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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 WEAVER LEATHER, LLC, TRACTOR
15 SUPPLY COMPANY,

16 Defendants.

Case No.: HG20071366

CONSENT JUDGMENT

Judge: Richard L. Seabolt
Dept.: 521
Hearing Date: February 4, 2021
Hearing Time: 1:30 PM
Reservation #: R-2226121

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

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Weather Leather leg wrap cases
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
13 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/Complaints.** On or about December 13, 2019, Espinoza served
16 Weaver Leather, Tractor Supply Company, and various public enforcement agencies with
17 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
18 (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Weather Leather leg wrap cases may expose users in California to DEHP. No
20 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
21 August 18, 2020, Espinoza filed a complaint (the “Complaint”) in the matter. On October 19, 2020,
22 Espinoza filed an amended complaint (the “Amended Complaint”) in the matter. Collectively, the
23 Complaint and Amended Complaint will be referred herein as (the “Complaints.”)

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

1 claims which were or could have been raised in the Complaints based on the facts alleged therein
2 and/or in the Notice.

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The terms "Covered Product" or "Covered Products" mean
12 Weather Leather leg wrap cases that are manufactured, distributed and/or offered for sale in
13 California by Weaver Leather.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
18 signed by both Parties, and continuing thereafter, Covered Products that Weaver Leather directly
19 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
20 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
21 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
22 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
23 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
24 Product.

25 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
26 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
27 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
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1 and 8270C or other methodology utilized by federal or state government agencies for the purpose
2 of determining the phthalate content in a solid substance.

3 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
4 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
5 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
6 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
7 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
8 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
9 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

11 ⚠ **WARNING:** This product may expose you to chemicals including di(2-
12 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
13 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

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

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

17 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
18 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
19 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
20 triangle with a black outline, except that if the sign or label for the Covered Product does not use
21 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
22 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
23 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
24 automatic process, providing that the warning is displayed with such conspicuousness, as compared
25 with other words, statements, or designs as to render it likely to be read and understood by an
26 ordinary individual under customary conditions of purchase or use. A warning may be contained
27 in the same section of the packaging, labeling, or instruction booklet that states other safety
28

1 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
2 those other safety warnings.

3 If Weaver Leather sells Covered Products via an internet website to customers located in
4 California, the warning requirements of this section shall be satisfied if the foregoing warning
5 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
6 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
7 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
8 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
9 to or immediately following the display, description, price, or checkout listing of the Covered
10 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
11 associates it with the product(s) to which the warning applies.

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

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** Weaver Leather shall pay \$2,500.00 as a Civil Penalty pursuant to
18 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
19 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
20 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code
21 § 25249.12(d).

22 4.1.1 Within ten (10) days of the Effective Date, Weaver Leather shall issue two
23 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$625.00; and to
24 (b) “Brodsky & Smith, LLC in Trust for Espinoza” in the amount of \$1,875.00. Payment owed to
25 Espinoza pursuant to this Section shall be delivered to the following payment address:

26 Evan J. Smith, Esquire
27 Brodsky & Smith, LLC
28 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

17 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Weaver Leather shall
18 pay \$22,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
19 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
20 Weaver Leather attention, litigating and negotiating and obtaining judicial approval of a settlement
21 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
24 acting on his own behalf, and on behalf of the public interest, and Weaver Leather, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
28 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
franchisees, cooperative members, and retailers, including but not limited to Tractor Supply
Company, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members

1 and licensees (collectively, the “Downstream Releasees”), of all claims for violations of Proposition
2 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with respect to
3 any Covered Products manufactured, distributed, or sold by Weaver Leather prior to the Effective
4 Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that
5 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
6 public 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 Complaints, or that could have been brought pursuant to the
8 Notice against Weaver Leather and/or the Downstream Releasees of the Covered Products
9 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes
10 compliance with Proposition 65 with regard to the Covered Products.

11 5.2 In addition to the foregoing, Espinoza, 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 Weaver Leather, Defendant Releasees, and Downstream Releasees from
15 any 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 Weaver Leather, Defendant Releasees
20 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
21 Espinoza 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 Weaver Leather waives any and all claims against Espinoza, 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 Espinoza 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 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 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 Defendant:

23 Ricardo Cestero
24 Greenberg Glusker Fields Claman & Machtinger LLP
25 2049 Century Park East, Suite 2600
26 Los Angeles, CA 90067

27 And

28 For Espinoza:

 Evan Smith
 Brodsky & Smith, LLC

1 9595 Wilshire Blvd., Ste. 900
2 Beverly Hills, CA 90212

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

5 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

6 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
7 which shall be deemed an original, and all of which, when taken together, shall constitute one and
8 the same document.

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

11 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
12 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
13 Defendant agrees it shall support approval of such Motion.

14 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
15 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
16 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
17 days, the case shall proceed on its normal course.

18 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
19 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
20 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
21 its normal course on the trial court's calendar.

22 **11. MODIFICATION**

23 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
24 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

25 **12. ATTORNEY'S FEES**

26 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.
28

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood and agree to all of the terms and conditions of this
9 document and certify that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.
12

13 **AGREED TO:**

13 **AGREED TO:**

14 Date: _____

14 Date:  _____

15 By: _____
16 GABRIEL ESPINOZA

15 By: Carlos Mullet, CFO
16 WEAVER LEATHER, LLC

17
18
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20
21 Dated: _____

21 _____
22 Judge of Superior Court

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

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9 document and certify that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.

12 **AGREED TO:**

AGREED TO:

13
14
15 Date: 12/11/2020

Date: _____

16 By: 
17 GABRIEL ESPINOZA

By: _____
WEAVER LEATHER, LLC

18
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20
21 Dated: _____

Judge of Superior Court