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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 WRIGHT & MCGILL CO.,
15 DICK'S SPORTING GOODS, INC.,

16 Defendants.

Case No.: CGC-22-597630

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: January 5, 2023

Hearing Time: 9:30 AM

Complaint Filed: January 13, 2022

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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 Wright & McGill Co. (“Wright & McGill” 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 who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Wright & McGill 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 di(2-ethylhexyl) phthalate (DEHP) from its sales of the Eagle Claw bag/satchel, UPC# 047708706674 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about May 14, 2021, Espinoza served Wright & McGill, Dick’s Sporting Goods, Inc., American Sports Licensing, Inc., American Sports Licensing, LLC, 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 consumers and customers that use of Eagle Claw bag/satchel, UPC# 047708706674 exposes users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 13, 2022, Espinoza filed a complaint (the “Complaint”) in the matter.

1.4 **Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that venue is proper in the County of San Francisco, 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 claims which were or could have been raised in the Complaint based on the facts

1 alleged in the Complaint and/or in the Notice.

2 1.5 **No Admission.** Defendant denies the material allegations contained in Espinoza’s
3 Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
4 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
5 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
6 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
7 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
8 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Eagle Claw bags/satchels,
11 UPC# 047708706674, that are manufactured, distributed and/or offered for sale in California by
12 Wright & McGill.

13 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
17 signed by both Parties, and continuing thereafter, Covered Products that Wright & McGill directly
18 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
19 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
20 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
21 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
22 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
23 Product.

24 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
25 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
26 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) **Warning¹.** The “Warning” shall consist of the statement:

11 ⚠ **WARNING:** This product can 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:** Wright & McGill 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

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26 ¹ If Wright & McGill has testing indicating that use of the Covered Product will expose
27 persons to lead in addition to, or in lieu of DEHP, Wright & McGill shall be permitted to use the
28 following **Warning** if it so chooses, “⚠ **WARNING:** This product can expose you to chemicals
including lead, 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.”

1 with other words, statements, or designs as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use. A warning may be contained
3 in the same section of the packaging, labeling, or instruction booklet that states other safety
4 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
5 those other safety warnings.

6 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
7 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
8 Wright & McGill offers Products for sale to consumers in California. The requirements of this
9 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
10 using the word "**WARNING**," appears on the product display page, or by otherwise prominently
11 displaying the warning to the purchaser prior to completing the purchase. To comply with this
12 Section, Wright & McGill shall (a) post the **Warning** or **Alternative Warning** on its own website
13 and, if it has the ability to do so, on the websites of third-party internet sellers to which it sells or
14 transfers the Covered Product; and (b) if it does not have the ability to post the **Warning** or
15 **Alternative Warning** on the websites of third-party internet sellers to which it sells or transfers
16 the Covered Product, provide such sellers with written notice in accordance with Title 27,
17 California Code of Regulations, Section 25600.2. Third-party internet sellers of the Covered
18 Product that have been provided with written notice in accordance with Title 27, California Code
19 of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet
20 the warning requirements herein.

21 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
22 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
23 Judgment or by complying with warning requirements adopted by the State of California's Office
24 of Environmental Health Hazard Assessment ("OEHHA") applicable to the product and the
25 exposure at issue after the Effective Date.
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1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Wright & McGill shall pay \$2,000 as a Civil Penalty pursuant to
3 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
4 & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
5 remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety
6 Code § 25249.12(d).

7 4.1.1 Within ten (10) days of the Effective Date, Wright & McGill shall issue
8 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
9 and to (b) "Brodsky & Smith in Trust for Espinoza" in the amount of \$500.00 Payment owed to
10 Espinoza pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky & Smith
13 Two Bala Plaza, Suite 805
14 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Wright & McGill shall
pay \$22,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for

1 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
2 Wright & McGill attention, litigating and negotiating and obtaining judicial approval of a
3 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
6 acting on his own behalf, and on behalf of the public interest, and Wright & McGill, and its parents,
7 shareholders, members, directors, officers, managers, employees, representatives, agents,
8 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
9 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
10 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
11 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
12 retailers, franchisees, and cooperative members ("Chain of Distribution Releasees"), of all claims
13 for violations of Proposition 65 based on exposure to DEHP from use of the Covered Products as
14 set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by
15 Wright & McGill prior to the Effective Date. It is the Parties' intention that this Consent Judgment
16 shall have preclusive effect such that no other actions by private enforcers, whether purporting to
17 act in his, her, or its interests or the public interest, shall be permitted to pursue and/or take any
18 action with respect to any violation of Proposition 65 based on exposure to DEHP that was alleged
19 in the Complaint, or that could have been brought pursuant to the Notice against Wright & McGill
20 and/or the Chain of Distribution Releasees of the Covered Products ("Proposition 65 Claims").

21 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
22 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
23 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
24 legal action and releases Wright & McGill, Defendant Releasees, and Chain of Distribution
25 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
26 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
27 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed
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1 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
2 to or arising from Covered Products manufactured, distributed, or sold by Wright & McGill,
3 Defendant Releasees or Chain of Distribution Releasees. With respect to the foregoing waivers and
4 releases in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which
5 he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
6 California Civil Code, which provides as follows:

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

14 5.3 Wright & McGill waives any and all claims against Espinoza, his attorneys and other
15 representatives, for any and all actions taken, or statements made (or those that could have been
16 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
18 and/or with respect to Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
21 prior negotiations and understandings related hereto shall be deemed to have been merged within
22 it. No representations or terms of agreement other than those contained herein exist or have been
23 made by any Party with respect to the other Party or the subject matter of this Consent Judgment.

24 **7. GOVERNING LAW**

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
27 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
28 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified in this Consent Judgment, all correspondence and notices required
3 to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or
4 sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier
5 on any party by the other party at the following addresses:

6 For Defendant:

7 James A. Geocaris
8 Lewis Brisbois
9 650 Town Center Drive, Suite 1400
10 Costa Mesa, CA 92626
11 714/966-3129

For Espinoza:

Evan Smith
Brodsky & Smith
Two Bala Plaza, Ste. 805
Brodsky Smith, PA 19004
877/534-2590

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

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

20 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
21 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
22 Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
25 Parties agree to meet and confer on how to proceed and if an agreement is not reached within 30
26 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
28 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 written stipulation of the
5 Parties and the approval of the Court or upon the granting of a motion brought to the Court by either
6 Party.

7 **12. ATTORNEY'S FEES**

8 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
9 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

10 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
11 pursuant to law.

12 **13. RETENTION OF JURISDICTION**

13 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
14 Consent Judgment.

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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 in this Consent Judgment each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: _____

Date: 9/6/2022

By: _____
GABRIEL ESPINOZA

By: *Cory L. Miller*
WRIGHT & MCGILL CO.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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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 in this Consent Judgment each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 11/11/22
By: [Signature]
GABRIEL ESPINOZA

Date: 9/6/2022
By: [Signature]
WRIGHT & MCGILL CO.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court