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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 WELLS LAMONT, LLC,

15 Defendant.

Case No.: CGC-21-590972

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Ethan P. Schulman
Dept.: 302
Hearing Date: August 11, 2021
Hearing Time: 9:30 AM
Reservation #:

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Wells Lamont, LLC (“Wells Lamont” or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Espinoza is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Wells Lamont is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed individuals to chromium (hexavalent compounds) (“chromium VI” or “(CrVI)”) from its sales of leather gloves, including but not limited to Wells Lamont heavy duty cowhide gloves, UPC #053300113215 without providing a clear and reasonable exposure warning pursuant to Proposition 65. CrVI is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

1.3 **Notice of Violation/Complaint.** On or about August 3, 2020, Espinoza served Wells Lamont, Ace Hardware Corporation, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn that leather gloves sold by Defendant, including but not limited to heavy duty cowhide gloves (UPC #053300113215), expose consumers in California to CrVI. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On April 12, 2021, Espinoza filed a complaint (the “Complaint”) in the matter.

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

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

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term “Covered Products” means leather gloves, including
12 but not limited to Wells Lamont heavy duty cowhide gloves, UPC #053300113215, that are
13 manufactured, distributed and/or offered for sale in California by Wells Lamont.

14 2.2 **Effective Date.** The term “Effective Date” means the date Wells Lamont’s counsel
15 receives written notice that this Consent Judgment is entered as a Judgment of the Court.


16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Clear and Reasonable Warning.** Within twelve (12) months of the Effective Date,
18 and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.1 and
19 3.2 must be provided for all Covered Products that Defendant manufacturers, imports, distributes,
20 sells, or offers for sale in California. There shall be no obligation to provide a warning for Covered
21 Products that were manufactured or otherwise entered the stream of commerce prior to the Effective
22 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
23 3.1(a) or (b), respectively:

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

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

1 (b) **Alternative Warning:** Wells Lamont may, but is not required to, use the alternative
2 short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

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

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

17 If Wells Lamont sells Covered Products via an internet website to consumers located in
18 California, the warning requirements of this section shall be satisfied if the foregoing warning
19 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
20 (b) on the same page as the price for the Covered Product; (c) on one or more web pages displayed
21 to a purchaser prior to purchase during the checkout process, or (d) by use of the word **WARNING**
22 with a hyperlink to a warning under section 2.1(a) or (b) pursuant to California Code of Regulations
23 title 27 section 25602(b). Alternatively, a symbol consisting of a black exclamation point in a
24 yellow or white equilateral triangle may appear adjacent to or immediately following the display,
25 description, price, or checkout listing of the Covered Product, if the warning statement appears
26 elsewhere on the same web page in a manner that clearly associates it with the product(s) to which
27 the warning applies.
28

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

8 **4. MONETARY TERMS**

9 4.1 **Civil Penalty.** Wells Lamont shall pay \$7,000.00 as a Civil Penalty pursuant to
10 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
11 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
12 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code
13 § 25249.12(d).

14 4.1.1 Within thirty (30) days of the Effective Date, Wells Lamont shall issue two
15 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$5,250.00; and
16 to (b) “Brodsky & Smith, LLC in Trust for Espinoza” in the amount of \$1,750.00. Payment owed
17 to Espinoza pursuant to this Section shall be delivered to the following payment address:

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

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

24 For United States Postal Service Delivery:

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

 For Non-United States Postal Service Delivery:

 Mike Gyurics

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

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

7 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Wells Lamont shall
8 pay \$45,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
9 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
10 Wells Lamont's attention, litigating and negotiating and obtaining judicial approval of a settlement
11 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

12 **5. RELEASE OF ALL CLAIMS**

13 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
14 acting on his own behalf, and on behalf of the public interest, and Wells Lamont, and its parents,
15 shareholders, members, directors, officers, managers, employees, representatives, agents,
16 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
17 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
18 directly or indirectly obtain ("Upstream Releasees") and to whom they directly or indirectly
19 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
20 distributors, wholesalers, customers, licensors, licensees, retailers, including but not limited to Ace
21 Hardware Corporation, franchisees, cooperative members, and their affiliates, subsidiaries,
22 successors, or assigns ("Downstream Releasees"), of all claims for violations of Proposition 65
23 based on exposure to CrVI from Covered Products as set forth in the Notice, with respect to any
24 Covered Products manufactured, distributed, or sold by Wells Lamont prior to the Effective Date.
25 It is the Parties' intention that, to the fullest extent permitted by law, this Consent Judgment shall
26 have preclusive effect such that no other actions by private enforcers, which includes persons and
27 entities, whether purporting to act in his, her, or its interests or the public interest, shall be permitted
28 with respect to, or arising out of, any violation of Proposition 65 or related claim that was alleged
in the Complaint, alleged in the Notice, or that could have been brought pursuant to the Notice

1 against Wells Lamont, the Defendant Releasees, the Upstream Releasees, and/or the Downstream
2 Releasees (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment
3 constitutes compliance with Proposition 65 with regard to the Covered Products.

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

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

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

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6. INTEGRATION

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

7. GOVERNING LAW

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

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

For Defendant:

Greg Sperla
DLA Piper (US) LLP
400 Capitol Mall, Suite 2400
Sacramento, CA 95814
Greg.Sperla@dlapiper.com

And

For Espinoza:

Evan Smith
Brodsky & Smith

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

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: 6/24/2021
By: [Signature]
GABRIEL ESPINOZA

Date: 5-25-2021
By: [Signature]
WELLS LAMONT, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court

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