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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 GOLF & TENNIS PRO SHOP, INC. DBA PGA
15 TOUR SUPERSTORE,

16 Defendant.

Case No.: CGC-23-607014

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: January 6, 2025

Hearing Time: 9:30 AM

Complaint Filed: June 12, 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 Golf & Tennis Pro
4 Shop, Inc. dba PGA Tour Superstore (“Golf & Tennis Pro Shop” or “Defendant”) with Espinoza
5 and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Espinoza is
6 an individual residing in California that seeks to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. Golf & Tennis Pro Shop is alleged to be a person in the course of doing business for
9 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to di (2-ethylhexyl) phthalate (DEHP) from its sales of *Cool It Caddy*® personal
12 coolers, # 1121773001, without providing a clear and reasonable exposure warning pursuant to
13 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
14 California to cause cancer and birth defects or other reproductive harm.

15 1.3 **Notice of Violation/Action.** On or about February 13, 2023, Espinoza served Vinci
16 Designs, LLC, Golf & Tennis Pro Shop, and various public enforcement agencies with documents
17 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
18 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of *Cool It Caddy*® personal coolers, # 1121773001, expose users in California
20 to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
21 Notice. On June 12, 2023, Espinoza filed a complaint (the “Complaint”).

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Action based on the facts alleged therein
27 and 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. Defendant states the Covered Products are no longer in inventory or being
7 manufactured and enters into this settlement to avoid costs of litigation and defense. However, this
8 Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of
9 Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term “Covered Products” means *Cool It Caddy*® personal
12 coolers, # 1121773001, that are manufactured, distributed, shipped into California and offered for
13 sale in California by Golf & Tennis Pro Shop that exposes user to DEHP.

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

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
18 thereafter, if the Covered Products are sold in California in the future, a clear and reasonable
19 exposure warning as set forth in this §§ 3.1 and 3.2 must be provided for all Covered Products that
20 Defendant distributes, sells, or offers for sale in California. There shall be no obligation for
21 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
22 the date this Consent Judgment is signed by both Parties. The warning shall consist of either the
23 **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

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

1 (b) **Alternative Warning:** Golf & Tennis Pro Shop may, but is not required to, use the
2 alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

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

4 3.2 A **Warning or Alternative Warning** provided pursuant to § 3.1 must print the word
5 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
6 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
7 triangle with a black outline, except that if the sign or label for the Covered Product does not use
8 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
9 than the height of the word “**WARNING:**”. The **Warning or Alternative Warning** shall be affixed
10 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
11 electronic device or automatic process, providing that the **Warning or Alternative Warning** is
12 displayed with such conspicuousness, as compared with other words, statements, or designs as to
13 render it likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use. The **Warning or Alternative Warning** may be contained in the same section of
15 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
16 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
17 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
18 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Golf &
19 Tennis Pro Shop shall provide the **Warning or Alternative Warning** in the foreign language in
20 accordance with applicable warning regulations adopted by OEHHA.

21 In addition to affixing the **Warning or Alternative Warning** to the Covered Product’s
22 packaging or labeling, the **Warning or Alternative Warning** shall be posted on websites where
23 Golf & Tennis Pro Shop offers Products for sale to consumers in California. The requirements of
24 this Section shall be satisfied if the **Warning or Alternative Warning**, or a clearly marked
25 hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise
26 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
27 with this Section, Golf & Tennis Pro Shop shall (a) post the **Warning or Alternative Warning** on
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1 its own website and, if it has the ability to do so, on the websites of its third-party internet sellers;
2 and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites
3 of its third-party internet sellers, provide such sellers with written notice in accordance with Title
4 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product
5 that have been provided with written notice in accordance with Title 27, California Code of
6 Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the
7 warning requirements herein.

8 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
9 compliance with this Consent Judgment by either adhering to § 3 of this Consent Judgment or by
10 complying with warning regulations adopted by OEHHA applicable to the Covered Product and
11 exposures at issue after the Effective Date.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Golf & Tennis Pro Shop shall pay \$1,000.00 as a Civil Penalty
14 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
15 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the
16 remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety
17 Code § 25249.12(d).

18 **4.1.1** Within ten (10) days of the Effective Date, Golf & Tennis Pro Shop shall
19 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of
20 \$750.00; and to (b) “Gabriel Espinoza” in the amount of \$250.00. Payment owed to Espinoza
21 pursuant to this Section shall be delivered to the following payment address:

22 Evan J. Smith, Esquire
23 Brodsky Smith
24 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

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

27 For United States Postal Service Delivery:
28 Mike Gyurics

1 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
2 P.O. Box 4010
Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

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

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

9 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Golf & Tennis Pro
10 Shop shall pay \$16,500.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys'
11 fees and costs incurred as a result of investigating, bringing this matter to the attention of Golf &
12 Tennis Pro Shop, litigating and negotiating and obtaining judicial approval of a settlement in the
13 public interest, pursuant to Code of Civil Procedure § 1021.5.

14 **5. RELEASE OF ALL CLAIMS**

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

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

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

26 5.3 Golf & Tennis Pro Shop waives any and all claims against Espinoza, his attorneys
27 and other representatives, for any and all actions taken, or statements made (or those that could
28 have been taken or made) by Espinoza and his attorneys and other representatives, whether in the
course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
matter, and with respect to Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. NOTICES**

7 7.1 Unless specified herein, all correspondence and notices required to be provided
8 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
9 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
10 by the other party at the following addresses:

11 For Defendant:

12 Garth N. Ward
13 Lewis Brisbois
14 550 W. C St., Ste. 1700
 San Diego, CA 92101

15 And

16 For Espinoza:

17 Evan Smith
18 Brodsky Smith
 9465 Wilshire Blvd., Ste. 300
 Beverly Hills, CA 90212

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

21 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

22 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
23 which shall be deemed an original, and all of which, when taken together, shall constitute one and
24 the same document.

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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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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: _____

Date: 9/24/2024

By: _____

By: Matthew Potos

GABRIEL ESPINOZA

GOLF & TENNIS PRO SHOP, INC. DBA
PGA TOUR SUPERSTORE

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 9 / 27 / 24

Date: _____

By: 
GABRIEL ESPINOZA

By: _____
GOLF & TENNIS PRO SHOP, INC. DBA
PGA TOUR SUPERSTORE

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court