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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOSA,

12 Plaintiff,

13 v.

14 TITLE BOXING, LLC, THE SPORTS
15 BASEMENT, INC.

16 Defendants.

Case No.: HG19040701

CONSENT JUDGMENT

Judge: Julia Spain

Dept.: 520

Hearing Date: August 19, 2020

Hearing Time: 2:00 PM

Reservation #: R-2184247

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinosa acting on behalf of the public interest (hereinafter “Espinosa”) and Title Boxing, LLC
4 (“Title Boxing” or “Defendant”) with Espinosa and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinosa 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. Title Boxing is alleged to be a
8 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.** Espinosa alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Title Boxing Classic Pro training
12 gloves without providing a clear and reasonable exposure warning pursuant to Proposition 65.
13 DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer
14 and reproductive toxicity.

15 1.3 **Notice of Violation/Complaint.** On or about October 31, 2018, Espinosa served
16 Title Boxing, and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Title Boxing
19 Classic Pro training gloves expose users in California to DEHP. No public enforcer has brought
20 and is diligently prosecuting the claims alleged in the Notice. On October 25, 2019, Espinosa filed
21 a complaint (the “Complaint”) in the matter.

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 Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.
28

1 1.5 Defendant denies the material allegations contained in Espinosa’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 boxing gloves
10 manufactured, distributed and/or offered for sale in California by Title Boxing.

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 OR WARNINGS**

14 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
15 signed by both Parties, and continuing thereafter, Covered Products that Title Boxing directly
16 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
17 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
18 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
19 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
20 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
21 Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
24 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
25 and 8270C or other methodology utilized by federal or state government agencies for the purpose
26 of determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** Within sixty (60) days of the date this Consent
2 Judgment is signed by both Parties, and continuing thereafter, a clear and reasonable exposure
3 warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant
4 manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated
5 Product. There shall be no obligation for Defendant to provide a warning for Covered Products that
6 enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties.
7 The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a)
8 or (b), respectively:

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

10 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
11 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
12 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

13 (b) **Alternative Warning:** Title Boxing may, but is not required to, use the alternative
14 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

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

1 If Title Boxing sells Covered Products via an internet website to customers located in
2 California, the warning requirements of this section shall be satisfied if the foregoing warning
3 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
4 (b) on the same page as the price for the Covered Product; (c) on one or more web pages displayed
5 to a purchaser prior to purchase during the checkout process, or or (d) by use of the word
6 **WARNING** with a hyperlink to a warning under section 2.1(a) or (b) pursuant to California Code
7 of Regulations title 27 section 25602(b). Alternatively, a symbol consisting of a black exclamation
8 point in a yellow or white equilateral triangle may appear adjacent to or immediately following the
9 display, description, price, or checkout listing of the Covered Product, if the warning statement
10 appears elsewhere on the same web page in a manner that clearly associates it with the product(s)
11 to which the warning applies.

12 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
14 Judgment or by complying with warning requirements adopted by the State of California’s Office
15 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** Title Boxing shall pay \$2,500.00 as a Civil Penalty pursuant to Health
18 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
19 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
20 Civil Penalty remitted to Espinosa, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within thirty (30) days of the Effective Date, Title Boxing shall issue two
22 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,875.00; and
23 to (b) “Brodsky & Smith, LLC in Trust for Espinosa” in the amount of \$625.00. Payment owed to
24 Espinosa pursuant to this Section shall be delivered to the following payment address:

25 Evan J. Smith, Esquire
26 Brodsky & Smith, LLC
27 Two Bala Plaza, Suite 510
28 Bala Cynwyd, PA 19004

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

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
16 set forth above as proof of payment to OEHHA.

17 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Title Boxing shall
18 pay \$22,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
19 Espinosa's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
20 Title Boxing attention, litigating and negotiating and obtaining judicial approval of a settlement in
21 the public interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
24 acting on his own behalf, and on behalf of the public interest, and Title Boxing, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
28 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
retailers, including but not limited to The Sports Basement, Inc., franchisees, and cooperative
members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on

1 exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered
2 Products manufactured, distributed, or sold by Title Boxing prior to the Effective Date. This
3 Consent Judgment shall have preclusive effect such that no other person or entity, whether
4 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or
5 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,
6 or that could have been brought pursuant to the Notice against Title Boxing and/or the Downstream
7 Releasees of the Covered Products (“Proposition 65 Claims”). Compliance with the terms of this
8 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

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

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

28 5.3 Title Boxing waives any and all claims against Espinosa, his attorneys and other
representatives, for any and all actions taken or statements made (or those that could have been
taken or made) by Espinosa and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and/or 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 **8. NOTICES**

15 8.1 Unless specified herein, all correspondence and notices required to be provided
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
17 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
18 by the other party at the following addresses:

19 For Defendant:

20 Ryan S. Landis
21 Polsinelli PC, Polsinelli LLP
22 2049 Century Park East, Suite 2900
Los Angeles, CA 90067

23 And

24 For Espinosa:

25 Evan Smith
26 Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

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9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

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

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

11. MODIFICATION

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

12. ATTORNEY’S FEES

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

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

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood and agree to all of the terms and conditions of this
7 document and certify that he or she is fully authorized by the Party he or she represents to execute
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.

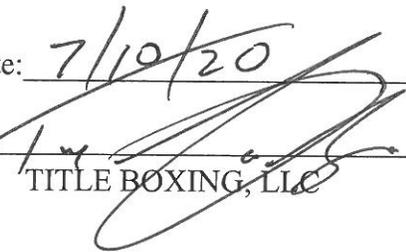
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11 **AGREED TO:**

AGREED TO:

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13 Date: _____

Date: 7/10/20

14 By: _____
15 GABRIEL ESPINOSA

By: 
TITLE BOXING, LLC

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17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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19 Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 7/2/2020

Date: _____

By: [Signature]
GABRIEL ESPINOSA

By: _____
TITLE BOXING, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court