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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

GABRIEL ESPINOZA,

Plaintiff,

v.

L.L. BEAN, INC.,

Defendant.

Case No.: RG21103603

CONSENT JUDGMENT

Judge: Dennis Hayashi

Dept.: 518

Hearing Date: September 9, 2021

Hearing Time: 2:30 PM

Reservation #: R-2274486

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 L.L. Bean, Inc. (“L.L.
4 Bean” or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Espinoza is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. L.L. Bean is alleged to be a person in the
8 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et
9 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 gloves with leather components, including but not limited to Uplander Pro Hunting Gloves and
13 L.L. Bean Utility Gloves without providing a clear and reasonable exposure warning pursuant to
14 Proposition 65. CrVI is listed under Proposition 65 as a chemical known to the State of California
15 to cause cancer and adverse developmental effects in both males and females.

16 1.3 **Notice of Violation/Complaint.** On or about February 15, 2021, Espinoza served
17 L.L. Bean, and various public enforcement agencies with documents entitled “60-Day Notice of
18 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
19 violated Proposition 65 for failing to warn consumers and customers that use of Uplander Pro
20 Hunting Gloves and L.L. Bean Utility Gloves expose users in California to CrVI. No public
21 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May 27,
22 2021, 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
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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 gloves with leather
12 components, including but not limited to Uplander Pro Hunting Gloves and L.L. Bean Utility
13 Gloves, that are manufactured, distributed and/or offered for sale in California by L.L. Bean.

14 2.2 **Effective Date.** The term “Effective Date” means the date L.L. Bean’s counsel
15 receives 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.** Commencing on the Effective Date, Defendant
18 shall provide a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2 must be
19 provided for all Covered Products that contain leather components that are tanned with chromium
20 compounds that Defendant distributes or sells in California. The warning shall consist of either the
21 **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

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

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

1  **WARNING:** Risk of Cancer and Reproductive Harm from chromium (hexavalent
2 compounds) Exposure - www.P65Warnings.ca.gov.

3 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
4 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
5 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
6 triangle with a black outline, except that if the sign or label for the Covered Product does not use
7 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
8 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
9 Covered Product’s packaging or labeling or provided for internet sales by including either the
10 warning or a clearly marked hyperlink using the word “WARNING” on the product display page,
11 or by otherwise prominently displaying the warning to the purchaser prior to completing the
12 purchase. The warning must be displayed with such conspicuousness, as compared with other
13 words, statements, or designs as to render it likely to be read and understood by an ordinary
14 individual under customary conditions of purchase or use.

15 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
16 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
17 Judgment or by complying with warning regulations approved or adopted by the State of
18 California’s Office of Environmental Health Hazard Assessment (“OEHHA”), or by any other State
19 of California agency authorized to issue regulations approving or adopting warnings as
20 implementation of Proposition 65, or by statutes adopted by the California State Legislature or by
21 the California voters after the Effective Date.

22 **4. MONETARY TERMS**

23 4.1 **Civil Penalty.** L.L. Bean shall pay \$2,000.00 as a Civil Penalty pursuant to Health
24 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
25 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
26 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).
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1 4.1.1 Within thirty (30) days of the Effective Date, L.L. Bean shall issue two
2 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
3 to (b) "Brodsky Smith in Trust for Espinoza" in the amount of \$500.00. Payment owed to
4 Espinoza pursuant to this Section shall be delivered to the following payment address:

5 Evan J. Smith, Esquire
6 Brodsky Smith
7 Two Bala Plaza, Suite 510
8 Bala Cynwyd, PA 19004

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

11 For United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010
16 Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street
22 Sacramento, CA 95814

23 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
24 above as proof of payment to OEHHA.

25 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, L.L. Bean shall pay
26 \$27,500.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Espinoza's
27 attorneys' fees and costs incurred as a result of investigating, bringing this matter to L.L. Bean's
28 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
interest, pursuant to Code of Civil Procedure § 1021.5.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
31 acting on his own behalf, and on behalf of the public interest, and L.L. Bean, and its parents,

1 shareholders, members, directors, officers, managers, employees, representatives, agents,
2 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
3 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
4 directly or indirectly obtain (“Upstream Releasees”) and to whom they directly or indirectly
5 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
6 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
7 members (“Downstream Releasees”), of all claims for violations of Proposition 65 based on
8 exposure to CrVI from Covered Products as set forth in the Notice, with respect to any Covered
9 Products manufactured, distributed, or sold by L.L. Bean prior to the Effective Date. Defendant
10 Releasees’ compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 with regard to exposure to CrVI from the Covered Products.

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

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

9 5.3 L.L. Bean waives any and all claims against Espinoza, his attorneys and other
10 representatives, for any and all actions taken or statements made by Espinoza and his attorneys and
11 other representatives, whether in the course of investigating claims or otherwise seeking
12 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

11 **6. INTEGRATION**

12 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
13 any and all prior negotiations and understandings related hereto shall be deemed to have been
14 merged within it. No representations or terms of agreement other than those contained herein exist
15 or have been made by any Party with respect to the other Party or the subject matter hereof.

16 **7. GOVERNING LAW**

17 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California and apply within the State of California. In the event that Proposition 65 is repealed or
19 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
20 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
21 to the extent that, Covered Products are so affected.

22 **8. NOTICES**

23 8.1 Unless specified herein, all correspondence and notices required to be provided
24 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
25 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
26 by the other party at the following addresses:

27 For Defendant:

28 Ross Nova

1 Head of Global Compliance
2 L.L. Bean, Inc.
3 15 Casco Street
4 Freeport, ME 04033

5 Jeffrey Margulies
6 Norton Rose Fulbright US LLP
7 555 South Flower Street, Forty-First Floor
8 Los Angeles, CA 90071

9 And

10 For Espinoza:

11 Evan Smith
12 Brodsky Smith
13 9595 Wilshire Blvd., Ste. 900
14 Beverly Hills, CA 90212

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and
20 the same document.

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

23 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
24 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
25 Defendant agrees it shall support approval of such Motion.

26 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
27 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
28 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 11.2 **Alternative Compliance Standards.** If either (i) Espinoza or another private
7 enforcer enters into a court-approved settlement or a court enters a final judgment in a Proposition
8 65 enforcement action over exposure to CrVI from leather that includes injunctive relief defining
9 the conditions under which Proposition 65 warnings are required for exposure to CrVI in gloves
10 with leather components, including but not limited to a reformulation standards based on CrVI
11 content or tannery process controls; or (ii) the State of California adopts a standard defining the
12 conditions under which Proposition 65 warnings are required for exposure to CrVI in gloves with
13 leather components, the Parties will meet and confer in good faith on conforming modifications to
14 this Consent Judgment. If the Parties are unable to reach agreement, either Party may move the
15 Court to modify the Consent Judgment.

16 **12. ATTORNEY'S FEES**

17 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
18 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

19 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
20 pursuant to law.

21 **13. RETENTION OF JURISDICTION**

22 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

24 **14. AUTHORIZATION**

25 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
26 respective Parties and have read, understood and agree to all of the terms and conditions of this
27 document and certify that he or she is fully authorized by the Party he or she represents to execute
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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: _____

Date: June 30, 2021

By: _____
GABRIEL ESPINOZA

By:  _____
L.L. BEAN, INC. Michael K Mahoney
Chief Legal & Compliance Officer

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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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: 6/30/21

Date: _____

By: 
GABRIEL ESPINOZA

By: _____
L.L. BEAN, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court