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FILED
Superior Court of California
County of San Francisco

AUG 27 2024

CLERK OF THE SUPERIOR COURT

By Victor De Pando Deputy

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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 WILLARD MANUFACTURING INC.,
15 PODIUM BRANDS, LLC,

16 Defendants.

Case No.: CGC-24-611864

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: August 27, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 25, 2024

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 Willard
4 Manufacturing Inc. ("Willard" or "Defendant") with Espinoza and Defendant collectively referred
5 to as the "Parties" and each of them as a "Party." Espinoza is an individual residing in California
6 that seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer products. Willard is alleged
8 to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to diethanolamine (DEA) from its sales of moisturizing lotions distributed, sold, or
12 offered for sale in California by Willard that expose users to DEA without providing a clear and
13 reasonable exposure warning pursuant to Proposition 65. DEA is listed pursuant to Proposition 65
14 as a chemical known to the State of California to cause cancer.

15 **1.3 Notice of Violation/Action.** On or about January 26, 2023, Espinoza served Willard
16 and various public enforcement agencies with documents entitled "60-Day Notice of Violation"
17 pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of moisturizing lotions
19 distributed, sold, or offered for sale in California by Willard that expose users to DEA. No public
20 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 25,
21 2024, Espinoza filed a complaint (the "Complaint").

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Action based on the facts alleged therein
27 and in the Notice.
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1 1.5 Defendant denies the material allegations contained in Espinoza's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 2. **DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means moisturizing lotions
10 distributed, sold, or offered for sale in California by Willard that expose users to DEA.

11 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 3. **INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

14 3.1 **Reformulation of Products.** Commencing within sixty (60) days after the Effective
15 Date, and continuing thereafter, Covered Products that Willard directly manufactures, imports,
16 distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant
17 to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and
18 3.4, below. For purposes of this Settlement Agreement, a "DEA Free Reformulated Product" is a
19 Covered Product that is in compliance with the standard set forth in § 3.2, below. The warning
20 requirements set forth in §§ 3.3 and 3.4 shall not apply to any DEA Free Reformulated Product or
21 to any Covered Product manufactured within 60 days after the Effective Date.

22 3.2 **DEA Free Reformulation Standard.** To qualify as a "DEA Free Reformulated
23 Product" the Covered Product must meet the following standard: DEA content that is not detectable
24 (i.e., zero) or below the Reporting Limit (defined herein) when analyzed pursuant to liquid
25 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy
26 (ICP-MS) or other method of analysis utilized by the International Organization for Standardization
27 (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.
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1 3.2.1 **Reporting Limit.** The "Reporting Limit"¹ is 50 mg/kg.

2 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
3 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
4 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
5 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
6 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
7 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
8 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

10 ⚠ **WARNING:** This product can expose you to chemicals including
11 diethanolamine (DEA), which is known to the State of California to cause cancer.
For more information go to www.P65Warnings.ca.gov.

12 (b) **Alternative Warning:** Willard may, but is not required to, use the alternative short-
13 form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

14 ⚠ **WARNING:** Cancer - www.P65Warnings.ca.gov.

15 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
16 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word "**WARNING:**". The **Warning** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25

26 ¹ The "Reporting Limit" the lowest concentration at which DEA can be detected in a
27 sample of a Covered Product by an accredited testing laboratory employing LC/MS/MS analysis
28 or other method of analysis utilized by the ISO for qualitative and quantitative screening of
cosmetics and cosmetic raw materials.

1 purchase or use. The **Warning or Alternative Warning** may be contained in the same section of
2 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
3 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
4 "consumer information," as that term is defined in Title 27, California Code of Regulations, Section
5 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Willard shall
6 provide the **Warning or Alternative Warning** in the foreign language in accordance with
7 applicable warning regulations adopted by the State of California's Office of Environmental Health
8 Hazard Assessment ("OEHHA").

9 In addition to affixing the **Warning or Alternative Warning** to the Covered Product's
10 packaging or labeling, the **Warning or Alternative Warning** shall be posted on websites where
11 Willard offers Products for sale to consumers in California. The requirements of this Section shall
12 be satisfied if the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word
13 "**WARNING**," appears on the product display page, or by otherwise prominently displaying the
14 warning to the purchaser prior to completing the purchase. To comply with this Section, Willard
15 shall (a) post the **Warning or Alternative Warning** on its own website and, if it has the ability to
16 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
17 the **Warning or Alternative Warning** on the websites of its third-party internet sellers, provide
18 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
19 25600.2. Third-party internet sellers of the Covered Product that have been provided with written
20 notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in
21 Section 5 of this Agreement if they fail to meet the warning requirements herein.

22 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
23 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
24 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
25 Product and exposures at issue within 60 days after the Effective Date.
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1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Willard shall pay \$4,000.00 as a Civil Penalty pursuant to Health and
3 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
5 Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

6 **4.1.1** Within ten (10) days of the Effective Date, Willard shall issue two separate
7 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,000.00; and to (b)
8 "Gabriel Espinoza" in the amount of \$1,000.00. Payment owed to Espinoza pursuant to this
9 Section shall be delivered to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky Smith
12 Two Bala Plaza, Suite 805
13 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

1 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Willard shall pay
2 \$40,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs
3 incurred as a result of investigating, bringing this matter to the attention of Willard, litigating and
4 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
5 of Civil Procedure § 1021.5.

6 5. **RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
8 acting on his own behalf, and on behalf of the public interest, and Willard, and its parents,
9 shareholders, members, directors, officers, managers, employees, representatives, agents,
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
11 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
12 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
13 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
14 retailers, including but not limited to Willard, and its parents, subsidiaries, and affiliates,
15 franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of
16 Proposition 65 based on exposure to DEA from use of the Covered Products manufactured,
17 distributed, or sold by Willard within 60 days after the Effective Date as set forth in the Notice. It
18 is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other
19 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
20 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
21 65 based on exposure to DEA from use of the Covered Products that was alleged in the Complaint,
22 or that could have been brought pursuant to the Notice against Willard and the Downstream
23 Releasees ("Proposition 65 Claims"). Willard's compliance with the terms of this Consent
24 Judgment constitutes compliance with Proposition 65 by Willard with regard to exposure to DEA
25 from use of the Covered Products.

1 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and assignees, and not in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Willard, Defendant Releasees, and Downstream Releasees from any and
5 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
9 Products manufactured, distributed, or sold by Willard, Defendant Releasees or Downstream
10 Releasees. With respect to the foregoing waivers and releases in this paragraph, Espinoza hereby
11 specifically waives any and all rights and benefits which he now has, or in the future may have,
12 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
13 follows:

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

18 5.3 Willard waives any and all claims against Espinoza, his attorneys and other
19 representatives, for any and all actions taken, or statements made (or those that could have been
20 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
22 and with respect to Covered Products.

23 6. INTEGRATION

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
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1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 L. Daniel Wilson
14 91 Wyndham Crescent
15 Red Deer, Alberta
 T4N 7G9, Canada

16 And

17 For Espinoza:

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

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

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

3 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.
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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:

Date:

7/9/24

By:

GABRIEL ESPINOZA

AGREED TO:

Date:

7/9/24

By:

WILLARD MANUFACTURING, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated

8/27/24

Judge of Superior Court

RICHARD B. ULSEN