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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

BRAD VAN PATTEN, an individual,) CASE NO. 37-2021-00000421-CU-MC-CTL
Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
vs.)
URBAN OUTFITTERS, INC., a Delaware) Dept.: C-65
Corporation; and DOES 1 through 10,) Judge: Ronald F. Frazier
inclusive,) Complaint Filed: January 5, 2021
Defendant.)
)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Brad Van Patten (“Van Patten”) on the one hand, and Defendant Urban Outfitters, Inc. (“Urban”) on the other hand, with Van Patten and Urban each referred to individually as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

Van Patten is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and improve human health by reducing or eliminating harmful substances contained in consumer and commercial Product.

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1 **1.3 Defendant**

2 Urban employs ten or more persons and are each a person in the course of doing business
3 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
4 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

5 **1.4 General Allegations**

6 Van Patten alleges that Urban manufactures, imports, sells and/or distributes for sale in
7 California, Shaye Clear Festival Bags containing di(2-ethylhexyl) phthalate (“DEHP”), and that
8 they do so without providing the health hazard warning required by Proposition 65.

9 **1.5 Product Description**

10 For purposes of this Consent Judgment, “Product” is defined as the Shaye Clear Festival
11 Bags containing DEHP that are manufactured, sold, or distributed for sale in California by
12 Urban.

13 **1.6 Notices of Violation**

14 On September 25, 2020, or thereabouts, Van Patten served Urban, the California
15 Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of
16 Violation (“Notice”), alleging that the Product violated Proposition 65 when it failed to warn it
17 customers and consumers in California that the Product exposes users to DEHP. No public
18 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
19 forth in either of the Notice.

20 **1.7 Complaint**

21 On January 5, 2021, Van Patten commenced the instant action, naming Urban as a
22 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

23 **1.8 No Admission**

24 Urban denies the material, factual, and legal allegations contained in the Notice and
25 Complaint, and maintains that Product it sold or distributed for sale in California, has been in
26 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
27 by Urban of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment constitute or be construed as an admission by Urban of

1 any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,
2 however, diminish or otherwise affect Urban's obligations, responsibilities, and duties under this
3 Consent Judgment.

4 **1.9 Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over Urban as to the allegations contained in the Complaint, that venue is proper in
7 the County of San Diego, and that the Court has jurisdiction to enter and enforce the provisions
8 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
11 that the Court grants the motion for approval of this Consent Judgment contemplated by Section
12 5.

13 **2. INJUNCTIVE RELIEF: CEASED SALES; PRODUCT REFORMULATION AND**
14 **WARNINGS**

15 **Urban has ceased sales of the Product in California and agrees to not sell the**
16 **Product in California. If Urban chooses to proceed with any sales of the Product in**
17 **California after the Effective Date, then Urban will either reformulate the Product or add a**
18 **Clear and Reasonable Warning as outlined herein:**

19 **2.1 Commitment to Reformulate or Provide Warnings**

20 Commencing by the Effective Date and continuing thereafter, Urban agrees to only
21 manufacture, import, distribute, sell or offer for sale in California either (a) "Reformulated
22 Product" as defined by subsection 2.2 below; or (b) Product sold and offered for sale with a clear
23 and reasonable warning pursuant to subsection 2.3, below.

24 **2.2 Reformulated Product Defined**

25 **a. DEHP Limits Applicable to Reformulated Product**

26 With respect to their DEHP content, Reformulated Product is defined as Product
27 containing no more than 1,000 parts per million (0.1%) DEHP in any component sampled and
28

1 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
2 8270C to determine DEHP content in a solid substance.

3 **b. Additional Methods of Analysis**

4 In addition to the above methodologies used to test for DEHP in the Product, the Parties
5 may use equivalent methodologies utilized by state or federal agencies to determine DEHP
6 content in a solid substance.

7 **2.3 Clear and Reasonable Warnings**

8 Commencing by the Effective Date, Urban shall provide clear and reasonable health
9 hazard warnings for the Product, if it is not a Reformulated Product, it sells or distributes in
10 California. Urban agrees that the warning will be prominently placed with such conspicuousness
11 when compared with other words, statements, designs, or devices as to render it likely to be read
12 and understood by an ordinary individual under customary conditions before purchase or use.
13 For purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning
14 affixed to or printed on the packaging, label, tag, or directly to a Product sold in California and
15 containing the following statement:

16
17 **⚠ WARNING:** This product can expose you to DEHP, which is known to
18 the State of California to cause cancer and birth defects or
19 other reproductive harm. For more information go to
20 www.P65Warnings.ca.gov.

21 Alternatively, a clear and reasonable warning shall consist of an on-product, short form
22 warning on the label – either on the product itself or its immediate container or packaging. The
23 entire warning must be in a type size no smaller than the largest type size used for other
24 consumer information on the product. The warning cannot appear in a type size smaller than 6-
25 point type and shall contain the following statement:

26 **⚠ WARNING:** Cancer and Reproductive Harm - www.p65warnings.ca.gov

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

3 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
4 claims referred to in the Notice or this Consent Judgment, Urban has agreed, jointly and
5 severally, to be responsible for and to pay civil penalties in the amount of \$5,000.00. Urban's
6 penalty payment will be allocated in accordance with California Health & Safety Code §
7 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
8 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Van
9 Patten. Urban shall provide its payment in two checks for the following amounts payable to (a)
10 "OEHHA" in the amount of \$3,750.00; and (b) "Brad Van Patten," in the amount of \$1,250.00.
11 Van Patten's counsel shall be responsible for remitting Urban's penalty payment(s) under this
12 Consent Judgment to OEHHA.

13 **3.2 Attorneys' Fees and Costs**

14 Van Patten's right to attorneys' fees and any costs, if any, shall be determined by the
15 Court pursuant to an appropriate motion filed by counsel for Van Patten concurrently with or
16 after the approval of the Consent Judgment.

17 **3.3 Payment Timing; Enforcement of Payment Terms**

18 Urban shall deliver all payments required by this Consent Judgment to Van Patten's
19 counsel within fifteen (15) days of the Effective Date. In the event that any payment required
20 by this Consent Judgment is untimely, the Parties agree and acknowledge that (a) Urban shall be
21 liable to Van Patten for ten percent (10%) simple interest per annum on any unpaid amount(s);
22 and (b) Van Patten may seek to enforce Urban's payment obligations under general contract
23 principles and Code of Civil Procedure sections 664.6.

24 **3.4 Payment Address**

25 All payments required by this Consent Judgment shall be delivered to:

26 George Rikos
27 Law Offices of George Rikos
28 555 Beech Street, Ste. 500
 San Diego, CA 92101

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Van Patten’s Release of Proposition 65 Claims**

3 Upon Court approval of the Consent Judgment, Van Patten, acting on her own behalf and
4 in the public interest, releases Urban and each of its parents, subsidiaries, affiliated entities under
5 common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity
6 to whom they directly or indirectly distribute or sell the Product including, but not limited to,
7 their downstream distributors, wholesalers, marketplace hosts, direct or indirect customers,
8 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”)
9 from all claims arising under Proposition 65 and alleging a failure to warn about exposures to
10 DEHP in the Product manufactured, imported, sold or distributed for sale in California by Urban
11 prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent
12 Judgment constitutes compliance with Proposition 65 by Urban with respect to the alleged or
13 actual failure to warn about exposures to DEHP in the Product manufactured, sold, or distributed
14 for sale by Urban after the Effective Date.

15 **4.2 Van Patten’s Individual Release of Claims**

16 Van Patten, in his individual capacity only and *not* in any representative capacity, also
17 provides a release to Urban, Releasees, and Downstream Releasees which shall be effective as a
18 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
19 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature,
20 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
21 or actual exposures to DEHP in the Product manufactured, imported, sold or distributed for sale
22 by Urban before the Effective Date.

23 **4.3 Urban’s Release of Van Patten**

24 Urban, each on its own behalf, and on behalf of its past and current agents,
25 representatives, attorneys, successors, and assignees, hereby waive any and all claims against
26 Van Patten and his attorneys and other representatives, for any and all actions taken or
27 statements made by Van Patten and his attorneys and other representatives, whether in the course
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1 of investigating claims, seeking to enforce Proposition 65 against them in this matter, or with
2 respect to the Product.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one
6 year after it has been fully executed by the Parties, or by such additional time to which the
7 Parties may agree to in writing. Van Patten and Urban agree to support the entry of this
8 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
9 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
10 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
11 motion Van Patten shall draft and file and Urban shall support, including by appearing at the
12 hearing if so requested. If any third-party objection to the motion is filed, Van Patten and Urban
13 agree to work together to file a reply and appear at any hearing. This provision is a material
14 component of the Consent Judgment and shall be treated as such in the event of a breach.

15 **6. SEVERABILITY**

16 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
17 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
18 remaining provisions shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed,
22 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Product,
23 then Urban may provide Van Patten with written notice of any asserted change in the law, and
24 shall have no further injunctive obligations pursuant to this Consent Judgment, with respect to,
25 and to the extent that, the Product is so affected.

26 **8. NOTICE**

27 Unless specified herein, all correspondence and notice required by this Consent Judgment
28 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,

1 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
2 following addresses:

3 To Urban:

To Van Patten:

4 Brian M. Ledger, Esq.
5 Gordon Rees Scully Mansukhani LLP
6 101 W. Broadway Suite 2000
7 San Diego, CA 92101

George Rikos, Esq.
Law Offices of George Rikos
555 Beech Street, Suite 500
San Diego, CA 92101

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

10 **9. COUNTERPARTS AND FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed in counterparts and by facsimile signature, each
12 of which shall be deemed an original and, all of which, when taken together, shall constitute one
13 and the same document.

14 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

15 Van Patten and her counsel agree to comply with the reporting form requirements
16 referenced in California Health and Safety Code section 25249.7(f).

17 **11. MODIFICATION**

18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
19 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
20 motion of any party and the entry of a modified Consent Judgment by the Court thereon.

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12. AUTHORIZATION

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 Consent Judgment.

AGREED TO:

AGREED TO:

Date: _____

Date: 1/31/23

By: _____

By: [Signature]

BRAD VAN PATTEN

Printed Name: Michael Silbert

Title: General Counsel

URBAN OUTFITTERS, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Hon. Ronald F. Frazier
Judge of the Superior Court

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12. AUTHORIZATION

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 Consent Judgment.

AGREED TO:

AGREED TO:

Date: 1/3/23
By: Bradley Van Patten
BRAD VAN PATTEN

Date: 1/3/23
By: Michael Silbert
Printed Name: Michael Silbert
Title: General Counsel
URBAN OUTFITTERS, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Hon. Ronald F. Frazier
Judge of the Superior Court