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

11 GABRIEL ESPINOZA,
12 Plaintiff,
13 v.
14 MIDWEST QUALITY GLOVES, INC.,
15 Defendant.

Case No.: HG20064308

CONSENT JUDGMENT

Judge: Dennis Hayashi
Dept.: 518
Hearing Date: August 12, 2020
Hearing Time: 2:30 PM
Reservation #: R - 2184663

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

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to chromium (hexavalent compounds) (“chromium VI” or “(CrVI)”) from its sales of
12 leather gloves, including but not limited to Midwest Quality pigskin gloves, UPC #072264179082
13 without providing a clear and reasonable exposure warning pursuant to Proposition 65. CrVI is
14 listed under Proposition 65 as a chemical known to the State of California to cause cancer and
15 adverse developmental effects in both males and females.

16 1.3 **Notice of Violation/Complaint.** On or about December 10, 2019, Espinoza served
17 Midwest Gloves, and various public enforcement agencies with documents entitled “60-Day Notice
18 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Midwest
20 Quality pigskin gloves, UPC #072264179082 expose users in California to CrVI. No public
21 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May 29,
22 2020, Espinoza filed a complaint (the “Complaint”) in the matter.

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Notice filed in this matter, that
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
27 claims which were, or could have been raised in the Complaint based on the facts alleged therein
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1 and/or in the Notice.

2 1.5 Defendant denies the material allegations contained in the Notice and Complaint
3 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
4 construed as an admission by Defendant 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 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
7 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
8 responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means leather gloves, including
11 but not limited to Midwest Quality pigskin gloves, UPC #072264179082, that are manufactured,
12 distributed and/or offered for sale in California by Midwest Gloves.

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

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Clear and Reasonable Warning.** Within sixty (60) days of the Effective Date, and
17 continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2
18 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells,
19 or offers for sale in California. There shall be no obligation for Defendant to provide a warning for
20 Covered Products that enter the stream of commerce prior to three months after the Effective Date.
21 The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.1(a)
22 or (b), respectively:

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

24 **⚠ WARNING:** This product can expose you to chemicals including chromium
25 (hexavalent compounds), which is known to the State of California to cause cancer
26 and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

27 (b) **Alternative Warning:** Midwest Gloves may, but is not required to, use the
28 alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

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

2 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
3 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
4 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
5 triangle with a black outline, except that if the sign or label for the Covered Product does not use
6 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
7 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
8 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
9 automatic process, providing that the warning is displayed with such conspicuousness, as compared
10 with other words, statements, or designs as to render it likely to be read and understood by an
11 ordinary individual under customary conditions of purchase or use. A warning may be contained
12 in the same section of the packaging, labeling, or instruction booklet that states other safety
13 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
14 those other safety warnings.

15 If Midwest Gloves sells Covered Products via an internet website to customers located in
16 California, the warning requirements of this section shall be satisfied if the foregoing warning
17 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
18 (b) on the same page as the price for the Covered Product; (c) on one or more web pages displayed
19 to a purchaser prior to purchase during the checkout process, or (d) by use of the word **WARNING**
20 with a hyperlink to a warning under section 2.1(a) or (b) pursuant to California Code of Regulations
21 title 27 section 25602(b). Alternatively, a symbol consisting of a black exclamation point in a
22 yellow or white equilateral triangle may appear adjacent to or immediately following the display,
23 description, price, or checkout listing of the Covered Product, if the warning statement appears
24 elsewhere on the same web page in a manner that clearly associates it with the product(s) to which
25 the warning applies.

26 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
27 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
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1 Judgment or by complying with warning regulations approved or adopted by the State of
2 California’s Office of Environmental Health Hazard Assessment (“OEHHA”), or by any other State
3 of California agency authorized to issue regulations approving or adopting warnings as
4 implementation of Proposition 65, or by statutes adopted by the California State Legislature or by
5 the California voters after the Effective Date.

6 **4. MONETARY TERMS**

7 4.1 **Civil Penalty.** Midwest Gloves shall pay \$5,000.00 as a Civil Penalty pursuant to
8 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
9 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
10 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code
11 § 25249.12(d).

12 4.1.1 Within thirty (30) days of the Effective Date, Midwest Gloves shall issue
13 two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3,750.00;
14 and to (b) “Brodsky & Smith, LLC in Trust for Espinoza” in the amount of \$1,250.00. Payment
15 owed to Espinoza pursuant to this Section shall be delivered to the following payment address:

16 Evan J. Smith, Esquire
17 Brodsky & Smith, LLC
18 Two Bala Plaza, Suite 510
19 Bala Cynwyd, PA 19004

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

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street

1 Sacramento, CA 95814

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

4 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Midwest Gloves
5 shall pay \$28,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
6 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
7 Midwest Gloves' attention, litigating and negotiating and obtaining judicial approval of a
8 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

9 **5. RELEASE OF ALL CLAIMS**

10 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
11 acting on his own behalf, and on behalf of the public interest, and Midwest Gloves, and its parents,
12 shareholders, members, directors, officers, managers, employees, representatives, agents,
13 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
14 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
15 directly or indirectly obtain ("Upstream Releasees") and to whom they directly or indirectly
16 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
17 distributors, wholesalers, customers, licensors, licensees, retailers, including but not limited to
18 Home Depot Product Authority, LLC; The Home Depot, Inc.; Home Depot U.S.A., Inc., Ross
19 Stores, Inc., franchisees, and cooperative members ("Downstream Releasees"), of all claims for
20 violations of Proposition 65 based on exposure to CrVI from Covered Products as set forth in the
21 Notice, with respect to any Covered Products manufactured, distributed, or sold by Midwest Gloves
22 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other
23 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
24 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
25 alleged in the Complaint, or that could have been brought pursuant to the Notice against Midwest
26 Gloves and/or the Upstream Releasees and/or the Downstream Releasees of the Covered Products
27 ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment constitutes
28 compliance with Proposition 65 with regard to the Covered Products.

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

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

22 5.3 Midwest Gloves waives any and all claims against Espinoza, his attorneys and other
23 representatives, for any and all actions taken or statements made by Espinoza and his attorneys and
24 other representatives, whether in the course of investigating claims or otherwise seeking
25 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

26 **6. INTEGRATION**

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
28 any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
6 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
7 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
8 that, Covered Products are so affected. The Parties agree that after the Effective Date should
9 compliance with Proposition 65 with respect to chromium VI in the Covered Products be governed
10 by operation of law (i.e. Court Order regarding chromium VI in leather products, regulatory
11 exemption) Midwest Gloves may choose to comply with such operation of law and such action
12 would not be a breach or violation of this Consent Judgment.

13 **8. NOTICES**

14 8.1 Unless specified herein, all correspondence and notices required to be provided
15 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
16 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
17 by the other party at the following addresses:

18 For Defendant:

19 Ryan Landis
20 Polsinelli LLP
21 2049 Century Park East, Suite 2900
Los Angeles, CA 90067

22 And

23 For Espinoza:

24 Evan Smith
25 Brodsky & Smith, LLC
26 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.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

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13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 5/19/2020
By: [Signature]
GABRIEL ESPINOZA

Date: 5/29/2020
By: [Signature] Ex V.P.
MIDWEST QUALITY GLOVES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court