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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

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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1.3 Defendant

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

1.4 General Allegations

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

1.5 Product Description

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

1.6 Notices of Violation

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

1.7 Complaint

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

1.8 No Admission

Urban denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that Product it sold or distributed for sale in California, has been in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Urban of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall 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 **2. INJUNCTIVE RELIEF: CEASED SALES; PRODUCT REFORMULATION AND**
13 **WARNINGS**

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

18 **2.1 Commitment to Reformulate or Provide Warnings**

19 Commencing by the Effective Date and continuing thereafter, Urban agrees to only
20 manufacture, import, distribute, sell or offer for sale in California either (a) "Reformulated
21 Product" as defined by subsection 2.2 below; or (b) Product sold and offered for sale with a clear
22 and reasonable warning pursuant to subsections 2.3 and 2.4, below.

23 **2.2 Reformulated Product Defined**

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

25 With respect to their DEHP content, Reformulated Product is defined as Product
26 containing no more than 1,000 parts per million (0.1%) DEHP in any component sampled and
27 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
28 8270C to determine DEHP content in a solid substance.

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b. Additional Methods of Analysis

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

2.3 Clear and Reasonable Warnings

Commencing by the Effective Date, Urban shall provide clear and reasonable health hazard warnings for the Product, if it is not a Reformulated Product, it sells or distributes in California. Urban agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The warning shall contain a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING". For purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed to or printed on the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

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

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

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

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2.4 Internet Warnings

If, after the Effective Date, Urban sells Products, via the internet, through its own website, affiliated websites or a third party website, to consumers located in California, Urban shall provide warnings for each Product both on the Product label in accordance with Section 2.3(d), and by prominently displaying , or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “WARNING” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. To the extent that the current Proposition 65 requirements for Internet Warnings are changed, Urban may elect to adhere to any such changes in lieu of that which is set forth herein.

3. MONETARY SETTLEMENT TERMS

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

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

1 **3.2 Attorneys' Fees and Costs**

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

5 **3.3 Payment Timing; Enforcement of Payment Terms**

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

12 **3.4 Payment Address**

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

14 George Rikos
15 Law Offices of George Rikos
16 555 Beech Street, Ste. 500
17 San Diego, CA 92101

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Van Patten's Release of Proposition 65 Claims**

20 Van Patten, acting on her own behalf and in the public interest, releases Urban and each
21 of its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
22 employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly
23 distribute or sell the Product including, but not limited to, their downstream distributors,
24 wholesalers, marketplace hosts, direct or indirect customers, retailers, franchisers, cooperative
25 members, licensors and licensees ("Downstream Releasees") from all claims arising under
26 Proposition 65 and alleging a failure to warn about exposures to DEHP in the Product
27 manufactured, imported, sold or distributed for sale in California by Urban prior to the Effective
28 Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
compliance with Proposition 65 by Urban with respect to the alleged or actual failure to warn

1 about exposures to DEHP in the Product manufactured, sold, or distributed for sale by Urban
2 after the Effective Date.

3 **4.2 Van Patten's Individual Release of Claims**

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

11 **4.3 Urban's Release of Van Patten**

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

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one
21 year after it has been fully executed by the Parties, or by such additional time to which the
22 Parties may agree to in writing. Van Patten and Urban agree to support the entry of this
23 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
24 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
25 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
26 motion Van Patten shall draft and file and Urban shall support, including by appearing at the
27 hearing if so requested. If any third-party objection to the motion is filed, Van Patten and Urban
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1 agree to work together to file a reply and appear at any hearing. This provision is a material
2 component of the Consent Judgment and shall be treated as such in the event of a breach.

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

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

14 **8. NOTICE**

15 Unless specified herein, all correspondence and notice required by this Consent Judgment
16 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
17 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
18 following addresses:

19 To Urban:

20 Brian M. Ledger, Esq.
21 Gordon Rees Scully Mansukhani LLP
22 101 W. Broadway Suite 2000
23 San Diego, CA 92101

To Van Patten:

24 George Rikos, Esq.
25 Law Offices of George Rikos
26 555 Beech Street, Suite 500
27 San Diego, CA 92101

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

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Gordon Rees Scully Mansukhani, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101

1 9. COUNTERPARTS AND FACSIMILE SIGNATURES

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

5 10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

8 11. MODIFICATION

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

12 12. AUTHORIZATION

13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 Consent Judgment.

16 AGREED TO:

AGREED TO:

17
18 Date: 08/07/23
19 By: Bradley Van Patten
20 BRAD VAN PATTEN

8/5/2023
Date: DocuSigned by:
By: Michael D. Silbert
92E85C9E08E6955
Printed Name: Michael D. Silbert
General Counsel and Secretary
Title: URBAN OUTFITTERS, INC.

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24 IT IS SO ORDERED, ADJUDGED, AND DECREED:

25 Dated: _____

26
27 _____
28 Hon. Ronald F. Frazier
Judge of the Superior Court