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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 CHEWY, INC.,

15 Defendant.

Case No.: CGC-24-616123

CONSENT JUDGMENT

Judge: Joseph M. Quinn

Dept.: 302

Hearing Date: March 6, 2025

Hearing Time: 9:30 AM

Complaint Filed: July 3, 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 Chewy, Inc. (“Chewy”
4 or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties” and each of
5 them as a “Party.” Espinoza is an individual residing in California that seeks to promote awareness
6 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Chewy is alleged to be a person in the course of doing
8 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 lead or di(2-ethylhexyl) phthalate (DEHP) from its sales of (a) Loyalty Pet Products
11 dog grooming shear briefcases, UPC # 685239950779, (DEHP), (b) Loyalty Pet Products dog
12 grooming hammocks, # 685239950762, (DEHP), (c) *Frisco*® cat face ceramic dishes, UPC #
13 192268116576, (lead), and (d) Bitebuster Scratchbuster pet grooming sleeves, UPC #
14 860002982656, (DEHP), without providing a clear and reasonable exposure warning pursuant to
15 Proposition 65. Lead and DEHP are listed pursuant to Proposition 65 as chemicals known to the
16 State of California to cause cancer and birth defects or other reproductive harm.

17 **1.3 Notices of Violation/Complaint.**

18 **1.3.1** On February 22, 2024, Espinoza served Chewy and various public
19 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
20 Safety Code §25249.7(d) (the “First February Notice”), alleging that Defendant violated
21 Proposition 65 for failing to warn consumers and customers that use of Loyalty Pet Products dog
22 grooming shear briefcases exposes users in California to DEHP. No public enforcer has brought
23 and is diligently prosecuting the claims alleged in the First February Notice.

24 **1.3.2** On February 22, 2024, Espinoza served Chewy and various public
25 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
26 Safety Code §25249.7(d) (the “Second February Notice”), alleging that Defendant violated
27 Proposition 65 for failing to warn consumers and customers that use of Loyalty Pet Products dog
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1 grooming hammocks exposes users in California to DEHP. No public enforcer has brought and is
2 diligently prosecuting the claims alleged in the Second February Notice.

3 1.3.3 On March 13, 2024, Espinoza served Chewy and various public enforcement
4 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
5 §25249.7(d) (the “First March Notice”), alleging that Defendant violated Proposition 65 for failing
6 to warn consumers and customers that use of *Frisco*® cat face ceramic dishes exposes users in
7 California to lead. No public enforcer has brought and is diligently prosecuting the claims alleged
8 in the First March Notice.

9 1.3.4 On March 20, 2024, Espinoza served Chewy and various public enforcement
10 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
11 §25249.7(d) (the “Second March Notice”), alleging that Defendant violated Proposition 65 for
12 failing to warn consumers and customers that use of Bitebuster Scratchbuster pet grooming sleeves
13 exposes users in California to DEHP. No public enforcer has brought and is diligently prosecuting
14 the claims alleged in the Second March Notice.

15 1.3.5 The First February Notice, Second February Notice, First March Notice, and
16 Second March Notice are collectively referred to herein as, the “Notices.”

17 1.3.6 On July 3, 2024, Espinoza filed a complaint (the “Complaint”).

18 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
20 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
21 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
22 of all claims which were or could have been raised in the Complaint based on the facts alleged
23 therein and in the Notices.

24 1.5 Defendant denies the material allegations contained in Espinoza’s Notices and
25 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
26 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
27 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
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1 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
2 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
3 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

4 **2. DEFINITIONS**

5 2.1 **Covered Products.** The term “Covered Products” means (a) Loyalty Pet Products
6 dog grooming shear briefcases, UPC # 685239950779, (b) Loyalty Pet Products dog grooming
7 hammocks, # 685239950762, (c) *Frisco*® cat face ceramic dishes, UPC # 192268116576, and (d)
8 Bitebuster Scratchbuster pet grooming sleeves, UPC # 860002982656 that are manufactured,
9 distributed, shipped into California and offered for sale in California by Chewy.

10 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
11 entered as a Judgment of the Court.

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

13 3.1 **Clear and Reasonable Warning.** Commencing within sixty (60) days after the
14 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
15 this §§ 3.1 and 3.2 must be provided for all Covered Products that Chewy manufacturers, imports,
16 distributes, sells, or offers for sale in California that expose users to lead or DEHP. The warning
17 language must comply with 27 CCR § 25603. The warning shall consist of either the **Warning** or
18 **Alternative Warning** described in §§ 3.1(a) - (d):

19 (a) **Warning.** The “Warning” for (i) Loyalty Pet Products dog grooming shear
20 briefcases, (ii) Loyalty Pet Products dog grooming shear briefcases, and (iii) Bitebuster
21 Scratchbuster pet grooming sleeves shall consist of the statement:

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

25 (b) **Alternative Warning:** With regard to (i) Loyalty Pet Products dog
26 grooming shear briefcases, (ii) Loyalty Pet Products dog grooming shear briefcases, and (iii)
27 Bitebuster Scratchbuster pet grooming sleeves, Chewy may, but is not required to, use the
28 alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

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

(c) **Warning.** The “Warning” for *Frisco*® cat face ceramic dishes shall consist of the statement:

⚠ WARNING: This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(d) **Alternative Warning:** With regard to *Frisco*® cat face ceramic dishes, Chewy may, but is not required to, use the alternative short-form warning as set forth in this § 3.1(d) (“**Alternative Warning**”) as follows:

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

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

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

15 **3.3 Lead Reformulation Standard.** With respect to California sales of *Frisco*® cat
16 face ceramic dishes, pursuant to this Agreement, in addition to the option to provide a **Warning** or
17 **Alternative Warning**, Chewy may choose to manufacture, import, distribute, sell or offer for sale
18 in California “Lead Reformulated Products.”

19 “Lead Reformulated Products” shall mean Covered Products that produce a wipe test result
20 no higher than 1 microgram (µg) of lead when analyzed pursuant to NIOSH method no. 9100.

21 **3.4 No Reformulation Standard Option for (i) Loyalty Pet Products dog grooming**
22 **shear briefcases, (ii) Loyalty Pet Products dog grooming shear briefcases, and (iii) Bitebuster**
23 **Scratchbuster pet grooming sleeves.** This Agreement does not provide a reformulation option for
24 (i) Loyalty Pet Products dog grooming shear briefcases, (ii) Loyalty Pet Products dog grooming
25 shear briefcases, and (iii) Bitebuster Scratchbuster pet grooming sleeves products. Pursuant to §§
26 3.1(a), (b) & 3.2 of this Agreement, commencing within 60 days after the Effective Date, Chewy
27 shall provide a **Warning** or **Alternative Warning** for California sales of (i) Loyalty Pet Products
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1 dog grooming shear briefcases, (ii) Loyalty Pet Products dog grooming shear briefcases, and (iii)
2 Bitebuster Scratchbuster pet grooming sleeves.

3 **3.5 Compliance with Warning Regulations.** The Parties agree that Chewy shall be
4 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
5 Settlement Agreement or by complying with warning regulations adopted by the State of
6 California’s OEHHA applicable to the Covered Product and the exposure at issue.

7 **4. MONETARY TERMS**

8 **4.1 Civil Penalty.** Chewy shall pay \$3,000.00 as a Civil Penalty pursuant to Health and
9 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
10 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
11 Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

12 **4.1.1** Within fifteen (15) days of the Effective Date, Chewy shall issue two
13 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; and
14 to (b) “Gabriel Espinoza” in the amount of \$750.00. Payment owed to Espinoza pursuant to this
15 Section shall be delivered to the following payment address:

16 Evan J. Smith, Esquire
17 Brodsky Smith
18 Two Bala Plaza, Suite 805
19 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
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

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

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

3 4.2 **Attorneys' Fees.** Within fifteen (15) days of the Effective Date, Chewy shall pay
4 \$27,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs
5 incurred as a result of investigating, bringing this matter to the attention of Chewy, litigating and
6 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
7 of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
10 acting on her own behalf, and on behalf of the public interest, and Chewy, and its parents,
11 shareholders, members, directors, officers, managers, employees, representatives, agents,
12 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
13 predecessors, successors and assigns ("Defendant Releasees"), of all claims for violations of
14 Proposition 65 based on exposure to lead and/or DEHP from use of the Covered Products
15 manufactured, distributed, or sold by Chewy within 60 days after the Effective Date, as set forth in
16 the Notice. It is the intention of the Parties that this Consent Judgment shall have preclusive effect
17 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
18 or the public interest shall be permitted to pursue and take any action with respect to any violation
19 of Proposition 65 based on exposure to lead and/or DEHP from use of the Covered Products that
20 was alleged in the Complaint, or that could have been brought pursuant to the Notices against
21 Chewy and the Defendant Releasees ("Proposition 65 Claims"). Chewy's compliance with the
22 terms of this Consent Judgment constitutes compliance with Proposition 65 by Chewy with regard
23 to exposure to lead and/or DEHP from use of the Covered Products.

24 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
25 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
26 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
27 legal action and releases Chewy and Defendant Releasees from any and all manner of actions,
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1 causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
2 liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever,
3 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any
4 alleged violations of Proposition 65 related to or arising from Covered Products manufactured,
5 distributed, or sold by Chewy or Defendant Releasees. With respect to the foregoing waivers and
6 releases in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which
7 he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
8 California Civil Code, which provides as follows:

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

15 5.3 Chewy 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, whether in the course of
18 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
19 and with respect to Covered Products.

20 **6. INTEGRATION**

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

25 **7. NOTICES**

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

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For Defendant:

Rick R. Rothman
Morgan, Lewis & Bockius LLP
300 S. Grand Ave., 22nd Fl.
Los Angeles, CA 90071

And

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.

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

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

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10. MODIFICATION

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

11. ATTORNEY'S FEES

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

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

12. RETENTION OF JURISDICTION

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

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: 1/14/2025 _____

By: _____
GABRIEL ESPINOZA

By: Signed by: *Dominique Forrest* _____
CHEWY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 1/15/25

Date: _____

By: [Signature]

By: _____

GABRIEL ESPINOZA

CHEWY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court