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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 WATER SPORTS, LLC,

15 Defendant.

Case No.: CGC-22-600424

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: February 15, 2024

Hearing Time: 9:30 AM

Complaint Filed: June 28, 2022

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 Water Sports, LLC
4 (“Water Sports” or “Defendant”) with Espinoza and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinoza is an individual residing in California that seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Water Sports is alleged to be a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to di-isodecyl phthalate (DIDP) from its sales of (a) Instant Fun Sports bocce sets, UPC
12 # 755786800756, and (b) Stream Machine children’s pool rings, UPC # 755786810557, without
13 providing a clear and reasonable exposure warning pursuant to Proposition 65. DIDP is listed
14 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or
15 other reproductive harm.

16 1.3 **Notices of Violation/Action.** On or about June 29, 2021, Espinoza served
17 Amazon.com, Inc., Amazon Technologies Company, Amazon Technologies, Inc. (collectively,
18 “Amazon”), LunZhi Plastic Products Ltd., Water Sports and various public enforcement agencies
19 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
20 §25249.7(d), alleging that Defendant violated Proposition 65 for failing to warn consumers and
21 customers that use of Stream Machine children’s pool rings, UPC # 755786810557, expose users
22 in California to DIDP. No public enforcer has brought and is diligently prosecuting the claims
23 alleged in the notice.

24 On or about June 30, 2021, Espinoza served Amazon, LunZhi Plastic Products Ltd., Water
25 Sports and various public enforcement agencies with documents entitled “60-Day Notice of
26 Violation” pursuant to Health & Safety Code §25249.7(d), alleging that Defendant violated
27 Proposition 65 for failing to warn consumers and customers that use of Instant Fun Sports bocce
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1 sets, UPC # 755786800756, expose users in California to DIDP. No public enforcer has brought
2 and is diligently prosecuting the claims alleged in the notice.

3 1.4 The documents entitled “60-Day Notice of Violation” pursuant to Health & Safety
4 Code §25249.7(d) dated June 29, 2021 and June 30, 2021 are collectively referred to as the
5 “Notices.”

6 1.5 On June 28, 2022, Espinoza filed a complaint (the “Complaint”).

7 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
9 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
10 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
11 of all claims which were or could have been raised in the Action based on the facts alleged therein
12 and in the Notices.

13 1.7 Defendant denies each and every material allegation contained in Espinoza’s
14 Notices and Complaint and maintains that it has not violated Proposition 65 and/or is not subject
15 to that law. Nothing in this Consent Judgment shall be construed as an admission by Defendant of
16 any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
17 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of
18 law, or violation of law, such being specifically denied by Defendant. However, this section shall
19 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this
20 Consent Judgment.

21 **2. DEFINITIONS**

22 2.1 **Covered Products.** The term “Covered Products” means (a) Instant Fun Sports
23 bocce sets, UPC # 755786800756, and (b) Stream Machine children’s pool rings, UPC #
24 755786810557 that are manufactured, distributed, shipped into California and offered for sale in
25 California by Water Sports.

26 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
27 entered as a Judgment of the Court.

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1 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

2 **3.1 Reformulation of Covered Products.** As of the date this Consent Judgment is
3 signed by both Parties, and continuing thereafter, Covered Products that Water Sports directly
4 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
5 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
6 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
7 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
8 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

9 **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products
10 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DIDP
11 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
12 and 8270C or other methodology utilized by federal or state government agencies for the purpose
13 of determining the phthalate content in a solid substance.

14 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
15 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
16 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
17 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
18 shall be no obligation for Defendant to provide a warning or notification for Covered Products that
19 enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties.
20 The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a)
21 or (b), respectively:

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

23 **⚠ WARNING:** This product can expose you to chemicals including di-isodecyl
24 phthalate (DIDP), which is known to the State of California to cause birth defects
or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

25 (b) **Alternative Warning:** Water Sports may, but is not required to, use the alternative
26 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

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1 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
7 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
8 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
9 displayed with such conspicuousness, as compared with other words, statements, or designs as to
10 render it likely to be read and understood by an ordinary individual under customary conditions of
11 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
12 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
13 the use of the Covered Product and shall be at least the same size as those other safety warnings.

14 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
15 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
16 Water Sports offers Products for sale to consumers in California. The requirements of this Section
17 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
18 word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying
19 the warning to the purchaser prior to completing the purchase. To comply with this Section, Water
20 Sports shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the
21 ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the
22 ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet
23 sellers, provide such sellers with notice pursuant to Title 27, California Code of Regulations, §
24 25600.2. Any entity to whom Defendant provides notice in accordance with § 25600.2, but who
25 did not provide the **Warning** or **Alternative Warning**, is not released in Section 5

26 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
27 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
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1 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
2 Covered Product and exposures at issue after the Effective Date. If “consumer information,” as that
3 term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
4 amended from time to time, is provided in a foreign language, Water Sports shall provide the
5 **Warning** in the foreign language in accordance with applicable warning regulations adopted by
6 OEHHA.

7 **4. MONETARY TERMS**

8 4.1 **Civil Penalty.** Water Sports shall pay \$2,000.00 as a Civil Penalty pursuant to
9 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
10 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
11 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code
12 § 25249.12(d).

13 4.1.1 Within ten (10) days of the Effective Date, Water Sports shall issue two
14 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
15 to (b) “Gabriel Espinoza” in the amount of \$500.00. Payment owed to Espinoza pursuant to this
16 Section shall be delivered to the following payment address:

17 Evan J. Smith, Esquire
18 Brodsky Smith
19 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 1001 I Street
2 Sacramento, CA 95814

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

5 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Water Sports shall pay
6 \$25,000.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Espinoza's
7 attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention
8 of Water Sports, litigating and negotiating and obtaining judicial approval of a settlement in the
9 public interest, pursuant to Code of Civil Procedure § 1021.5.

10 **5. RELEASE OF ALL CLAIMS**

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

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

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

22 5.3 Water Sports waives any and all claims against Espinoza, his attorneys and other
23 representatives, for any and all actions taken, or statements made (or those that could have been
24 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
26 and with respect to Covered Products.

27 **6. INTEGRATION**

28 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
13 by the other party at the following addresses and by e-mail to the addresses set forth below:

14 For Defendant:

15 Bao Vu
16 Stoel Rives LLP
17 1 Montgomery Street, Suite 3230
18 San Francisco, CA 94104
19 bao.vu@stoel.com

20 And

21 For Espinoza:

22 Evan Smith
23 Brodsky Smith
24 9595 Wilshire Blvd., Ste. 900
25 Beverly Hills, CA 90212
26 esmith@brodskysmith.com

27 Any party, from time to time, may specify in writing to the other party a change of address to
28 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.

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

2 **APPROVAL**

3 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

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

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

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 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 herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: _____

Date: October 24, 2023

By: _____
GABRIEL ESPINOZA

By: [Signature]
WATER SPORTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

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9 Date: 12/29/23

Date: _____

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11 By: 
12 **GABRIEL ESPINOZA**

By: _____
WATER SPORTS, LLC

13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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15 Dated: _____

16 Judge of Superior Court

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