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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 OLIVET INTERNATIONAL, INC.,
15 WALMART, INC.,

16 Defendants.

Case No.: CGC-23-606876

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: September 19, 2024

Hearing Time: 9:30 AM

Complaint Filed: June 1, 2023

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 Olivet International,
4 Inc. (“Olivet” or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties”
5 and each of them as a “Party.” Espinoza is an individual residing in California who 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. Olivet is alleged to be a person in the course
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of *My Life As*® backpacks at a level
11 that requires a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed
12 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth
13 defects or other reproductive harm.

14 **1.3 Notices of Violation/Action.** On or about July 6, 2022, Espinoza served Walmart,
15 Inc. (“Walmart”), Olivet, and various public enforcement agencies with documents entitled “60-
16 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “First July Notice”),
17 alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that
18 use of *My Life As*® backpacks, UPC # 618842396870 expose users in California to DEHP. No
19 public enforcer has brought and is diligently prosecuting the claims alleged in the First July Notice.
20 On or about July 8, 2022, Espinoza served Walmart, Olivet, and various public enforcement
21 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
22 §25249.7(d) (the “Second July Notice”), alleging that Defendant violated Proposition 65 for failing
23 to warn consumers and customers that use of *My Life As*® backpacks, UPC # 618842396870 expose
24 users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims
25 alleged in the Second July Notice.

26 The First July Notice and the Second July Notice are collectively referred to herein as, the
27 “Notices.”

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1 On June 1, 2023, Espinoza filed a complaint (the “Complaint”).

2 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
4 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
5 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
6 of all claims which were or could have been raised in the Action based on the facts alleged therein
7 and in the Notices.

8 1.5 Defendant denies the material allegations contained in Espinoza’s Notices and
9 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
10 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
11 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
12 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
13 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
14 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

15 **2. DEFINITIONS**

16 2.1 **Covered Products.** The term “Covered Products” means backpacks, *My Life As*®
17 backpacks that are manufactured, distributed, shipped into California and offered for sale in
18 California by Olivet.

19 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
20 entered as a Judgment of the Court.

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


22 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
23 signed by both Parties, and continuing thereafter, Covered Products that Olivet directly
24 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
25 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
26 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
27 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
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1 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
2 Product.


3 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
4 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
5 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
6 and 8270C or other methodology utilized by federal or state government agencies for the purpose
7 of determining the phthalate content in a solid substance.

8 3.3 **Clear and Reasonable Warning.** As of the Effective Date of this Consent
9 Judgment, and continuing thereafter, a clear and reasonable exposure warning as set forth in this
10 §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports,
11 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be
12 no obligation for Defendant to provide a warning for Covered Products that enter the stream of
13 commerce prior to the Effective Date of this Consent Judgment. The warning shall consist of either
14 the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

22 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
23 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
24 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
25 triangle with a black outline, except that if the sign or label for the Covered Product does not use
26 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
27 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
28 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or

1 electronic device or automatic process, providing that the **Warning or Alternative Warning** is
2 displayed with such conspicuousness, as compared with other words, statements, or designs as to
3 render it likely to be read and understood by an ordinary individual under customary conditions of
4 purchase or use. The **Warning or Alternative Warning** may be contained in the same section of
5 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
6 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
7 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
8 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Olivet shall
9 provide the **Warning or Alternative Warning** in the foreign language in accordance with
10 applicable warning regulations adopted by the State of California’s Office of Environmental Health
11 Hazard Assessment (“OEHHA”).

12 In addition to affixing the **Warning or Alternative Warning** to the Covered Product’s
13 packaging or labeling, Olivet shall post the **Warning or Alternative Warning** on websites where
14 Olivet offers Products for sale to consumers in California. The requirements of this Section shall
15 be satisfied if the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word
16 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the
17 warning to the purchaser prior to completing the purchase. To comply with this Section, Olivet
18 shall (a) post the **Warning or Alternative Warning** on its own website and, if it has the ability to
19 do so, on the websites of the third-party eCommerce platforms via which it sells its products (such
20 as Walmart.com, where Olivet has the ability to post the **Warning or Alternative Warning** when
21 it offers and lists Products for sale); and (b) if it does not have the ability to post the **Warning or**
22 **Alternative Warning** on the websites of its third-party internet sellers (which does not include
23 Walmart.com), provide such sellers with written notice in accordance with Title 27, California
24 Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been
25 provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2
26 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.
27 Nothing in this Consent Judgment shall be deemed to alter, modify, or waive the terms,
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1 representations, or warranties contained in the Walmart General Merchandise Agreement between
2 Walmart and Olivet, or any other contract between Walmart and Olivet, including all defense and
3 indemnification provisions. Olivet understands that it has the sole responsibility for providing the
4 **Warning or Alternative Warning** for Covered Products sold via Walmart.com to consumers in
5 California.

6 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
7 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
8 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
9 Product and exposures at issue within sixty (60) days after the Effective Date.

10 **4. MONETARY TERMS**

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

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

19 Evan J. Smith, Esquire
20 Brodsky Smith
21 Two Bala Plaza, Suite 805
22 Bala Cynwyd, PA 19004

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

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

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

8 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Olivet shall pay
9 \$25,500.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs
10 incurred as a result of investigating, bringing this matter to the attention of Olivet, litigating and
11 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
12 of Civil Procedure § 1021.5.

13 **5. RELEASE OF ALL CLAIMS**

14 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
15 acting on his own behalf, and on behalf of the public interest, Olivet, and its parents, shareholders,
16 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
17 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
18 successors and assigns, and Walmart and its parents, subsidiaries, affiliates, franchisees, and
19 cooperative members ("Defendant Releasees"), and all entities and/or individuals from which
20 Defendant Releasees obtain and to which they directly or indirectly distribute or sell Covered
21 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
22 customers, licensors, licensees, retailers, marketplace hosts, and internet marketplaces, including
23 but not limited to Wal-Mart Stores East, L.P., Wal-Mart Stores East, Inc., Walmart Inc., Wal-Mart
24 Stores Inc., Wal-Mart.com USA LLC, and all of their respective officers, directors, members,
25 shareholders, employees, representatives, attorneys, agents, direct or indirect parent companies,
26 subsidiaries, divisions, affiliates, predecessors, franchisees, cooperative members, licensees, and
27 the successors and assigns ("Downstream Releasees"), of all claims for alleged violations of
28 Proposition 65 based on exposure to DEHP from use of or exposure to the Covered Products
manufactured, distributed, sold, or offered for sale by Olivet up until 60 days after the Effective

1 Date. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that
2 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
3 public interest shall be permitted to pursue and take any action with respect to any alleged violation
4 of Proposition 65 based on exposure to DEHP from use of or exposure to the Covered Products
5 that was alleged in the Notices and/or the Complaint, or that could have been brought pursuant to
6 the Notices against Olivet, the Downstream Defendants, and the Downstream Releasees
7 ("Proposition 65 Claims"). Olivet's compliance with the terms of this Consent Judgment constitutes
8 compliance with Proposition 65 by Olivet with regard to exposure to DEHP from use of or exposure
9 to the Covered Products.

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

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

27 5.3 Olivet waives any and all claims against Espinoza, his attorneys and other
28 representatives, for any and all actions taken, or statements made (or those that could have been

1 taken or made) by Espinoza and his attorneys and other representatives in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter
3 with respect to Covered Products.

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
6 any and all prior negotiations and understandings related hereto shall be deemed to have been
7 merged within it. No representations or terms of agreement other than those contained herein exist
8 or have been made by any Party with respect to the other Party or the subject matter hereof.

9 **7. NOTICES**

10 7.1 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:

14 For Defendant:

15 Peter Renstrom, Esq.
16 Goldberg Segalla
17 611 Gateway Blvd., Ste. 120
18 South San Francisco, CA 94080

19 And

20 For Espinoza:

21 Evan Smith
22 Brodsky Smith
23 9465 Wilshire Blvd., Ste. 300
24 Beverly Hills, CA 90212

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

27 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

28 8.1 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 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**

2 **APPROVAL**

3 9.1 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 9.2 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 9.3 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 **10. MODIFICATION**

15 10.1 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 **11. ATTORNEY'S FEES**

18 11.1 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 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.


22 **12. RETENTION OF JURISDICTION**

23 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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1 **13. AUTHORIZATION**

2 13.1 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
8 **AGREED TO:** **AGREED TO:**
9 Date: _____ Date: 07/31/2024
10 By: _____ By: 
11 **GABRIEL ESPINOZA** **OLIVET INTERNATIONAL, INC.**
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13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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15 Dated: _____
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17 Judge of Superior Court
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13. AUTHORIZATION

13.1 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: 8/1/24

Date: _____

By: [Signature]
GABRIEL ESPINOZA

By: _____
OLIVET INTERNATIONAL, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court