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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

v.

TOMMY BAHAMA GROUP, INC., et al.,

Defendants.

Case No. RG 19-034870

**[PROPOSED] AMENDED CONSENT
JUDGMENT AS TO H & M HENNES
& MAURITZ LP**

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
3 California non-profit corporation (“CEH”), and H & M Hennes & Mauritz LP (“Settling
4 Defendant”). CEH and Settling Defendant are referred to herein together as the Parties or
5 independently as a Party. The Parties enter into this Consent Judgment to settle certain claims
6 asserted by CEH against Settling Defendant as set forth in the operative complaint in the above-
7 captioned matter. This Consent Judgment addresses chromium exposures from footwear made
8 with leather materials. Leather used to make footwear that is tanned with chromium compounds
9 can under certain circumstances expose consumers to hexavalent chromium (“CrVI”), which is a
10 chemical listed under Proposition 65 as a known to the State of California to cause cancer and
11 reproductive toxicity.

12 1.2 On July 2, 2019, CEH provided a 60-day Notice of Violation under California
13 Health & Safety Code Section 25249.5 *et seq.* (“Proposition 65”) to Settling Defendant, the
14 California Attorney General, the District Attorneys of every county in California and the City
15 Attorneys of every California city with a population greater than 750,000, alleging that Settling
16 Defendant violated Proposition 65 by exposing persons to CrVI from leather footwear without
17 first providing a clear and reasonable Proposition 65 warning.

18 1.3 Settling Defendant is a corporation and a person in the course of doing business as
19 such term is defined under Proposition 65. Settling Defendant exclusively sells H&M brand
20 private label products in California through its approximately eighty-five H&M retail stores as
21 well as its H&M online store.

22 1.4 On September 12, 2019, CEH filed the complaint in the above-captioned matter.
23 On May 19, 2022, CEH filed the operative Third Amended Complaint in the above-captioned
24 matter naming Settling Defendant as a defendant (the “Complaint”).

25 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
26 has jurisdiction over the allegations of violations contained in the Complaint and personal
27 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
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1 the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
2 Judgment as further set forth herein as a full and final resolution of all claims which were or
3 could have been raised in the Complaint based on the facts alleged therein with respect to leather
4 footwear sold by Settling Defendant.

5 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
6 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
7 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
8 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
9 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
10 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
11 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
12 resolving issues disputed in this Action.

13 **2. DEFINITIONS**

14 2.1 “Chrome-Free Leather” means that: (a) the skin or hide used to make the
15 leather was converted to leather by tanning agents free of chromium salts, including but not
16 limited to chromium sulfate; (b) the leather was not intentionally treated, dyed or exposed to
17 chemicals that contain chromium as an intended ingredient; and (c) the total content of the
18 chromium in the tanned leather is less than or equal to 0.1% (mass of chromium/total dry weight
19 of leather) when measured using ISO 17072-2.

20 2.2 “Chrome-Tanned Leather” means that the hide or skin used to make the
21 leather was converted to leather either by treatment solely with chromium salts or with chromium
22 salts together with a small amount of some other tanning agent, used merely to assist the
23 chromium tanning process, and not in sufficient amount to alter the essential chromium tanned
24 character of the leather that is tanned with chromium compounds.

25 2.3 “Covered Products” means footwear for which normal and foreseeable use will
26 result in one or more Chrome-Tanned Leather components coming into direct contact with the skin
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1 of the average user’s foot or leg while the footwear is worn (e.g., a chrome-tanned leather insole,
2 tongue, liner, unlined upper or strap).

3 2.4 “Effective Date” means the date the Consent Judgment is entered by the Court.

4 **3. INJUNCTIVE RELIEF**

5 3.1 **Reformulation:** After the Effective Date, Settling Defendant shall not sell any
6 Covered Product that is made with leather that is not Chrome-Free Leather that will be sold or
7 offered for sale by Settling Defendant or any entity downstream of Settling Defendant in
8 California. This prohibition shall not apply to synthetic, fake, faux or other leather materials that
9 are not derived from animals.

10 3.2 **Notice to Tanneries and Suppliers:** Settling Defendant represents and
11 warrants that it stopped allocating Covered Products made with Chrome-Tanned Leather to its
12 United States stores in July of 2021 and since it has no intention of reintroducing Covered
13 Products made with Chrome-Tanned Leather into the United States market it need not provide
14 any notice to its tanneries or suppliers of Covered Products instructing them that all Covered
15 Products shall be made with Chrome-Free Leather or non-leather materials.

16 **4. ENFORCEMENT**

17 4.1 **Enforcement Procedures.** CEH may, by motion or application for an order
18 to show cause before the Superior Court of the County of Alameda, enforce the terms and
19 conditions contained in this Consent Judgment. Prior to bringing any motion or application to
20 enforce the requirements of Section 3 above, CEH shall provide Settling Defendant with a Notice
21 of Violation setting forth the basis for the alleged violation. The Parties shall then meet and
22 confer during the thirty (30) day period following the date the Notice of Violation was sent in an
23 effort to try to reach agreement on an appropriate cure, penalty or related attorneys’ fees related to
24 the alleged violation. After such thirty (30) day period, CEH may, by new action, motion, or
25 order to show cause before the Superior Court of Alameda, seek to enforce the terms and
26 conditions contained in this Consent Judgment. In any enforcement proceeding, the Court shall
27 not be limited by this Consent Judgment in fashioning remedies for failure to comply with
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1 Proposition 65, and may order compliance with Proposition 65 by reformulation, warnings or any
2 other method it finds compliant with the law.

3 **5. PAYMENTS**

4 **5.1 Payments by Settling Defendant.** On or before seven (7) days after the entry of
5 this Consent Judgment, Settling Defendant shall pay the total sum of \$45,500 as a settlement
6 payment as further set forth in this Section.

7 **5.2 Allocation of Payments.** The total settlement amount shall be paid in five (5)
8 separate checks in the amounts specified below and delivered as set forth below. Any failure by
9 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
10 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not
11 received after the applicable payment due date set forth in Section 4.1. The late fees required
12 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
13 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
14 by Settling Defendant shall be allocated as set forth below between the following categories and
15 made payable as follows:

16 **5.2.1** Settling Defendant shall pay \$5,932 as a civil penalty pursuant to Health &
17 Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
18 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
19 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Settling Defendant shall
20 pay the OEHHA portion of the civil penalty payment for \$4,449 by check made payable to
21 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
22 delivered as follows:

23 For United States Postal Service Delivery:
24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010, MS #19B
28 Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:
Attn: Mike Gyurics

1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 1001 I Street, MS #19B
4 Sacramento, CA 95814

5 5.2.2 Settling Defendant shall pay the CEH portion of the civil penalty payment
6 for \$1,483 by check made payable to the Center for Environmental Health and associated with
7 taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law
8 Group, 503 Divisadero Street, San Francisco, CA 94117.

9 5.2.3 Settling Defendant shall pay \$4,448 as an Additional Settlement Payment
10 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
11 Regulations, Title 11, § 3204. CEH will use these funds to support CEH programs and activities
12 that seek to educate the public about toxic chemicals, including hormone disruptors such as CrVI,
13 work with industries interested in moving toward safer alternatives, advocate with government,
14 businesses, and communities for business practices that are safe for human health and the
15 environment, and thereby reduce the public health impacts and risks of exposure to CrVI and
16 other toxic chemicals in consumer products sold in California. CEH shall obtain and maintain
17 adequate records to document that ASPs are spent on these activities and CEH agrees to provide
18 such documentation to the Attorney General within thirty (30) days of any request from the
19 Attorney General. The payments pursuant to this Section shall be made payable to the Center for
20 Environmental Health and associated with taxpayer identification number 94-3251981. These
21 payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
22 94117.

23 5.2.4 Defendant shall pay \$35,120 as a reimbursement of a portion of CEH’s
24 reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made
25 in two separate checks as follows: (a) \$29,680 payable to the Lexington Law Group and
26 associated with taxpayer identification number 94-3317175; and (b) \$5,440 payable to the Center
27 For Environmental Health and associated with taxpayer identification number 94-3251981. Both
28 of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San
29 Francisco, CA 94117.

1 5.2.5 To summarize, Settling Defendant shall deliver checks made out to the
2 payees and in the amounts set forth below:

3

4 Payee	Type	Amount	Deliver To
5 OEHHA	Penalty	\$ 4,449	OEHHA per § 4.2.1
6 Center For Environmental Health	Penalty	\$ 1,483	LLG
7 Center For Environmental Health	ASP	\$ 4,448	LLG
8 Lexington Law Group	Fee and Cost	\$29,680	LLG
9 Center For Environmental Health	Fee and Cost	\$ 5,440	LLG

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11 **6. MODIFICATION OF CONSENT JUDGMENT**

12 6.1 **Modification.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties, with the approval of the Court, or by an order of this
14 Court upon motion and in accordance with law.

15 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
16 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
17 modify the Consent Judgment.

18 **7. CLAIMS COVERED AND RELEASE**

19 7.1 Provided that Settling Defendant has complied with Section 5 hereof, this Consent
20 Judgment is a full, final and binding resolution between CEH on behalf of itself and the public
21 interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under
22 common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and
23 attorneys (“Defendant Releasees”), and all entities to which Settling Defendant directly or
24 indirectly distributes or sells Covered Products, including but not limited to distributors,
25 wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant
26 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to
27 CrVI contained in Covered Products sold by Settling Defendant prior to the Effective Date.

1 7.2 Provided that Settling Defendant has complied with Section 5 hereof, CEH, for
2 itself, its agents, successors and assigns, releases, waives, and forever discharges any and all
3 claims against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees
4 arising from any violation of Proposition 65 or any other statutory or common law claims that
5 have been or could have been asserted by CEH individually regarding the failure to warn about
6 exposure to CrVI arising in connection with Covered Products sold by Settling Defendant prior to
7 the Effective Date.

8 7.3 Provided that Settling Defendant has complied with Section 5 hereof, compliance
9 with the terms of this Consent Judgment by Settling Defendant shall constitute compliance with
10 Proposition 65 by Settling Defendant, its Defendant Releasees and its Downstream Defendant
11 Releasees with respect to any alleged failure to warn about CrVI in Covered Products sold by
12 Settling Defendant after the Effective Date.

13 **8. PROVISION OF NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail to:

16 Eric S. Somers
17 Lexington Law Group
18 503 Divisadero Street
19 San Francisco, CA 94117
20 esomers@lexlawgroup.com

21 8.2 When Settling Defendant is entitled to receive any notice under this Consent
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Staci Trager
24 Nixon Peabody LLP
25 300 South Grand Avenue, Suite 4100
26 Los Angeles, CA 90071-3151
27 strager@nixonpeabody.com

28 8.3 Any Party may modify the person and address to whom the notice is to be sent by
sending the other Party notice by first class and electronic mail.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective as a contract upon the date signed
3 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also
4 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
5 support approval of such Motion.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no further force
7 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California.

12 **11. ATTORNEY’S FEES**

13 11.1 Should CEH prevail on any motion, application for an order to show cause, or
14 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
15 reasonable attorneys’ fees and costs incurred as a result of such motion or application. Should
16 Settling Defendant prevail on any motion, application for an order to show cause, or other
17 proceeding, Settling Defendant may be awarded its reasonable attorneys’ fees and costs as a result
18 of such motion or application upon a finding by the Court that CEH’s prosecution of the motion
19 or application lacked substantial justification. For purposes of this Consent Judgment, the term
20 “substantial justification” shall carry the same meaning as used in the Civil Discovery Act of
21 1986, Code of Civil Procedure §§ 2016, et seq.

22 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
23 sanctions pursuant to law.

24 **12. ENTIRE AGREEMENT**

25 12.1 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
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1 and therein. There are no warranties, representations, or other agreements between the Parties
2 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
3 other than those specifically referred to in this Consent Judgment have been made by any Party
4 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
5 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
6 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
7 Parties hereto only to the extent that they are expressly incorporated herein. No waiver of any of
8 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
9 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
10 waiver.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 **14. SUCCESSORS AND ASSIGNS.**

15 14.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
16 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
17 assigns of any of them.

18 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

19 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
21 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

22 **16. NO EFFECT ON OTHER SETTLEMENTS**

23 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
24 against an entity that is not Settling Defendant on terms that are different than those contained in
25 this Consent Judgment.

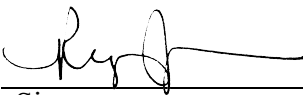
1 **17. EXECUTION IN COUNTERPARTS**

2 17.1 The stipulations to this Consent Judgment may be executed in counterparts and
3 by means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

5 **IT IS SO STIPULATED:**

6 Dated: August 23, 2022

**CENTER FOR ENVIRONMENTAL
HEALTH**

8 

9 _____
10 Signature

11 Regina Jackson
12 Printed Name

13 Interim Executive Director
14 Title

15 Dated: August 17, 2022

H & M HENNES & MAURITZ LP

17 

18 _____
Signature

19 Aleksandra Filipov
20 Printed Name

21 Authorized Signatory
22 Title

Adam Valko

23 _____
Signature

24 Adam Valko
25 Printed Name

26 Authorized Signatory
27 Title

28 **IT IS SO ORDERED:**

Dated: _____, 2022

Judge of the Superior Court of California