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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 ACUSHNET COMPANY, BIG 5 CORP.,

15 Defendants.

Case No.: RG20077402

CONSENT JUDGMENT

Judge: Richard Seabolt

Courtroom.: 521

Hearing Date: September 16, 2021

Hearing Time: 2:30 PM

Reservation #: R-2279147

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

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to chromium (hexavalent compounds) (“CrVI”) from its sales of WeatherSof golf
12 gloves without providing a clear and reasonable exposure warning pursuant to Proposition 65. CrVI
13 is listed 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.** On or about October 10, 2019, Espinoza served Acushnet, and
16 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of WeatherSof golf gloves
19 expose users in California to CrVI. No public enforcer has brought and is diligently prosecuting
20 the claims alleged in the Notice. On or about December 10, 2020, Espinoza filed a complaint (the
21 “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 Notice and Complaint filed in this
24 matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
25 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
26 resolution of all claims which were or could have been raised in the Notice and/or Complaint.
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1 1.5 Defendant denies the material allegations contained in the Notice and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means WeatherSof golf gloves,
10 that include a leather palm patch, that are manufactured, distributed and/or offered for sale in
11 California by Acushnet.

12 2.2 **Effective Date.** The term “Effective Date” means the date Acushnet’s counsel
13 receives notice that this Consent Judgment is entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF**

15 3.1 **Commitment to not Sell and/or Manufacture the Covered Product.** Subject to
16 Section 3.3 below, commencing October 1, 2021, and continuing thereafter, Acushnet agrees that
17 it shall not manufacture the Covered Product. Acushnet may sell through its inventory of previously
18 manufactured Covered Products in California, with no obligation to warn or remove such Covered
19 Products from existing inventory, as long as such Covered Products entered the stream of
20 commerce prior to the Effective Date through and including June 30, 2022, subject to Section 3.3.1
21 below. Following the expiration of the sell-through period, no further sales of the Covered Product
22 will be made in California.

23 3.2 **Commitment to sell CrVI Free Gloves.** Subject to Section 3.3.1 below,
24 commencing July 1, 2022, and continuing thereafter, Acushnet agrees that it shall only distribute,
25 sell or offer for sale in California Covered Products made of wholly synthetic leather (“CrVI Free
26 Gloves”). CrVI Free Gloves shall not contain any detectable amount of CrVI when analyzed
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1 pursuant to accepted testing methodologies utilized by federal or state governmental agencies for
2 the purpose of determining CrVI exposure from use of the Covered Products.

3 **3.3 Supply Chain Delays Beyond Defendant's Control.** Subject to the sell-through
4 period in Section 3.1, the current date of October 1, 2021, by which Acushnet will not sell and/or
5 manufacture the Covered Product, is subject to the following. In the event that there occurs a supply
6 chain interruption or manufacturing stoppage or work delay (collectively, "Delay"), as a result of
7 the COVID-19 crisis or any other event beyond Defendant's reasonable control, which makes
8 Defendant's compliance with the foregoing date commercially reasonably impracticable,
9 Defendant shall notify Plaintiff of this delay in writing, no later than 30 days before October 1,
10 2021. At the time Defendant's notification is sent, Defendant will be granted a 90-day extension of
11 the October 1, 2021 discontinuation of sales and/or manufacture date, pursuant to Section 3.1, to
12 December 30, 2021. If conditions of Delay continue, Defendant shall, no later than 30 days before
13 December 30, 2021, notify Plaintiff in writing of this delay, at which time Defendant will be granted
14 another 90-day extension from December 30, 2021 to March 30, 2022.

15 **3.3.1** In the event of an extension of the discontinuation of manufacture date of
16 October 1, 2021 to December 30, 2021, Acushnet shall also be granted a 90-day extension of the
17 currently agreed upon commitment to sell CrVI Free Gloves date of July 1, 2022, pursuant to
18 Section 3.2, to September 29, 2022.

19 **4. MONETARY TERMS**

20 **4.1 Civil Penalty.** Acushnet shall pay \$7,000.00 as a Civil Penalty pursuant to Health
21 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
22 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
23 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

24 **4.1.1** Within ten (10) days of the Effective Date, Acushnet shall issue two
25 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$5,250.00; and
26 to (b) "Brodsky & Smith, LLC in Trust for Espinoza" in the amount of \$1,750.00. Payment owed
27 to Espinoza pursuant to this Section shall be delivered to the following payment address:
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1 Evan J. Smith, Esquire
2 Brodsky & Smith, LLC
3 Two Bala Plaza, Suite 510
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

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

21 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Acushnet shall pay
22 \$55,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
23 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
24 Acushnet' attention, litigating and negotiating and obtaining judicial approval of a settlement in the
25 public interest, pursuant to Code of Civil Procedure § 1021.5.

26 **5. RELEASE OF ALL CLAIMS**

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

1 distributors, wholesalers, customers, licensors, licensees, retailers, including but not limited to Big
2 5 Corp., franchisees, and cooperative members (“Downstream Releasees”), of all claims for
3 violations of Proposition 65 based on exposure to CrVI from use of the Covered Products as set
4 forth in the Notice and Complaint, with respect to any Covered Products manufactured, distributed,
5 or sold by Acushnet prior to the Effective Date through and including June 30, 2022, subject to
6 Section 3.3 (inclusive of 3.3.1). It is the Parties’ intent that this Consent Judgment shall have
7 preclusive effect such that no other person or entity, whether purporting to act in his, her, or its
8 interests or the public interest shall be permitted to pursue and/or take any action with respect to
9 any violation of Proposition 65 that was alleged in the Notice and Complaint against Acushnet
10 and/or the Upstream Releasees and/or the Downstream Releasees of the Covered Products
11 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes
12 compliance with Proposition 65 with regard to the Covered Products.

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

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
6 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
7 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
8 DEBTOR OR RELEASED PARTY.

9 5.3 Acushnet waives any and all claims against Espinoza, his attorneys and other
10 representatives, for any and all actions taken or statements made by Espinoza and his attorneys and
11 other representatives, whether in the course of investigating claims or otherwise seeking
12 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

13 6. INTEGRATION

14 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
15 any and all prior negotiations and understandings related hereto shall be deemed to have been
16 merged within it. No representations or terms of agreement other than those contained herein exist
17 or have been made by any Party with respect to the other Party or the subject matter hereof.

18 7. GOVERNING LAW

19 The terms of this Consent Judgment shall be governed by the laws of the State of California
20 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
21 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
22 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
23 that, Covered Products are so affected. The Parties agree that after the Effective Date should
24 compliance with Proposition 65 with respect to exposure to CrVI from use of the Covered Products
25 be governed by operation of law (i.e. Court Order regarding chromium (VI) in leather products,
26 regulatory exemption) Acushnet may choose to comply with such operation of law and such action
27 would not be a breach or violation of this Consent Judgment.

28 8. NOTICES

8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Defendant:

4 Mark E. Elliott
5 Pillsbury Winthrop Shaw Pittman LLP
6 725 South Figueroa Street, Suite 2800
7 Los Angeles, CA 90017

8 Rebecca M. Lee
9 Pillsbury Winthrop Shaw Pittman LLP
10 725 South Figueroa Street, Suite 2800
11 Los Angeles, CA 90017

12 And

13 For Espinoza:

14 Evan Smith
15 Brodsky & Smith, LLC
16 9595 Wilshire Blvd., Ste. 900
17 Beverly Hills, CA 90212

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and
23 the same document.

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

26 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
27 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
28 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.

1 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. ATTORNEY'S FEES**

9 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

11 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
12 pursuant to law.

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent Judgment.

16 **14. AUTHORIZATION**

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

AGREED TO:

Date: 7/30/21

Date: 7/23/2021

By: 
GABRIEL ESPINOZA

By: 
ACUSHNET COMPANY

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court