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

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

TOMMY BAHAMA GROUP, INC., *et al.*,

Defendants.

) Case No. RG 19-034870
)
) **[PROPOSED] CONSENT**
) **JUDGMENT AS TO TOMMY**
) **BAHAMA GROUP, INC.**

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation (“CEH”), and Tommy Bahama Group, Inc. (“Settling Defendant”). CEH and Settling Defendant are referred to herein together as the Parties or independently as a Party. The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint in the above-captioned matter. This Consent Judgment covers footwear made with leather materials that are sold under a brand or trademark that is owned or licensed by Settling Defendant or an entity affiliated with Settling Defendant (“Private Label Footwear”). CEH contends that leather used to make footwear that is tanned with chromium compounds can under certain circumstances expose

1 consumers to hexavalent chromium (“CrVI”), which is a chemical listed under Proposition 65 as
2 known to the State of California to cause cancer and reproductive toxicity.

3 1.2 On July 2, 2019, CEH provided a 60-day Notice of Violation under California
4 Health & Safety Code Section 25249.5 et seq. (“Proposition 65”) to Settling Defendant, the
5 California Attorney General, the District Attorneys of every county in California and the City
6 Attorneys of every California city with a population greater than 750,000, alleging that Settling
7 Defendant violated Proposition 65 by exposing persons to CrVI from footwear without first
8 providing a clear and reasonable Proposition 65 warning.

9 1.3 Settling Defendant is a corporation and a person in the course of doing business as
10 such term is defined under Proposition 65.

11 1.4 On September 12, 2019, CEH filed the Complaint in the above-captioned matter.
12 On November 26, 2019, CEH filed the operative First Amended Complaint in the above-captioned
13 matter (the “FAC”).

14 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over the allegations of violations contained in the FAC and personal jurisdiction over
16 Settling Defendant as to the acts alleged in the FAC, that venue is proper in the County of
17 Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full
18 and final resolution of all claims which were or could have been raised in the FAC based on the
19 facts alleged therein with respect to Private Label Footwear sold by Settling Defendant.

20 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
21 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
22 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
24 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
25 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
26 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
27 resolving issues disputed in this Action.
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1 **2. DEFINITIONS**

2 2.1 “Effective Date” means the date the Consent Judgment is entered by the Court.

3 2.2 “Chrome-Free Leather” means leather that: (a) was not at any point in the
4 production process treated or tanned with chromium based tannins, including but not limited to
5 chromium sulfate; (b) was not otherwise treated, dyed or exposed to chemicals that contain
6 chromium as an intended ingredient; and (c) was not produced in tanneries that have material
7 residual chromium contamination; and (d) has extractable chromium of less than 2 part per million
8 by weight when tested pursuant to ISO 17072-1 or a successor ISO standard that measures
9 extractable total chromium.

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Specification Compliance Date.** To the extent it has not already done so, no more
12 than thirty (30) days after the date of entry of this Consent Judgment, Settling Defendant shall
13 instruct in writing each of its Private Label Footwear suppliers (a “Private Label Footwear
14 Supplier”) that any leather used in Private Label Footwear supplied to Settling Defendant must be
15 made with Chrome-Free Leather. If in the future Settling Defendant purchases Private Label
16 Footwear from a Private Label Footwear Supplier that it has not previously provided with such
17 written instructions, Settling Defendant shall instruct in writing each such Private Label Footwear
18 Supplier that any leather used in Private Label Footwear supplied to Settling Defendant must be
19 made with Chrome-Free Leather prior to placing an initial order for Private Label Footwear.
20 Settling Defendant may comply with the requirements of this Section 3.1 by incorporating the
21 requirements of this Section into its vendor guidelines, restricted substances list or similar vendor
22 specifications document and obtaining approval from Private Label Footwear Suppliers in writing
23 or electronically through its standard vendor approval and consent process. Settling Defendant
24 shall retain and make available to CEH upon reasonable request records of communications sent to
25 and received from Private Label Footwear Suppliers that are related to the requirement of this
26 Section 3.1 for a period of five (5) years from the date of entry of this Consent Judgment (the
27 “Effective Date”).
28

1 3.2 **Reformulation of Private Label Footwear.** After the Effective Date, Settling
2 Defendant shall not manufacture, import, or purchase any Private Label Footwear that will be sold
3 in California that contains leather that is not Chrome-Free Leather. As of 90 days after the
4 Effective Date, Settling Defendant shall not offer for sale or sell in California any Private Label
5 Footwear that contains leather that is not Chrome-Free Leather. Nothing in this Section requires
6 Settling Defendant to perform testing of Private Label Footwear.

7 **4. ENFORCEMENT**

8 4.1 **Enforcement Procedures.** Either Party may by motion or application for an order
9 to show cause before this Court seek to enforce the terms of this Consent Judgment. Prior to filing
10 any such motion or application, a Party seeking to enforce shall provide the allegedly violating
11 party with a written notice setting forth the detailed factual and legal basis for the alleged violation
12 (“Notice of Violation”). The Parties shall then meet and confer during the thirty (30) day period
13 following the date the Notice of Violation was sent in an effort to try to reach agreement on an
14 appropriate cure, penalty or related attorneys’ fees related to the alleged violation. After such
15 thirty (30) day period, the Party seeking to enforce may, by new action, motion, or order to show
16 cause before the Superior Court of Alameda, seek to enforce the terms and conditions contained in
17 this Consent Judgment. In any enforcement proceeding, the Court shall not be limited by this
18 Consent Judgment in fashioning remedies for failure to comply with Proposition 65, and may
19 order compliance with Proposition 65 by reformulation, warnings or any other method it finds
20 compliant with the law. In cases where the Notice of Violation applies to alleged violations of
21 Section 3, the parties shall meet and confer and consider the scope of the violation, the number of
22 units of Private Label Footwear impacted and any explanation put forward by Settling Defendant
23 for such violation. If the Parties are unable to resolve the matter, the Court shall also consider
24 these factors in any enforcement proceeding.

25 **5. PAYMENTS**

26 5.1 **Payments by Settling Defendant.** On or before five (5) days after notice of entry
27 of this Consent Judgment, Settling Defendant shall pay the total sum of \$80,000 as a settlement
28 payment as further set forth in this Section.

1 5.2 **Allocation of Payments.** The total settlement amount shall be paid in five (5)
2 separate checks in the amounts specified below and delivered as set forth below. The funds paid
3 by Settling Defendant shall be allocated as set forth below between the following categories and
4 made payable as follows:

5 5.3 Settling Defendant shall pay \$10,600 as a civil penalty pursuant to Health & Safety
6 Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &
7 Safety Code §25249.12 (75% to the State of California’s Office of Environmental Health Hazard
8 Assessment (“OEHHA”) and 25% to CEH). Accordingly, Settling Defendant shall pay the
9 OEHHA portion of the civil penalty payment for \$7,950 by check made payable to OEHHA and
10 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
11 follows:

12 For United States Postal Service Delivery:

13 Attn: Mike Gyurics
14 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010, MS #19B
 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Attn: Mike Gyurics
18 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
19 1001 I Street, MS #19B
 Sacramento, CA 95814

20 5.3.1 Settling Defendant shall pay the CEH portion of the civil penalty payment
21 for \$2,650 by check made payable to the Center for Environmental Health and associated with
22 taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law
23 Group, 503 Divisadero Street, San Francisco, CA 94117.

24 5.3.2 Settling Defendant shall pay \$7,950 as an Additional Settlement Payment
25 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
26 Regulations, Title 11, § 3204. CEH will use these funds to support CEH programs and activities
27 that seek to educate the public about toxic chemicals, including hormone disruptors such as
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1 hexavalent chromium, work with industries interested in moving toward safer alternatives,
 2 advocate with government, businesses, and communities for business practices that are safe for
 3 human health and the environment, and thereby reduce the public health impacts and risks of
 4 exposure to hexavalent chromium and other toxic chemicals in consumer products sold in
 5 California. CEH shall obtain and maintain adequate records to document that ASPs are spent on
 6 these activities and CEH agrees to provide such documentation to the Attorney General within
 7 thirty days of any request from the Attorney General. The payments pursuant to this Section shall
 8 be made payable to the Center for Environmental Health and associated with taxpayer
 9 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
 10 503 Divisadero Street, San Francisco, CA 94117.

11 5.3.3 Settling Defendant shall pay \$61,450 as a reimbursement of a portion of
 12 CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be
 13 made in two separate checks as follows: (a) \$51,800 payable to the Lexington Law Group and
 14 associated with taxpayer identification number 94-3317175; and (b) \$9,650 payable to the Center
 15 For Environmental Health and associated with taxpayer identification number 94-3251981. Both
 16 of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San
 17 Francisco, CA 94117.

18 5.3.4 To summarize, Settling Defendant shall deliver checks made out to the
 19 payees and in the amounts set forth below:

20 Payee	Type	Amount	Deliver To
21 OEHHA	Penalty	\$7,950	OEHHA per Section 5.2.1
22 Center For Environmental Health	Penalty	\$2,650	LLG
23 Center For Environmental Health	ASP	\$7,950	LLG
24 Lexington Law Group	Fee and Cost	\$51,800	LLG
25 Center For Environmental Health	Fee and Cost	\$9,650	LLG

1 **6. MODIFICATION AND DISPUTE RESOLUTION**

2 6.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 6.2 **Alternative Compliance Standards.** If either (i) CEH enters into a court-approved
6 settlement or a court enters a final judgment in a Proposition 65 enforcement action over exposure
7 to CrVI from leather that includes a different definition for Chrome Free Leather or method for
8 determining whether Leather is “Chrome-Free” than Section 2.2; or (ii) the State of California
9 adopts a different definition or method for determining Leather is “Chrome-Free” than Section 2.2
10 for purposes of determining exposure to CrVI for purposes of Proposition 65, the Parties will meet
11 and confer in good faith on conforming modifications to this Consent Judgment. If the Parties are
12 unable to reach agreement, either Party may move the Court to modify the Consent Judgment.

13 6.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
14 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASE**

17 7.1 Provided that Settling Defendant has complied with Section 5 hereof, this Consent
18 Judgment is a full, final and binding resolution between CEH on behalf of itself and the public
19 interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under
20 common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and
21 attorneys (“Defendant Releasees”), and all entities to which Settling Defendant directly or
22 indirectly distributes or sells Private Label Footwear, including but not limited to distributors,
23 wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant
24 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to
25 CrVI contained in Private Label Footwear manufactured, distributed, sold or offered for sale by
26 Settling Defendant prior to the Effective Date.

27 7.2 Provided that Settling Defendant has complied with Section 5 hereof, CEH, for
28 itself, its agents, successors and assigns, releases, waives, and forever discharges any and all

1 claims against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees
2 arising from any violation of Proposition 65 or any other statutory or common law claims that
3 have been or could have been asserted by CEH individually or in the public interest regarding the
4 failure to warn about exposure to CrVI arising in connection with Private Label Footwear
5 manufactured, distributed, sold or offered for sale by Settling Defendant and Defendant Releasees
6 prior to the Effective Date.

7 7.3 Provided that Settling Defendant has complied with Section 5 hereof, compliance
8 with the terms of this Consent Judgment by Settling Defendant shall constitute compliance with
9 Proposition 65 by Settling Defendant, its Defendant Releasees and its Downstream Defendant
10 Releasees with respect to any alleged failure to warn about CrVI in Private Label Footwear
11 manufactured, distributed, sold or offered for sale by Settling Defendant after the Effective Date.

12 7.4 Nothing in this Consent Judgment releases, covers or addresses in any way any
13 claim regarding footwear manufactured, distributed, sold or offered for sale by Settling Defendant
14 that is not Private Label Footwear.

15 **8. PROVISION OF NOTICE**

16 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
17 notice shall be sent by first class and electronic mail to:

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

23 8.1.1 When Settling Defendant is entitled to receive any notice under this Consent
24 Judgment, the notice shall be sent by first class and electronic mail to:

25 Suraj A. Palakshappa
26 Vice President-Law, General Counsel and Secretary
27 Oxford Industries, Inc.
28 999 Peachtree Street NE, Suite 688
Atlanta, GA 30309
rpalakshappa@oxfordinc.com

Jeffrey B. Margulies

1 Lauren Shoor
2 Norton Rose Fulbright US LLP
3 555 South Flower Street, Forty-First Floor
4 Los Angeles, California 90071, United States
5 jeff.margulies@nortonrosefulbright.com
6 lauren.shoor@nortonrosefulbright.com

7 8.2 Any Party may modify the person and address to whom the notice is to be sent by
8 sending the other Party notice by first class and electronic mail.

9 **9. COURT APPROVAL**

10 9.1 This Consent Judgment shall become effective as a contract upon the date signed
11 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare
12 and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support
13 approval of such Motion.

14 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
15 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

16 **10. GOVERNING LAW AND CONSTRUCTION**

17 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 **11. ATTORNEY'S FEES**

20 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
21 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
22 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
23 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
24 Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

25 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
26 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
27 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
28 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
29 provision shall not be construed as altering any procedural or substantive requirements for
30 obtaining such an award.

1 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
2 sanctions pursuant to law.

3 **12. ENTIRE AGREEMENT**

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

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **14. SUCCESSORS AND ASSIGNS**

21 14.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
22 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
23 assigns of any of them.

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

25 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
27 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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


2 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against an entity that is not Settling Defendant on terms that are different than those contained in
4 this Consent Judgment.

5 **17. EXECUTION IN COUNTERPARTS**

6 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile or portable document format (pdf), which taken together shall be deemed to
8 constitute one document.


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10 **IT IS SO STIPULATED:**

<p>11 Dated: <u>March 15</u>, 2021</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p>Signature</p> <p><u>Michael Green</u></p> <hr/> <p>Printed Name</p> <p><u>CEO</u></p> <hr/> <p>Title</p>
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Dated: <u>March 8</u> , 2021	TOMMY BAHAMA GROUP, INC.
	 Signature
	<u>SURAJ A. PALAKSHAPPA</u> Printed Name
	<u>VICE PRESIDENT</u> Title

IT IS SO ORDERED

Dated: _____, 2021	_____ Judge of the Superior Court of California
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