

FILED

NOV 23 2016

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: J. Eerg, Deputy J. Berg

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17 Attorneys for Plaintiffs,  
18 Consumer Advocacy Group, Inc.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF MARIN

BY FAX

21 CONSUMER ADVOCACY GROUP, INC.,  
22 in the public interest,

23 Plaintiff,

24 v.

25 BELL SPORTS, INC., a California  
26 Corporation; EASTON-BELL SPORTS,  
27 INC. now known as BRG SPORTS, INC., a  
28 California Corporation; BELL SPORTS,  
CORP, a Delaware Corporation; and  
DOES1-20;

Defendants.

CASE NO. CIV-1500761

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

Dept. B

Judge: Hon. Roy O. Chernus

Complaint filed: February 27, 2015

11/16/16  
1:30P  
B

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2 **1. INTRODUCTION**

3 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer  
4 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the  
5 public, and defendant, BELL SPORTS, INC. (referred to as "Defendant") with each a Party to the  
6 action and collectively referred to as "Parties."

7 **1.2 Defendant and Products**

8 1.2.1 Defendant is a California corporation which employs ten or more persons.  
9 For purposes of this Consent Judgment, Defendant is deemed a person in the course of doing  
10 business in California and is subject to the provisions of the Safe Drinking Water and Toxic  
11 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

12 1.2.2 Defendant manufactured, caused to be manufactured, sold, or distributed  
13 (1) Bike Locks, (2) Brake and Gear Cable Sets, and (3) Cable Locks with Polymer Coating.

14 **1.3 Chemical Of Concern**

15 1.3.1 Diethyl hexyl phthalate ("DEHP") is known to the State of California to  
16 cause cancer and/or birth defects or other reproductive harm.

17 **1.4 Notices of Violation.**

18 1.4.1 On February 18, 2014, CAG served Defendant, Fenway Partners, Inc., E.I.  
19 DuPont de Nemours & Company, Big 5 Sporting Goods - #15, Big 5 Sporting Goods, Corp., Big  
20 5 Corp., Easton-Bell Sports, Inc., and various public enforcement agencies with a document  
21 entitled "Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic  
22 Enforcement Act of 1986" ("February 18, 2014 Notice") that provided the recipients with notice  
23 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
24 California of exposures to DEHP contained in Bike Locks sold by Defendant. No public enforcer  
25 has commenced or diligently prosecuted the allegations set forth in the February 18, 2014 Notice.  
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1           1.4.2 On March 27, 2014, CAG served Defendant, Fenway Partners, Inc., E.I.  
2 DuPont de Nemours & Company, Big 5 Sporting Goods - #15, Big 5 Sporting Goods, Corp., Big  
3 5 Corp., Easton-Bell Sports, Inc., and various public enforcement agencies with a document  
4 entitled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic  
5 Enforcement Act of 1986" ("March 27, 2014 Notice") that provided the recipients with notice of  
6 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California  
7 of exposures to DEHP contained in Bike Locks sold by Defendant. No public enforcer has  
8 commenced or diligently prosecuted the allegations set forth in the March 27, 2014 Notice.

9           1.4.3 On April 28, 2014, CAG served Defendant, Easton-Bell Sports, Inc., Bell  
10 Sports Corp., The True Value Company, Dick's True Value, and various public enforcement  
11 agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe  
12 Drinking Water and Toxic Enforcement Act of 1986" ("April 28, 2014 Notice") that provided the  
13 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
14 individuals in California of exposures to DEHP contained in Brake and Gear Cable Sets sold by  
15 Defendant. No public enforcer has commenced or diligently prosecuted the allegations set forth  
16 in the April 28, 2014 Notice.

17           1.4.4 On June 16, 2016, CAG served Defendant, Easton-Bell Sports, Inc., Vista  
18 Outdoor, Inc., KO Sports & Trading, Inc., Fenway Partners, Inc., E.I DuPont de Nemours &  
19 Company, BRG Sports, Inc., and various public enforcement agencies with a document entitled  
20 "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement  
21 Act of 1986" ("June 16, 2016 Notice") that provided the recipients with notice of alleged violations  
22 of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
23 DEHP contained in Cable Locks with Polymer Coating sold by Defendant. No public enforcer  
24 has commenced or diligently prosecuted the allegations set forth in the June 16, 2016 Notice.  
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1 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding  
2 or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall  
3 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
4 other or future legal proceeding, except as expressly provided in this Consent Judgment.

5 **2. DEFINITIONS**

6 2.1 "Covered Products" means (1) Bike Locks, including but not limited to Cable  
7 Locks with Polymer Coating; and (2) Brake and Gear Cable Sets; that are sold, distributed,  
8 packaged, produced, and /or manufactured by Defendant.

9 2.2 "Effective Date" means the date that this Consent Judgment is approved and  
10 entered by the Court.

11 2.3 "DEHP" means Diethyl hexyl phthalate.

12 2.4 "Notices" means the February 18, 2014 Notice, the March 27, 2014 Notice, the  
13 April 28, 2014 Notice, and the June 16, 2016 Notice.

14 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
15 **WARNINGS.**

16 3.1 As of the Effective Date, Defendant shall not sell the Covered Products in  
17 California unless they are reformulated to contain less than 0.1% (1,000 parts per million)  
18 DEHP.

19 3.2 For any Covered Products still existing in Defendant's inventory as of the Effective  
20 Date that have not been reformulated to contain less than 0.1% (1,000 parts per million) DEHP,  
21 Defendant shall place a Proposition 65 compliant warning. Any warning provided pursuant to this  
22 section shall be affixed to the packaging of, or directly on, the Covered Products, and be  
23 prominently placed with such conspicuousness as compared with other words, statements, designs,  
24 or devices as to render it likely to be read and understood by an ordinary individual under  
25 customary conditions before purchase or use. The warning shall state:  
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1           **WARNING:** This product contains a chemical known to the State of California to  
2           cause cancer and birth defects or other reproductive harm.

3           **4. SETTLEMENT PAYMENT**

4           **4.1 Payment and Due Date:** Within ten (10) business days of the Effective Date,  
5           Defendant shall pay a total of one-hundred and twenty-six thousand dollars and zero cents  
6           (\$126,000.00) in full and complete settlement of all monetary claims by CAG related to the  
7           Notices, as follows:

8                   **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling twelve  
9                   thousand dollars (\$12,000) as penalties pursuant to Health & Safety Code § 25249.12:

10                           (a) Defendant will issue one check made payable to the State of California's  
11                           Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of nine thousand  
12                           dollars (\$9,000.00) representing 75% of the total penalty and Defendant will issue a second check  
13                           to CAG in the amount of three thousand dollars (\$3,000.00) representing 25% of the total penalty;

14                           (b) Separate 1099s shall be issued for each of the above payments:  
15                           Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
16                           0284486) in the amounts of \$9,000.00. Defendant will also issue a 1099 to CAG in the amount of  
17                           \$3,000.00 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite  
18                           240W, Beverly Hills, California 90212.

19                           **4.1.2 Payments In Lieu of Civil Penalties:** Defendant shall pay nine thousand  
20                           dollars (\$9,000.00) in lieu of civil penalties payable to "Consumer Advocacy Group, Inc." CAG  
21                           will use this payment for investigation of the public's exposure to Proposition 65 listed chemicals  
22                           through various means, including laboratory fees for testing for Proposition 65 listed chemicals,  
23                           administrative costs and fees related to such activities, expert fees for evaluating exposures through  
24                           various mediums, including but not limited to consumer product, occupational, and environmental  
25                           exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained experts  
26                           who assist with the extensive scientific analysis necessary for those files in litigation, as well as  
27                           administrative costs and fees related to such activities in order to reduce the public's exposure to  
28

1 Proposition 65 listed chemicals by notifying those persons and/or entities believed to be  
2 responsible for such exposures and attempting to persuade those persons and/or entities to  
3 reformulate their products or the source of exposure to completely eliminate or lower the level of  
4 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the instant  
5 action. Further, should the Court require it, CAG will submit under seal, an accounting of these  
6 funds as described above as to how the funds were used.

7           **4.1.3 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay one-  
8 hundred and five thousand dollars (\$105,000.00) payable to "Yeroushalmi & Yeroushalmi" as  
9 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs  
10 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and  
11 negotiating a settlement in the public interest.

12           4.2 All payments referenced in paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall  
13 be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite  
14 240W, Beverly Hills, CA 90212.

15 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

16           5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on  
17 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,  
18 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
19 companies, vendors, suppliers, distributors, retailers, and customers and their predecessors,  
20 successors and assigns, including but not limited to Easton-Bell Sports Inc., BRG Sports Inc., Bell  
21 Sports Corp., Vista Outdoor, Inc., Fenway Partners, Inc., E.I DuPont de Nemours & Company,  
22 Big 5 Sporting Goods Corp., Big 5 Corp., Big 5 Sporting Goods #15, The True Value Company,  
23 Dick's True Value, and KO Sports & Trading, Inc. ("Releasees"), for all claims for violations of  
24 Proposition 65 up through the Effective Date based on exposure to DEHP from the Covered  
25 Products as set forth in the Notices and Complaint. Defendant's compliance with this Consent  
26 Judgment shall constitute compliance with Proposition 65 with respect to exposure to DEHP from  
27

1 the Covered Products. Nothing in this Section affects CAG's right to commence or prosecute an  
2 action under Proposition 65 against any person other than the Releasees.

3           5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
4 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
5 indirectly, any form of legal action and releases all claims, including, without limitation, all  
6 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
7 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
8 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
9 contingent (collectively "Claims"), against the Releasees arising from any violation of  
10 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure  
11 to DEHP from the Covered Products.

12           5.3 In furtherance of the foregoing, as to alleged exposures to DEHP from the Covered  
13 Products, CAG on behalf of itself only, hereby waives any and all rights and benefits which it now  
14 has, or in the future may have, conferred upon it with respect to Claims arising from any violation  
15 of Proposition 65 or any other statutory or common law regarding the failure to warn about  
16 exposure to DEHP from the Covered Products by virtue of the provisions of section 1542 of the  
17 California Civil Code, which provides as follows:

18  
19           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
20           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
21           FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
22           BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
23           SETTLEMENT WITH THE DEBTOR.

24 CAG understands and acknowledges that a consequence of this waiver of California Civil Code  
25 section 1542 is that even if CAG becomes aware in the future of Claims solely arising out of or  
26 resulting from, or related directly or indirectly to, in whole or in part, any violation of Proposition  
27 65 or any other statutory or common law only regarding any exposure to, or failure to warn with  
28 respect to exposure to DEHP from the Covered Products, CAG will not be able to make any such



1 Claim against the Releasees. Furthermore, CAG acknowledges that it intends these consequences  
2 for any such Claims arising from any violation of Proposition 65 or any other statutory or common  
3 law regarding the failure to warn about exposure to DEHP from Covered Products as may exist as  
4 of the date of this release but which CAG does not know exist, and which, if known, would  
5 materially affect their decision to enter into this Consent Judgment, regardless of whether their  
6 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7 **6. ENFORCEMENT OF JUDGMENT**

8 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
9 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
10 California, County of Marin, giving the notice required by law, enforce the terms and conditions  
11 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment  
12 only after that Party first provides 90 days notice to the Party allegedly failing to comply with the  
13 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to  
14 comply in an open and good faith manner.

15 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
16 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation  
17 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: (a) the name of  
18 the product, (b) specific dates when the product was sold in California, (c) the store or other place  
19 at which the product was available for sale to consumers, and (d) any other evidence or other  
20 support for the allegations in the NOV.

21 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
22 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of  
23 Election ("NOE") that meets one of the following conditions:

24 (a) The Covered Products were shipped by Defendant for sale in  
25 California before the Effective Date, or  
26

1 (b) Since receiving the NOV Defendant has taken corrective action by  
2 either (i) taking all steps necessary to bring the sale of the product into compliance under  
3 the terms of this Consent Judgment, or (ii) requesting that its customers or stores in  
4 California, as applicable, remove the Covered Products identified in the NOV from sale in  
5 California and destroy or return the Covered Products to Defendant, or (iii) refute the  
6 information provided in paragraph 6.2.

7 6.2.2 **Contested NOV.** Defendant may serve a Notice of Election (“NOE”)  
8 informing CAG of its election to contest the NOV within 30 days of receiving the NOV.

9 (a) In its election, Defendant may request that the sample(s) Covered  
10 Products tested by CAG be subject to confirmatory testing at an EPA-accredited laboratory.

11 (b) If the confirmatory testing establishes that the Covered Products do  
12 not contain DEHP in excess of the levels allowed in Section 3.1, above, CAG shall take no  
13 further action regarding the alleged violation. If the testing does not establish compliance  
14 with Section 3.1, above, Defendant may withdraw its NOE to contest the violation and may  
15 serve a new NOE pursuant to Section 6.2.1.

16 (c) If Defendant does not withdraw an NOE to contest the NOV, the  
17 Parties shall meet and confer for a period of no less than 30 days before CAG may seek an  
18 order enforcing the terms of this Consent Judgment.

19 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the  
20 prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs.

21  
22 **7. ENTRY OF CONSENT JUDGMENT**

23 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
24 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
25 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

26 7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent  
27 Judgment and any and all prior agreements between the parties merged herein shall terminate and



1 any written objection by the Attorney General to the terms of this Consent Judgment, the parties  
2 may then submit it to the Court for approval.

3 **12. ATTORNEY FEES**

4 12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its  
5 own attorneys' fees and costs in connection with this action.

6 **13. ENTIRE AGREEMENT**

7 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
8 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
9 negotiations, commitments and understandings related hereto. No representations, oral or  
10 otherwise, express or implied, other than those contained herein have been made by any party  
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
12 to exist or to bind any of the Parties.

13 **14. GOVERNING LAW**

14 14.1 The validity, construction and performance of this Consent Judgment shall be  
15 governed by the laws of the State of California, without reference to any conflicts of law provisions  
16 of California law.

17 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of  
18 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
19 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
20 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
21 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant may  
22 provide written notice to CAG of any asserted change in the law, and shall have no further  
23 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered  
24 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
25 Defendant from any obligation to comply with any pertinent state or federal law or regulation.  
26

1           14.3 The Parties, including their counsel, have participated in the preparation of this  
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
6 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
7 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
8 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
9 this regard, the Parties hereby waive California Civil Code § 1654.

10 **15. EXECUTION AND COUNTERPARTS**

11           15.1 This Consent Judgment may be executed in counterparts and by means of facsimile  
12 or portable document format (pdf), which taken together shall be deemed to constitute one  
13 document and have the same force and effect as original signatures.

14 **16. NOTICES**

15           16.1 Any notices under this Consent Judgment shall be by personal delivery, overnight  
16 delivery or First Class Mail.

17           If to CAG:

18           Yeroushalmi & Yeroushalmi  
19           9100 Wilshire Boulevard, Suite 240W  
20           Beverly Hills, CA 90212  
21           (310) 623-1926

22           If to Bell Sports, Inc.:

23           Peg Carew Toledo  
24           PEG CAREW TOLEDO, LAW CORPORATION  
25           3001 Douglas Blvd., Suite 340  
26           Roseville, CA 95661

1 17. AUTHORITY TO STIPULATE

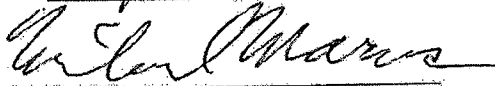
2 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
4 the party represented and legally to bind that party.

5  
6 AGREED TO:

AGREED TO:

7 Date: Sept 29, 2016

Date: Sept 28, 2016

8 



9 Name: Michael Marcus

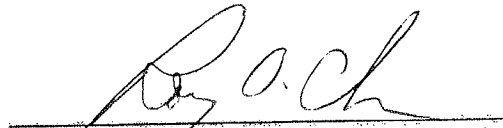
Name: Martin Nguyen

10 Title: Director  
11 CONSUMER ADVOCACY GROUP,  
12 INC.

Title: Associate General Counsel  
BELL SPORTS, INC.

13 IT IS SO ORDERED.

14  
15 Date: 11/23/16

  
16 JUDGE OF THE SUPERIOR COURT