

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*
8 Gabriel Espinoza

FILED
Superior Court of California
County of San Francisco

JUN 25 2024

CLERK OF THE SUPERIOR COURT
By *Victor Pa. Pomeda* Deputy

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

11 GABRIEL ESPINOZA,
12 Plaintiff,
13 v.
14 MARUCCI SPORTS, LLC, AMERICAN
15 SPORTS LICENSING, LLC, AMERICAN
16 SPORTS LICENSING, INC., DICK'S
17 SPORTING GOODS, INC.,
18 Defendants.

Case No.: CGC-22-602638
CONSENT JUDGMENT
Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: June 25, 2024
Hearing Time: 9:30 AM
Complaint Filed: October 28, 2022

19
20
21
22
23
24
25
26
27
28

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

10 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to chromium (hexavalent compounds) ("chromium VI" or "CrVI") from its sales of
12 gloves with leather components, including but not limited to: (a) Marucci *Signature*™ batting
13 gloves, UPC # 849817097014, (b) Marucci *Medallion*™ batting gloves, UPC # 840058729566,
14 and (c) *Lizard Skins*™ Komodo V2 batting gloves, UPC # 696260002986, without providing a
15 clear and reasonable exposure warning pursuant to Proposition 65. CrVI is listed under Proposition
16 65 as a chemical known to the State of California to cause cancer and birth defects or other
17 reproductive harm.

18 **1.3 Notices of Violation/Complaints.**

19 **1.3.1** On or about August 6, 2021, Espinoza served Marucci Sports, and various
20 public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to
21 Health & Safety Code §25249.7(d) (the "2021 Notice"), alleging that Defendant violated
22 Proposition 65 for failing to warn consumers and customers that use of Marucci *Signature*™ batting
23 gloves, UPC # 849817097014, expose users in California to CrVI. No public enforcer has brought
24 and is diligently prosecuting the claims alleged in the 2021 Notice.

25 **1.3.2** On or about October 18, 2022, Espinoza served Marucci Sports, and various
26 public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to
27 Health & Safety Code §25249.7(d) (the "2022 Notice"), alleging that Defendant violated
28

1 Proposition 65 for failing to warn consumers and customers that use of Marucci *Medallion*TM
2 batting gloves, UPC # 840058729566 expose users in California to CrVI.

3 1.3.3 On October 28, 2022, Espinoza filed a complaint (the "Complaint")
4 regarding allegations in the 2021 Notice.

5 1.3.4 On or about March 15, 2023, Plaintiff served Marucci Sports, and various
6 public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to
7 Health & Safety Code §25249.7(d) (the "2023 Notice"), alleging that Defendant violated
8 Proposition 65 for failing to warn consumers and customers that use of *Lizard Skins*TM Komodo V2
9 batting gloves, UPC # 696260002986, expose users in California to CrVI.

10 1.3.5 On November 6, 2023, Plaintiff filed a first amended complaint (the "FAC")
11 in the matter to bring claims regarding allegations in the 2022 Notice and 2023 Notice. The
12 Complaint and FAC are collectively referred to herein as, the "Action."

13 1.3.6 The 2021 Notice, the 2022 Notice, and the 2023 Notice are collectively
14 referred to herein, as the "Notices."

15 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Defendant as to the allegations contained in the Notices filed in this matter, that
17 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
18 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
19 of all claims which were, or could have been raised in the Action based on the facts alleged therein
20 and/or in the Notices.

21 1.5 Defendant denies the material allegations contained in the Notices and Action and
22 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
23 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
24 shall compliance with this Consent Judgment constitute or be construed as an admission by
25 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
26 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
27 responsibilities, and duties of Defendant under this Consent Judgment.
28

1 **2. DEFINITIONS**

2 **2.1 Covered Products.** The term “Covered Products” means batting gloves with leather
3 components, including but not limited to: (a) Marucci *Signature*™ batting gloves, UPC #
4 849817097014, (b) Marucci *Medallion*™ batting gloves, UPC # 840058729566, and (c) *Lizard*
5 *Skins*™ Komodo V2 batting gloves, UPC # 696260002986, that are manufactured, distributed
6 and/or offered for sale in California by Marucci Sports.

7 **2.2 Effective Date.** The term “Effective Date” means the date Marucci Sports’ counsel
8 receives notice that this Consent Judgment is entered as a Judgment of the Court.

9 **3. INJUNCTIVE RELIEF: WARNINGS**

10 **3.1 Clear and Reasonable Warning.** Commencing within sixty (60) days of the
11 Effective Date, Defendant shall provide a clear and reasonable exposure warning as set forth in this
12 §§ 3.1 and 3.2 for all Covered Products that contain leather components that are tanned with
13 chromium compounds that Defendant distributes or sells in California. The warning shall consist
14 of either the **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

15 **(a) Warning.** The “Warning” shall consist of the statement:

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

20 **⚠ (b) Alternative Warning:** Marucci Sports may, but is not required to, use the
21 alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as
22 follows:

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

24 **3.2 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
25 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
26 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
27 triangle with a black outline, except that if the sign or label for the Covered Product does not use
28 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed

1 to or printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or
2 electronic device or automatic process, providing that the warning is displayed with such
3 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
4 read and understood by an ordinary individual under customary conditions of purchase or use. The
5 **Warning or Alternative Warning** may be contained in the same section of the packaging, labeling,
6 or instruction booklet that states other safety warnings, if any, concerning the use of the Covered
7 Product and shall be at least the same size as those other safety warnings.

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

23 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
25 Judgment or by complying with warning regulations approved or adopted by the State of
26 California's Office of Environmental Health Hazard Assessment ("OEHHA"), or by any other State
27 of California agency authorized to issue regulations approving or adopting warnings as
28

1 implementation of Proposition 65, or by statutes adopted by the California State Legislature or by
2 the California voters applicable to the Covered Product and the exposures at issue after the Effective
3 Date. If "consumer information," as that term is defined in Title 27, California Code of Regulations,
4 Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language,
5 Marucci Sports shall provide the **Warning or Alternative Warning** in the foreign language in
6 accordance with applicable warning regulations adopted by OEHHA.

7 3.4 Covered Products that entered the stream of commerce prior to the Effective Date
8 may continue to be sold through and are exempt from the warning requirements in Section 3 of this
9 Consent Judgment.

10 **4. MONETARY TERMS**

11 4.1 **Civil Penalty.** Marucci Sports shall pay \$6,000.00 as a Civil Penalty pursuant to
12 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
13 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
14 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code
15 § 25249.12(d).

16 4.1.1 Within thirty (30) days of the Effective Date, Marucci Sports shall issue
17 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$4,500.00;
18 and to (b) "Gabriel Espinoza" in the amount of \$1,500.00. Payment owed to Espinoza pursuant to
19 this Section shall be delivered to the following payment address:

20 Evan J. Smith, Esquire
21 Brodsky Smith
22 Two Bala Plaza, Suite 510
23 Bala Cynwyd, PA 19004

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

26 For United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

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

9 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Marucci Sports shall
10 pay \$54,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and
11 costs incurred as a result of investigating, bringing this matter to Marucci Sports' attention,
12 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
13 pursuant to Code of Civil Procedure § 1021.5.

14 **5. RELEASE OF ALL CLAIMS**

15 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
16 acting on his own behalf, and on behalf of the public interest, and Marucci Sports, and its parents,
17 shareholders, members, directors, officers, managers, employees, representatives, agents,
18 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
19 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
20 directly or indirectly obtain ("Upstream Releasees") and to whom they directly or indirectly
21 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
22 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
23 members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on
24 exposure to CrVI from Covered Products as set forth in the Notices, with respect to any Covered
25 Products manufactured, distributed, or sold by Marucci Sports prior to the Effective Date. Marucci
26 Sports' compliance with the terms of this Consent Judgment constitutes compliance with
27 Proposition 65 by Marucci Sports with regard to exposure to CrVI from use of the Covered
28 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/or assignees, and not in his representative
3 capacity, hereby releases Defendant Releasees, Upstream Releasees and Downstream Releasees
4 from all claims that he has asserted or could have asserted against said Releasees arising out of
5 Proposition 65. Espinoza acting on behalf of himself, his past and current agents, representatives,
6 attorneys, and successors and/or assignees, and not in his representative capacity further waives all
7 rights to institute or participate in, directly or indirectly, any form of legal action and releases
8 Marucci Sports, Defendant Releasees, Upstream Releasees and Downstream Releasees from any
9 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
10 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
11 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
12 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
13 from Covered Products manufactured, distributed, or sold by Marucci Sports, Defendant Releasees,
14 Upstream Releasees or Downstream Releasees. With respect to the foregoing waivers and releases
15 in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which he now
16 has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California
17 Civil Code, which provides as follows:

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

22 5.3 Marucci Sports waives any and all claims against Espinoza, his attorneys and other
23 representatives, for any and all actions taken or statements made by Espinoza and his attorneys and
24 other representatives, whether in the course of investigating claims or otherwise seeking
25 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

26 **6. INTEGRATION**

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
28 any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

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

9 7.2 In the event that Proposition 65, either as a whole or as specifically applicable to the
10 Covered Products, is repealed by means of any California statute or regulation, or is federally
11 preempted, or is otherwise rendered inapplicable to the Covered Products by a decision of the
12 California Supreme Court, or if any of the provisions of this Consent Judgment are rendered
13 inapplicable or no longer required as to the Covered Products as a result of any such repeal or
14 preemption or decision of the California Supreme Court, or due to federal regulations, then Marucci
15 Sports may provide written notice to Espinoza of any asserted change in the law, and it shall have
16 no further obligations pursuant to this Consent Judgment with respect to the Covered Products, to
17 the extent that the Covered Products are so affected.

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:

24 Hazel Ocampo
25 Greenberg Traurig, LLP
26 18565 Jamboree Road, Suite 500
Irvine, CA 92612

27 And

28 For Espinoza:

1 Evan Smith
2 Brodsky Smith
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and
10 the same document.

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

12 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
13 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
14 Defendant agrees it shall support approval of such Motion.

15 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
16 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
17 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
18 days, the case shall proceed on its normal course.

19 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
20 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
21 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
22 its normal course on the trial court's calendar.

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
25 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

26 **12. ATTORNEY'S FEES**

27 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
28 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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:
Date: 5 / 7 / 24
By: [Signature]
GABRIEL ESPINOZA

AGREED TO:
Date: 3/28/2024
By: [Signature]
MARUCCI SPORTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 6/25/24

ULM
Judge of Superior Court

RICHARD B. ULMER