

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*
8 Gabriel Espinoza

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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 HEAD USA, INC.,

15 Defendant.

Case No.: CGC-22-602662

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: May 19, 2023

Hearing Time: 9:30 AM

Complaint Filed: October 28, 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 Head USA, Inc. (“Head USA” 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. Head USA 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 Head Renegade racquet gloves 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 adverse developmental effects in both males and females.

1.3 **Notice of Violation/Complaint.** On or about June 24, 2021, Espinoza served Head USA, 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 Head Renegade racquet gloves expose users in California to CrVI. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On October 28, 2022, 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 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 alleged therein and/or in the Notice.

1 1.5 Defendant denies the material allegations contained in the Notice and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means gloves with leather
10 components, including but not limited to Head Renegade racquet gloves, that are manufactured,
11 distributed and/or offered for sale in California by Head USA.

12 2.2 **Effective Date.** The term “Effective Date” means the date Head USA’s counsel
13 receives notice that this Consent Judgment is entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Clear and Reasonable Warning.** Commencing on the Effective Date, Defendant
16 shall provide a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2 for all
17 Covered Products that contain leather components that are tanned with chromium compounds that
18 Defendant distributes or sells in California. The warning shall consist of either the **Warning** or
19 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

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

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

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

28 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
“**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to

1 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
2 triangle with a black outline, except that if the sign or label for the Covered Product does not use
3 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
4 than the height of the word “**WARNING:**”. The **Warning** shall be affixed to or printed on the
5 Covered Product’s packaging or labeling or provided for internet sales by including either the
6 warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page,
7 or by otherwise prominently displaying the warning to the purchaser prior to completing the
8 purchase. The **Warning** must be displayed with such conspicuousness, as compared with other
9 words, statements, or designs as to render it likely to be read and understood by an ordinary
10 individual under customary conditions of purchase or use. If Head USA has actual knowledge
11 Covered Products are being offered for sale via third-party websites to California consumers, Head
12 USA shall provide such sellers with written notice in accordance with Title 27, California Code of
13 Regulations, Section 25600.2.

14 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
15 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
16 Judgment or by complying with warning regulations approved or adopted by the State of
17 California’s Office of Environmental Health Hazard Assessment (“OEHHA”), or by any other State
18 of California agency authorized to issue regulations approving or adopting warnings as
19 implementation of Proposition 65, or by statutes adopted by the California State Legislature or by
20 the California voters applicable to the Covered Product and the exposures at issue after the Effective
21 Date.

22 **3.4 Sell-Through Period.** Notwithstanding anything else in this Consent Judgment,
23 Covered Products that are manufactured, packaged, or put into commerce within ninety (90) days
24 of the Effective Date shall be subject to the release of liability pursuant to this Consent Judgment,
25 without regard to when such Covered Products were, or are in the future, distributed or sold to
26 customers, such that compliance with the warnings called for in the preceding paragraphs shall not
27 be required for such products.
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1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Head USA shall pay \$4,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
5 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

6 4.1.1 Within thirty (30) days of the Effective Date, Head USA shall issue two
7 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3,000.00; and
8 to (b) “Gabriel Espinoza” in the amount of \$1,000.00. Payment owed to Espinoza pursuant to this
9 Section shall be delivered to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky Smith
12 Two Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

15 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
 1001 I Street
 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, Head USA shall pay
26 \$36,000.00 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 Head USA’s
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1 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
2 interest, pursuant to Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
5 acting on his own behalf, and on behalf of the public interest, and Head USA, and its parents,
6 shareholders, members, directors, officers, managers, employees, representatives, agents,
7 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
8 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
9 directly or indirectly obtain (“Upstream Releasees”) and to whom they directly or indirectly
10 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
11 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
12 members (“Downstream Releasees”), of all claims for violations of Proposition 65 based on
13 exposure to CrVI from Covered Products as set forth in the Notice, with respect to any Covered
14 Products manufactured, distributed, or sold by Head USA prior to the Effective Date. Defendant
15 Releasees’ compliance with the terms of this Consent Judgment constitutes compliance with
16 Proposition 65 with regard to exposure to CrVI from use of the Covered Products.

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

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

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

15 **6. INTEGRATION**

16 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
17 any and all prior negotiations and understandings related hereto shall be deemed to have been
18 merged within it. No representations or terms of agreement other than those contained herein exist
19 or have been made by any Party with respect to the other Party or the subject matter hercof.

20 **7. GOVERNING LAW**

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

26 **8. NOTICES**

27 8.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

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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:

Paul S. Rosenlund
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127

And

For Espinoza:

Evan Smith
Brodsky & Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the 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.

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

11. MODIFICATION

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

12. ATTORNEY'S FEES

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

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.

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AGREED TO:

AGREED TO:

Date: 3/28/23

Date: 02-06-2023

By: GABRIEL ESPINOZA

By: Rose Mary Traynor
HEAD USA, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court