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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 WILSON SPORTING GOODS CO., BIG 5  
15 CORP.

16 Defendants.

Case No.: CGC-22-599772

**SETTLEMENT, RELEASE, AND  
CONSENT JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: March 10, 2023

Hearing Time: 9:30 AM

Complaint Filed: May 24, 2022

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1 to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the  
2 Notice. On May 24, 2022, Espinoza filed a complaint (the "Complaint") in the matter.

3 1.5 For purposes of this Settlement only, the Parties stipulate that this Court has  
4 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
5 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
6 enter, and oversee the enforcement of this Settlement as a full and final binding resolution of all  
7 claims which were or could have been raised in the Complaint based on the facts alleged therein  
8 and/or in the Notice.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Wilson Badminton kits  
11 bearing SKU # 0004704458 that were the subject of Espinoza's Notice of July 14, 2021.

12 2.2 **Reformulated Products.** The term "Reformulated Products" means any and all  
13 Wilson Badminton kits bearing SKU # 0004704458 that were reformulated by Wilson on or after  
14 July 14, 2021 to contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm))  
15 of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies  
16 3580A and 8270C or other methodology utilized by federal or state government agencies for the  
17 purpose of determining the phthalate content in a solid substance.

18 2.3 **Effective Date.** The term "Effective Date" means the date this Settlement is entered  
19 by of the Court.

20 **3. INJUNCTIVE RELIEF: WARNINGS**

21 3.1 **Reformulation of Covered Products.** As of the date this Settlement is signed by  
22 both Parties, and continuing thereafter, Covered Products that Wilson directly manufactures,  
23 imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products  
24 pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant  
25 to §§ 3.3 and 3.4, below.

1           The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
2 Product. For clarity, a Reformulated Product is a Covered Product that is in compliance with the  
3 standard set forth in § 3.2 below.

4           **3.2 Reformulation Standard.** Reformulated Products shall contain concentrations less  
5 than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S.  
6 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology  
7 utilized by federal or state government agencies for the purpose of determining the phthalate  
8 content in a solid substance.

9           **3.3 Clear and Reasonable Warning.** As an alternative to Section 3.2, Wilson may  
10 provide a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 for all Covered  
11 Products that it manufactures, imports, distributes, sells, or offers for sale in California after the  
12 date of this Settlement that are not Reformulated Products. There shall be no obligation for  
13 Defendant to provide a warning for Covered Products that entered the stream of commerce prior to  
14 the date this Settlement is signed by both Parties. The warning shall consist of either the **Warning**  
15 or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

23           **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
24 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
25 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
26 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
27 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
28 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the

1 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
2 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
3 with other words, statements, or designs as to render it likely to be read and understood by an  
4 ordinary individual under customary conditions of purchase or use. A warning may be contained  
5 in the same section of the packaging, labeling, or instruction booklet that states other safety  
6 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
7 those other safety warnings.

8 Wilson has taken appropriate steps to ensure Covered Product(s) will not be offered for sale  
9 online, therefore affixing the Warning or Alternative Warning to the Covered Product's packaging  
10 or labeling is sufficient to satisfy this Section. However, if Wilson elects to sell Covered Products  
11 online in the future, Wilson shall post the **Warning** or **Alternative Warning** on its own website  
12 and shall provide its third-party internet sellers with written notice in accordance with Title 27,  
13 California Code of Regulations, Section 25600.2.

14 3.5 **Compliance with Warning Regulations.** Regarding any future sales of Covered  
15 Products, Defendant shall be deemed to be in compliance with this Settlement by either adhering  
16 to §§ 3.3 and 3.4 or by complying with warning requirements adopted by the State of California's  
17 Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered  
18 Product and the exposures at issue after the Effective Date.

#### 19 4. **MONETARY TERMS**

20 Wilson shall make a one-time settlement payment of Twenty-Seven Thousand Five Hundred  
21 Dollars (\$27,500.00) (the "Settlement Payment"). The Settlement Payment shall be sub-divided  
22 pursuant to Sections 4.1 and 4.2, as follows:

23 4.1 **Civil Penalty.** Wilson shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
24 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
25 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining  
26 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code  
27 § 25249.12(d).

1                   4.1.1 Within ten (10) days of the Effective Date and receipt of a completed IRS  
2 Form W9 from Brodsky & Smith, Wilson shall issue two separate checks for the Civil Penalty  
3 payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b) "Brodsky & Smith in Trust for  
4 Espinoza" in the amount of \$500. Payment owed to Espinoza pursuant to this Section shall be  
5 delivered to the following payment address:

6                   Evan J. Smith, Esquire  
7                   Brodsky & Smith  
8                   Two Bala Plaza, Suite 805  
9                   Bala Cynwyd, PA 19004

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

12                   For United States Postal Service Delivery:

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

18                   For Non-United States Postal Service Delivery:

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

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

26                   4.2     **Attorneys' Fees.** Within ten (10) days of the Effective Date and receipt of a  
27 completed IRS Form W9, Wilson shall pay \$25,500.00 to Brodsky & Smith ("Brodsky & Smith")  
28 as complete reimbursement for Espinoza's attorneys' fees and costs incurred as a result of  
investigating, bringing this matter to Wilson attention, litigating and negotiating and obtaining  
judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.  
This payment shall be made by check payable to the address set forth in 4.1.1.



1           4.3     **No Additional Payments Due.** The payments identified above are the only  
2 payments due under the terms of this agreement. Wilson shall not be responsible for any additional  
3 remittances (including remittances to OEHHHA beyond those identified above) or tax liabilities  
4 incurred by Espinoza in connection with this agreement.

5           **5.     RELEASE OF ALL CLAIMS**

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

22           5.2     In addition to the foregoing, Espinoza, on behalf of himself, his past and current  
23 agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to  
24 institute or participate in, directly or indirectly, any form of legal action and releases Wilson,  
25 Defendant Releasees, and Downstream Releasees from any and all manner of actions, causes of  
26 action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,  
27 liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever,  
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1 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any  
2 alleged violations of Proposition 65 related to or arising from DEHP exposure from Covered  
3 Products manufactured, distributed, or sold by Wilson, Defendant Releasees or Downstream  
4 Releasees. With respect to the foregoing waivers and releases in this paragraph, Espinoza hereby  
5 specifically waives any and all rights and benefits which he now has, or in the future may have,  
6 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
7 follows:

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 Wilson 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 DEHP exposure from Covered Products.

## 19 **6. INTEGRATION**

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

## 24 **7. GOVERNING LAW**

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



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

**Dan S. Hurwitz**  
**Wilson Elser Moskowitz Edelman & Dicker LLP**  
**555 S. Flower Street - Suite 2900**  
**Los Angeles, CA 90071-2407**

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

## 9. COUNTERPARTS; FACSIMILE SIGNATURES

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

**APPROVAL**

10.2 This Settlement 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

1 agree to meet and confer on how to proceed and if such agreement is not reached within 30 days,  
2 the case shall proceed on its normal course.

3 10.3 If the Court approves this Settlement but is reversed or vacated by an appellate court,  
4 the Parties shall meet and confer as to whether to modify the terms of this Settlement. If the Parties  
5 do not jointly agree on a course of action to take, the case shall proceed on its normal course on the  
6 trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Settlement may be modified only by further stipulation of the Parties and the  
9 approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this  
12 Settlement shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the relief  
17 of Section 3.

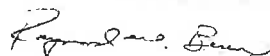
18 **14. AUTHORIZATION**

19 14.1 The undersigned are authorized to execute this Settlement, Release, and Judgment  
20 on behalf of their respective Parties and have read, understood, and agree to all of the terms and  
21 conditions of this document and certify that he or she is fully authorized by the Party he or she  
22 represents to execute the Settlement, Release, and Judgment on behalf of the Party represented and  
23 legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and  
24 costs.

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**AGREED TO:**

**AGREED TO:**



Date: \_\_\_\_\_

Date: Jan. 12, 2023

By: \_\_\_\_\_  
GABRIEL ESPINOZA

By: Ray Berens, General Counsel  
WILSON SPORTING GOODS CO.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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**AGREED TO:**

**AGREED TO:**

Date: 1/20/23

Date: \_\_\_\_\_

By:   
GABRIEL ESPINOZA

By: \_\_\_\_\_  
WILSON SPORTING GOODS CO.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court