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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 BAYLIS & HARDING PLC,

15 Defendant.

Case No.: CGC-24-619888

CONSENT JUDGMENT

Judge: Joseph M. Quinn

Dept.: 302

Hearing Date: March 14, 2025

Hearing Time: 9:30 AM

Complaint Filed: November 18, 2024

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

10 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to diethanolamine (DEA) from its sales of Baylis & Harding body lotions (as defined
12 below in section 2.1) without providing a clear and reasonable exposure warning pursuant to
13 Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of
14 California to cause cancer.

15 **1.3 Notice of Violation/Action.** On or about December 18, 2023, Espinoza served
16 Walmart, Inc. (“Walmart”), Baylis, 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 luxury vanity bags and cosmetic sets – body lotions (as defined below in
20 section 2.1)expose users in California to DEA. No public enforcer has brought and is diligently
21 prosecuting the claims alleged in the Notice. On November 18, 2024, Espinoza filed a complaint
22 (the “Complaint”).

23 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
27 of all claims which were or could have been raised in the Complaint based on the facts alleged
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1 therein and in the Notice.

2 1.5 Defendant denies the material, factual, and legal allegations contained in Espinoza's
3 Notice and Complaint and maintains that all of the products that it has sold and distributed in
4 California, including the Covered Products, have been, and are, in compliance with all laws.
5 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
6 finding, conclusion, issue of law, or violation of law; nor shall compliance with this Consent
7 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion,
8 issue of law, or violation of law, such being specifically denied by Defendant. However, this section
9 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant
10 under this Consent Judgment.

11 **2. DEFINITIONS**

12 2.1 **Covered Products.** The term "Covered Products" means Baylis & Harding body
13 lotions, # 017854114401, # 017854114531, # 017854114739,
14 # 017854113510, # 017854113695, # 017854114708, # 017854112599, # 017854113756,
15 # 017854114678, # 017854113633, # 017854112735, # 017854112575, # 017854113961,
16 # 017854113718, # 017854113541, # 017854114746, # 017854112766, # 017854113985,
17 # 017854113626, # 017854114661, # 017854113596, # 017854114593, # 017854114579,
18 # 017854113770, # 017854113565, # 017854113725, # 017854113978, # 017854114654,
19 # 017854113497, # 017854113428, # 017854113640, # 017854114609, # 017854113992,
20 # 017854113435, # 017854113817, # 017854114647, # 017854112582, # 017854113879,
21 # 017854113411, # 017854112636, # 017854112681, # 017854113800, # 017854113657,
22 # 017854113527, # 017854114586, # 017854113749, # 017854114036, # 017854112711,
23 # 017854113862, # 017854113688, # 017854114623, # 017854113732, # 017854113763,
24 # 017854112612 that are manufactured, distributed, shipped into California and offered for sale in
25 California by Baylis.

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: WARNINGS**

2 **3.1 Clear and Reasonable Warning.** Commencing within sixty (60) days after the
3 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
4 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
5 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
6 to provide a warning for Covered Products that enter the stream of commerce within 60 days after
7 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
8 described in §§ 3.1(a) or (b), respectively:

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

10 ⚠ **WARNING:** This product can expose you to chemicals including
11 diethanolamine (DEA), which is known to the State of California to cause cancer.
12 For more information go to www.P65Warnings.ca.gov.

13 (b) **Alternative Warning:** Baylis may, but is not required to, use the alternative short-
14 form warning¹ as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

15 ⚠ **WARNING:** Cancer - www.P65Warnings.ca.gov.

16 **3.2 A Warning or Alternative Warning** provided pursuant to § 3.1 must print the word
17 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
18 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
19 triangle with a black outline, except that if the sign or label for the Covered Product does not use
20 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
21 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
22 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
23 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
24 displayed with such conspicuousness, as compared with other words, statements, or designs as to
25 render it likely to be read and understood by an ordinary individual under customary conditions of
26 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of

27 ¹ An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028
28 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

1 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
2 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
3 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
4 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Baylis shall
5 provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
6 applicable warning regulations adopted by OEHHA.

7 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
8 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
9 Baylis offers Covered Products for sale to consumers in California. The requirements of this
10 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
11 using the word “**WARNING**,” appears on the product display page, or by otherwise prominently
12 displaying the warning to the purchaser prior to completing the purchase. To comply with this
13 Section, Baylis shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it
14 has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have
15 the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet
16 sellers, provide such sellers with written notice in accordance with Title 27, California Code of
17 Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been provided
18 with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not
19 released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

20 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
21 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
22 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
23 Product and exposures at issue.

24 4. MONETARY TERMS

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

3 4.1.1 Within fifteen (15) business days of the Effective Date, and upon receipt of
4 appropriate W-9 forms, whichever is later, Baylis shall issue two separate checks for the Civil
5 Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b) "Gabriel Espinoza" in
6 the amount of \$500.00. Payment owed to Espinoza pursuant to this Section shall be delivered to
7 the following payment address:

8 Evan J. Smith, Esquire
9 Brodsky Smith
10 Two Bala Plaza, Suite 805
11 Bala Cynwyd, PA 19004

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

14 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

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

28 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, and upon
receipt of appropriate W-9 forms, whichever is later, Baylis shall pay \$23,000.00, in the form of a
check made payable to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees
and costs incurred as a result of investigating, bringing this matter to the attention of Baylis,

1 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
2 pursuant to Code of Civil Procedure § 1021.5.

3 Baylis may also choose to wire all payments set forth in Section 4 and counsel for Espinoza
4 shall be responsible for apportioning the funds as appropriate. Counsel for Espinoza shall provide
5 wire information upon request.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
8 acting on his own behalf, and on behalf of the public interest, and Baylis, and its parents,
9 shareholders, members, directors, officers, managers, employees, representatives, agents,
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
11 predecessors, successors and assigns (“Defendant Releasees”), and all entities to whom they
12 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
13 suppliers, distributors, licensors, licensees retailers, including but not limited to Walmart, its
14 parents, subsidiaries, and affiliates, franchisees, and cooperative members (“Downstream
15 Releasees”), of all claims for violations of Proposition 65 based on exposure to DEA from use of
16 the Covered Products manufactured, distributed, or sold by Baylis within 60 days after the Effective
17 Date as set forth in the Notice. It is the Parties’ intention that this Consent Judgment shall have
18 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
19 her, or its interests or the public interest shall be permitted to pursue and take any action with respect
20 to any violation of Proposition 65 based on exposure to DEA from use of the Covered Products
21 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against
22 Baylis and the Downstream Releasees (“Proposition 65 Claims”). Baylis’s compliance with the
23 terms of this Consent Judgment constitutes compliance with Proposition 65 by Baylis with regard
24 to exposure to DEA from use of the Covered Products.

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

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

15 5.3 Baylis waives any and all claims against Espinoza, his attorneys and other
16 representatives, for any and all actions taken, or statements made (or those that could have been
17 taken or made) by Espinoza and his attorneys and other representatives seeking enforcement of
18 Proposition 65 against it in this matter, with respect to Covered Products.

19 **6. INTEGRATION**

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

24 **7. NOTICES**

25 7.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
27 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
28 by the other party at the following addresses:

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For Defendant:

Daniel Wall
Baylis & Harding Plc Nash Road
Park Farm Redditch
Worcestershire
B98 7AS
England
dwall@bayhar.com

And

Jeffrey Margulies
Eva Yang
Norton Rose Fulbright US LLP
555 S. Flower St., 41st Fl.
Los Angeles, CA 90071

For Espinoza:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
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.

8. COUNTERPARTS; FACSIMILE SIGNATURES

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.

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

9.1 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.

1 9.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
4 days, the case shall proceed on its normal course.

5 9.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **10. MODIFICATION**

10 10.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **11. ATTORNEY'S FEES**

13 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law.

17 **12. RETENTION OF JURISDICTION**

18 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 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: 15/01/2025

By: _____
GABRIEL ESPINOZA

By: 
BAYLIS & HARDING PLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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13. AUTHORIZATION

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AGREED TO:

AGREED TO:

Date: 1 | 24 | 25

Date: _____

By: GABRIEL ESPINOZA

By: BAYLIS & HARDING PLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court