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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 CHEWY, INC.,

15 Defendant.

Case No.: CGC-24-616123

CONSENT JUDGMENT

Judge: Christine Van Aken

Dept.: 301

Hearing Date: March 25, 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**¹ 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
cancer and birth defects or other reproductive harm. For more information go to
24 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 ¹ An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided
28 in accordance with Title 27, California Code of Regulations, § 25603(b).


1 Bitebuster Scratchbuster pet grooming sleeves, Chewy 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 For (i) Loyalty Pet Products dog grooming shear briefcases, (ii) Loyalty Pet Products dog
5 grooming shear briefcases, and (iii) Bitebuster Scratchbuster pet grooming sleeves that are
6 manufactured and labeled after January 1, 2028, Chewy shall use the following as its **Alternative**
7 **Warning:**

8  **WARNING:** Risk of cancer and reproductive harm from exposure to di(2-ethylhexyl)
9 phthalate (DEHP). See www.P65Warnings.ca.gov.


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

12  **WARNING:** This product can expose you to chemicals including lead, which
13 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.

14 (d) **Alternative Warning:** With regard to *Frisco*® cat face ceramic dishes,
15 Chewy may, but is not required to, use the alternative short-form warning as set forth in this §
16 3.1(d) (“**Alternative Warning**”) as follows:

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

18 For *Frisco*® cat face ceramic dishes that are manufactured and labeled after January 1,
19 2028, Chewy shall use the following as its **Alternative Warning:**

20  **WARNING:** Risk of cancer and reproductive harm from exposure to lead. See
21 www.P65Warnings.ca.gov.

22 **3.2 A Warning or Alternative Warning** provided pursuant to § 3.1 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 Products 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 Products’ packaging or labeling, or on a placard, shelf tag, sign or

1 electronic device or automatic process, provided 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 Product and shall be at least the same size as those other safety warnings. If “consumer
7 information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c)
8 as it may be amended from time to time, is provided in a foreign language, Chewy shall provide
9 the **Warning or Alternative Warning** in the foreign language in accordance with applicable
10 warning regulations adopted by the State of California’s Office of Environmental Health Hazard
11 Assessment (“OEHHA”).

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

26 **3.3 Lead Reformulation Standard.** With respect to California sales of *Frisco*® cat
27 face ceramic dishes, pursuant to this Agreement, in addition to the option to provide a **Warning** or
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1 **Alternative Warning**, Chewy may choose to manufacture, import, distribute, sell or offer for sale
2 in California “Lead Reformulated Products.”

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

5 **3.4 No Reformulation Standard Option for (i) Loyalty Pet Products dog grooming**
6 **shear briefcases, (ii) Loyalty Pet Products dog grooming shear briefcases, and (iii) Bitebuster**
7 **Scratchbuster pet grooming sleeves.** This Agreement does not provide a reformulation option for
8 (i) Loyalty Pet Products dog grooming shear briefcases, (ii) Loyalty Pet Products dog grooming
9 shear briefcases, and (iii) Bitebuster Scratchbuster pet grooming sleeves products. Pursuant to §§
10 3.1(a), (b) & 3.2 of this Agreement, commencing within 60 days after the Effective Date, Chewy
11 shall provide a **Warning** or **Alternative Warning** for California sales of (i) Loyalty Pet Products
12 dog grooming shear briefcases, (ii) Loyalty Pet Products dog grooming shear briefcases, and (iii)
13 Bitebuster Scratchbuster pet grooming sleeves.

14 **3.5 Compliance with Warning Regulations.** The Parties agree that Chewy shall be
15 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
16 Settlement Agreement or by complying with warning regulations adopted by the State of
17 California’s OEHHA applicable to the Covered Product and the exposure at issue.

18 **4. MONETARY TERMS**

19 **4.1 Civil Penalty.** Chewy shall pay \$3,000.00 as a Civil Penalty pursuant to Health and
20 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
21 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
22 Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

23 **4.1.1** Within fifteen (15) days of the Effective Date, Chewy shall issue two
24 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; and
25 to (b) “Gabriel Espinoza” in the amount of \$750.00. Payment owed to Espinoza pursuant to this
26 Section shall be delivered to the following payment address:

27 Evan J. Smith, Esquire
28 Brodsky Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95814

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

19 4.2 **Attorneys' Fees.** Within fifteen (15) days of the Effective Date, Chewy shall pay
20 \$27,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs
21 incurred as a result of investigating, bringing this matter to the attention of Chewy, litigating and
22 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
23 of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
26 acting on her own behalf, and on behalf of the public interest, and Chewy, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), of all claims for violations of
Proposition 65 based on exposure to lead and/or DEHP from use of the Covered Products
manufactured, distributed, or sold by Chewy within 60 days after the Effective Date, as set forth in
the Notice. It is the intention of the Parties that this Consent Judgment shall have preclusive effect

1 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
2 or the public interest shall be permitted to pursue and take any action with respect to any violation
3 of Proposition 65 based on exposure to lead and/or DEHP from use of the Covered Products that
4 was alleged in the Complaint, or that could have been brought pursuant to the Notices against
5 Chewy and the Defendant Releasees (“Proposition 65 Claims”). Chewy’s compliance with the
6 terms of this Consent Judgment constitutes compliance with Proposition 65 by Chewy with regard
7 to exposure to lead and/or DEHP from use of the Covered Products.

8 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
9 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
10 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
11 legal action and releases Chewy and Defendant Releasees from any and all manner of actions,
12 causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
13 liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever,
14 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any
15 alleged violations of Proposition 65 related to or arising from Covered Products manufactured,
16 distributed, or sold by Chewy or Defendant Releasees. With respect to the foregoing waivers and
17 releases in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which
18 he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
19 California 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 Chewy waives any and all claims against Espinoza, his attorneys and other
27 representatives, for any and all actions taken, or statements made (or those that could have been
28 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 Rick R. Rothman
13 Morgan, Lewis & Bockius LLP
14 300 S. Grand Ave., 22nd Fl.
15 Los Angeles, CA 90071

16 And

17 For Espinoza:

18 Evan Smith
19 Brodsky Smith
20 9465 Wilshire Blvd., Ste. 300
21 Beverly Hills, CA 90212

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

24 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

25 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and
27 the same document.

28 **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: 2/3/2025

By: _____
GABRIEL ESPINOZA

By: 
CHEWY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 2/4/25

Date: _____

By: [Signature]
GABRIEL ESPINOZA

By: _____
CHEWY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court