and improve
7 human health by reducing or eliminating hazardous substances contained in consumer products.
8 Sportsman’s Warehouse is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to chromium (hexavalent compounds) (“CrVI”) from its sales of *Bandera*® cobra
12 leather rifle slings, UPC # 781562000201, without providing a clear and reasonable exposure
13 warning pursuant to Proposition 65. CrVI is listed pursuant to Proposition 65 as a chemical known
14 to the State of California to cause cancer and birth defects or other reproductive harm.

15 **1.3 Notice of Violation/Action.** On or about January 10, 2022, Espinoza served Lloyd
16 Julian, Lloyd Julian dba Bandera USA (collectively “Lloyd Julian”), Cal-Bind-Grundmars Leather,
17 Sportsman’s Warehouse and various public enforcement agencies with documents entitled “60-
18 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging
19 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
20 *Bandera*® cobra leather rifle slings, UPC # 781562000201, expose users in California to CrVI. No
21 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
22 January 9, 2023, Espinoza filed a complaint (the “Complaint”).

23 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
27 of all claims which were or could have been raised in the Action based on the facts alleged therein
28

1 and in the Notice.

2 1.5 Defendant denies the material allegations contained in Espinoza's Notice and
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means *Bandera*® cobra leather
11 rifle slings, UPC # 781562000201, that are manufactured, distributed, shipped into California and
12 offered for sale in California by Sportsman's Warehouse.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
17 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
18 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
19 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
20 to provide a warning for Covered Products that enter the stream of commerce prior to the date this
21 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or
22 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

23 (a) **Warning.** The "Warning" shall consist of the statement:

24 ⚠ **WARNING:** This product can expose you to chemicals including chromium
25 (hexavalent compounds), which are known to the State of California to cause cancer
26 and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

27 (b) **Alternative Warning:** Sportsman's Warehouse may, but is not required to, use the
28 alternative short-form warning as set forth in this § 3.1(b) ("**Alternative Warning**") as follows:

1 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
3 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
4 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
5 triangle with a black outline, except that if the sign or label for the Covered Product does not use
6 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
7 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
8 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
9 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
10 displayed with such conspicuousness, as compared with other words, statements, or designs as to
11 render it likely to be read and understood by an ordinary individual under customary conditions of
12 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
13 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
14 the use of the Covered Product and shall be at least the same size as those other safety warnings.

15 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
16 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
17 Sportsman’s Warehouse offers Products for sale to consumers in California. The requirements of
18 this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked
19 hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise
20 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
21 with this Section, Sportsman’s Warehouse shall (a) post the **Warning** or **Alternative Warning** on
22 its own website and, if it has the ability to do so, on the websites of its third-party internet sellers;
23 and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites
24 of its third-party internet sellers, provide such sellers with written notice in accordance with Title
25 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product
26 that have been provided with written notice in accordance with Title 27, California Code of

1 Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the
2 warning requirements herein.

3 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
4 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
5 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
6 Covered Product and exposures at issue after the Effective Date. If “consumer information,” as that
7 term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
8 amended from time to time, is provided in a foreign language, Defendant shall provide the
9 **Warning or Alternative Warning** in the foreign language in accordance with applicable warning
10 regulations adopted by OEHHA.

11 **4. MONETARY TERMS**

12 **4.1 Civil Penalty.** Sportsman’s Warehouse shall pay \$1,000.00 as a Civil Penalty
13 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
14 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the
15 remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety
16 Code § 25249.12(d).

17 **4.1.1** Within ten (10) days of the Effective Date, Sportsman’s Warehouse shall
18 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of
19 \$750.00; and to (b) “Gabriel Espinoza” in the amount of \$250.00. Payment owed to Espinoza
20 pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky Smith
23 Two Bala Plaza, Suite 805
24 Bala Cynwyd, PA 19004

25 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
26 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

27 For United States Postal Service Delivery:
28 Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 P.O. Box 4010

1 Sacramento, CA 95812-4010

2 For Non-United States Postal Service Delivery:
3 Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 1001 I Street
7 Sacramento, CA 95814

8 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
9 above as proof of payment to OEHHA.

10 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Sportsman's
11 Warehouse shall pay \$16,500.00 to Brodsky Smith as complete reimbursement for Espinoza's
12 attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention
13 of Sportsman's Warehouse, litigating and negotiating and obtaining judicial approval of a
14 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

15 **5. RELEASE OF ALL CLAIMS**

16 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
17 acting on his own behalf, and on behalf of the public interest, and Sportsman's Warehouse, and its
18 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
19 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
20 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
21 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
22 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
23 retailers, including but not limited to, its parents, subsidiaries, and affiliates, franchisees, and
24 cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
25 based on exposure to CrVI from use of the Covered Products manufactured, distributed, or sold by
26 Sportsman's Warehouse prior to the Effective Date as set forth in the Notice. It is the Parties'
27 intention that this Consent Judgment shall have preclusive effect such that no other actions by
28 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
permitted to pursue and take any action with respect to any violation of Proposition 65 based on
exposure to CrVI from use of the Covered Products that was alleged in the Complaint, or that could

1 have been brought pursuant to the Notice against Sportsman's Warehouse and the Downstream
2 Releasees ("Proposition 65 Claims"), including, but not limited to, any acts of unfair competition
3 as defined by Business and Professions Code Sections 17200, *et seq.*, or any violation of any other
4 statutory or common law that have been or could have been asserted in the Complaint. Sportsman's
5 Warehouse compliance with the terms of this Consent Judgment constitutes compliance with
6 Proposition 65 by Sportsman's Warehouse with regard to exposure to CrVI from use of the Covered
7 Products.

8 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
9 agents, representatives, attorneys, and successors and assignees, and not in his representative
10 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
11 legal action and releases Sportsman's Warehouse, Defendant Releasees, and Downstream
12 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
13 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
14 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed
15 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
16 to or arising from Covered Products manufactured, distributed, or sold by Sportsman's Warehouse,
17 Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases
18 in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which he now
19 has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California
20 Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
22 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
24 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
25 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
26 DEBTOR OR RELEASED PARTY.

27 5.3 Sportsman's Warehouse waives any and all claims against Espinoza, his attorneys
28 and other representatives, for any and all actions taken, or statements made (or those that could
have been taken or made) by Espinoza and his attorneys and other representatives, whether in the

1 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
2 matter, and with respect to Covered Products.

3 **6. INTEGRATION**

4 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
5 any and all prior negotiations and understandings related hereto shall be deemed to have been
6 merged within it. No representations or terms of agreement other than those contained herein exist
7 or have been made by any Party with respect to the other Party or the subject matter hereof.

8 **7. GOVERNING LAW**

9 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed or
11 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
13 to the extent that, Covered Products are so affected.

14 7.2 If Proposition 65 or associated regulations are amended to require or allow different
15 text, font, and/or methods of warning than specified above, Sportsman's, after providing written
16 notice to Espinoza, may substitute such text, font, and/or methods of warning for product warnings
17 required under this Consent Judgment

18 **8. NOTICES**

19 8.1 Unless specified herein, all correspondence and notices required to be provided
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
21 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
22 by the other party at the following addresses:

23 For Defendant:

For Espinoza:

24 Kevin J. Grochow, Esq.
25 Kutak Rock LLP
5 Park Plaza, Ste. 1500
Irvine, CA 92614

Evan Smith
Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

26 Any party, from time to time, may specify in writing to the other party a change of address to
27 which all notices and other communications shall be sent.
28

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
6 **APPROVAL**

7 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions in
25 a future action arising out of this Consent Judgment pursuant to law.

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13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: _____

Date: August 16, 2023

By: _____
GABRIEL ESPINOZA

By: [Signature]
SPORTSMAN'S WAREHOUSE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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3 Consent Judgment.

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8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
9 explicitly provided herein each Party is to bear its own fees and costs.

10 **AGREED TO:**

AGREED TO:

11
12 Date: 11/28/23

Date: _____

13 By: 

14 GABRIEL ESPINOZA

By: _____

SPORTSMAN'S WAREHOUSE, INC.

15
16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17
18 Dated: 1/16/24

19 WR
Judge of Superior Court

20 **RICHARD ULMER**