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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 DICK'S SPORTING GOODS, INC.; and HARD  
15 CORE BRANDS INTERNATIONAL, LLC,

16 Defendants.

Case No.: RG19036045

**CONSENT JUDGMENT**

Judge: Paul D. Herbert

Dept.: 20

Hearing Date: August 26, 2020

Hearing Time: 3:00 PM

Reservation #: R-2184292

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 (“Espinosa”), Dick’s Sporting Goods, Inc. (“DSG”),  
4           and Hard Core Brands International, LLC (“HCB”) (collectively, “Defendants”) with Espinosa and  
5           Defendants collectively referred to as the “Parties” and each of them as a “Party.” Espinosa is an  
6           individual residing in California that seeks to promote awareness of exposures to toxic chemicals  
7           and improve human health by reducing or eliminating hazardous substances contained in consumer  
8           products. DSG and HCB are alleged to be persons 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.** Espinosa alleges that Defendants have exposed  
11          individuals to di(2-ethylhexyl) phthalate (DEHP) from their sales of Hard Core blind bags without  
12          providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed  
13          under Proposition 65 as a chemical known to the State of California to cause cancer and  
14          reproductive toxicity.

15          1.3     **Notice of Violation/Complaint.** On or about January 4, 2019, Espinosa served  
16          Defendants 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 Defendants  
18          violated Proposition 65 for failing to warn consumers and customers that use of Hard Core blind  
19          bags expose users in California to DEHP. No public enforcer has brought and is diligently  
20          prosecuting the claims alleged in the Notice. On September 20, 2019, Espinosa filed a complaint  
21          (the “Complaint”) in the matter against defendant DSG. On May 11, 2020, Plaintiff amended the  
22          Complaint in order to name HCB as a defendant (the “Amended Complaint”). The Complaint and  
23          Amended Complaint are collectively referred to herein as, the “Action.”

24          1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25          jurisdiction over Defendants as to the allegations contained in the Action, that venue is proper in  
26          the County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the  
27          enforcement of this Consent Judgment as a full and final binding resolution of all claims which  
28

1 were or could have been raised in the Action based on the facts alleged therein and/or in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Hard Core blind bags that  
11 are manufactured, distributed and/or offered for sale in California by Defendants.

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

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the Effective Date and continuing  
16 thereafter, Covered Products that Defendants directly manufacture, import, distribute, sell or offer  
17 for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be  
18 labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For  
19 purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in  
20 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3  
21 and 3.4 shall not apply to any Reformulated 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.  
27  
28

1           **3.3 Clear and Reasonable Warning.** As of the Effective Date and continuing  
2 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be  
3 provided for all Covered Products that Defendants manufacturer, import, distribute, sell or offer for  
4 sale in California that is not a Reformulated Product. There shall be no obligation for Defendants  
5 to provide a warning for Covered Products that entered the stream of commerce prior to the  
6 Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described  
7 in §§ 3.3(a) or (b), respectively:

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

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

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

14           ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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 shall be affixed to or printed on the  
21 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
22 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
23 with other words, statements, or designs as to render it likely to be read and understood by an  
24 ordinary individual under customary conditions of purchase or use. A warning may be contained  
25 in the same section of the packaging, labeling, or instruction booklet that states other safety  
26 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
27 those other safety warnings.  
28

1 If Defendants sell 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 web page as the price for the Covered Product; (c) on one or more web pages  
5 displayed to a purchaser prior to purchase during the checkout process; or (d) through a hyperlink  
6 provided on any of the foregoing web pages. Alternatively, a symbol consisting of a black  
7 exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately  
8 following the display, description, price, or checkout listing of the Covered Product, if the warning  
9 statement appears elsewhere on the same web page in a manner that clearly associates it with the  
10 product(s) to which the warning applies.

11 3.5 **Compliance with Warning Regulations.** Defendants shall be deemed to be in  
12 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
13 Judgment or by complying with warning requirements adopted by the State of California's Office  
14 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

15 **4. MONETARY TERMS**

16 4.1 **Civil Penalty.** Defendants shall pay \$1,500.00 as a Civil Penalty pursuant to Health  
17 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
18 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
19 Civil Penalty remitted to Espinosa, as provided by California Health & Safety Code § 25249.12(d).

20 4.1.1 Within ten (10) days of the Effective Date, Defendant DSG shall issue two  
21 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and  
22 to (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$375.00. Payment owed to  
23 Espinosa pursuant to this Section shall be delivered to the following payment address:

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

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

1 For United States Postal Service Delivery:

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

7 For Non-United States Postal Service Delivery:

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

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

15 4.2 **Attorneys' Fees.** Defendants shall pay \$16,000.00 to Brodsky & Smith, LLC  
16 ("Brodsky Smith") as complete reimbursement for Espinosa's attorneys' fees and costs incurred as  
17 a result of investigating, bringing this matter to Defendants' attention, litigating and negotiating  
18 and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil  
19 Procedure § 1021.5.

20 This amount to Brodsky Smith shall be paid in two separate payments. Within ten (10) days  
21 of the Effective Date, Defendant DSG shall issue a payment to Brodsky Smith in the amount of  
22 \$8,500.00. Three months from the date that is ten (10) days of the Effective Date, Defendant HCB  
23 shall issue payment to Brodsky Smith in the amount of \$7,500.00.

## 24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa  
26 acting on his own behalf, and on behalf of the public interest, and Defendants, and their parents,  
27 shareholders, members, directors, officers, managers, employees, representatives, agents,  
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
predecessors, successors and assigns ("Defendants Releasees"), and all entities from whom they  
obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
not limited to manufacturers, suppliers, distributors, wholesalers, customers (including Target

1 Corporation), licensors, licensees retailers, franchisees, and cooperative members ("Downstream  
2 Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP from  
3 Covered Products, and with respect to any Covered Products manufactured, distributed, or sold by  
4 Defendants prior to the Effective Date. This Consent Judgment shall have preclusive effect such  
5 that no other person or entity, whether purporting to act in his, her, or its interests or the public  
6 interest shall be permitted to pursue and/or take any action with respect to any violation of  
7 Proposition 65 that was alleged in the Action, or that could have been brought pursuant to the  
8 Notice against Defendants and/or the Downstream Releasees of the Covered Products ("Proposition  
9 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with  
10 Proposition 65 with regard to the Covered Products.

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

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

1           5.3     Defendants waive any and all claims against Espinosa, his attorneys and other  
2 representatives, for any and all actions taken or statements made (or those that could have been  
3 taken or made) by Espinosa and his attorneys and other representatives, whether in the course of  
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
5 and/or with respect to Covered Products.

6     **6.     INTEGRATION**

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

11     **7.     GOVERNING LAW**

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

17     **8.     NOTICES**

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

22     For DSG:

23           Todd O. Maiden  
24           Reed Smith LLP  
25           101 Second Street, Suite 1800  
26           San Francisco, CA, 94105

27     For HC Brands:

28           George Gigounas  
            Sean Newland



DLA Piper LLP (US)  
555 Mission Street  
Suite 2400  
San Francisco, CA 94105

And

For Espinosa:

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

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

**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. Defendants agree they 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, including whether to modify the terms of this Consent Judgment, 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.

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
8 pursuant to law.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
11 Consent Judgment.

12 **14. AUTHORIZATION**

13 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
14 respective Parties and have read, understood and agree to all of the terms and conditions of this  
15 document and certify that he or she is fully authorized by the Party he or she represents to execute  
16 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
17 explicitly provided herein each Party is to bear its own fees and costs.

18 **AGREED TO:**

19  
20 Date: \_\_\_\_\_


21 By: \_\_\_\_\_

22 GABRIEL ESPINOSA

**AGREED TO:**

Smith Thomas

Date: (0284407)

By: 

DICK'S SPORTING GOODS, INC.

Digitally signed by Smith Thomas  
(0284407)  
DN: dc=com, dc=dcs, ou=Associates,  
ou=C01, cn=Smith Thomas (0284407)  
Date: 2020.06.11 10:44:22 -0400

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18 **AGREED TO:**

19  
20 Date:

21 By:

22 GABRIEL ESPINOSA

18 **AGREED TO:**

19 Smith Thomas

20 Date: (0284407)

21 By:

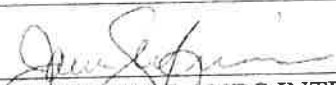
22 DICK'S SPORTING GOODS, INC.

Digitally signed by Smith Thomas  
(0284407)  
DN: dc=com, dc=dcs, ou=Associates  
ou=CO1, cn=Smith Thomas (0284407)  
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**AGREED TO:**

Date: 6-12-2020

By:   
HARD CORE BRANDS INTERNATIONAL,  
LLC

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

Dated: \_\_\_\_\_ Judge of Superior Court