

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 206683		FOR COURT USE ONLY on 4/12/2021 4:14 PM Reviewed By: L. Nguyen Case #18CV335498 Envelope: 6223928
NAME: Tanya E. Moore, Esq.		
FIRM NAME: Moore Law Firm, P.C.		
STREET ADDRESS: 300 South First Street, Suite 342		
CITY: San Jose	STATE: CA ZIP CODE: 95113	
TELEPHONE NO.: (408) 298-2000	FAX NO.: (408) 298-6046	
E-MAIL ADDRESS: service@moorelawfirm.com		
ATTORNEY FOR (name): Plaintiff, Safe Products for Californians, LLC		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara		
STREET ADDRESS: 191 North First Street		
MAILING ADDRESS: 191 North First Street		
CITY AND ZIP CODE: San Jose 95113		
BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: Safe Products for Californians, LLC		CASE NUMBER: 18CV335498
DEFENDANT/RESPONDENT: Dick's Sporting Goods, Inc., et al.		JUDICIAL OFFICER: Honorable Peter H. Kirwan
OTHER:		
PROPOSED ORDER (COVER SHEET)		DEPT: 19

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Safe Products for Californians, LLC
2. Title of the proposed order:
[PROPOSED] JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion to Approve Proposition 65 Settlement and Consent Judgment
 - b. Date and time: February 11, 2021 at 9:00 a.m.
 - c. Place: Department 19, Judge Kirwan, Downtown Superior Court, 191 North First Street, San Jose, CA 95113
4. The proposed order was served on the other parties in the case.

Tanya E. Moore, Esq.
(TYPE OR PRINT NAME)



/s/ Tanya E. Moore

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Safe Products for Californians, LLC v. Homegoods, Inc., et al.	CASE NUMBER: 18CV335498
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**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.

a. My residence or business address is (*specify*):

Moore Law Firm, P.C., 300 South First Street, Suite 342, San Jose, CA 95113

b. My electronic service address is (*specify*): isaac@moorelawfirm.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

Carol Brophy, Esq., Steptoe & Johnson LLP, 1 Market Street, Spear Tower, Suite 3900, San Francisco, CA 94105, attorneys for Defendant, DICK'S SPORTING GOODS, INC.

b. To (*electronic service address of person served*): cbrophy@steptoe.com; and dvallone@Steptoe.com

c. On (*date*): April 12, 2021

☒ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: April 12, 2021

Isaac Medrano

(TYPE OR PRINT NAME OF DECLARANT)



/s/ Isaac Medrano

(SIGNATURE OF DECLARANT)

ATTACHMENT TO PROPOSED (COVER SHEET)

Served: Allonn Levy, Esq. and Erika J. Gasaway, Esq., Hopkins & Carley, 70 South First Street, San Jose, CA 95113, attorneys for Defendant, Bass Pro Outdoor World, L.L.C., and Sunrize Tackle Inc.

Email for service: alevy@hopkinscarley.com, and egasaway@hopkinscarley.com

Served: Garth Neal Ward, Esq., Lewis Brisbois Bisgaard & Smith LLP, 701 B Street, Suite 1900, San Diego, CA 92101, attorneys for Defendant, Lunker City, Erroneously Served as HR Reed, LLC

Email for service: garth.ward@lewisbrisbois.com

Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
300 South First Street, Suite 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046
E-mail: service@moorelawfirm.com

Attorney for Plaintiff
Safe Products for Californians, LLC

Filed
April 19, 2021
Clerk of the Court
Superior Court of CA
County of Santa Clara
18CV335498
By: raragon

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAFE PRODUCTS FOR CALIFORNIANS,)
LLC,)

Plaintiff,)

vs.)

DICK'S SPORTING GOODS, INC., et al.,)

Defendants.)

No. 18CV335498

~~PROPOSED~~ CONSENT JUDGMENT

(Health & Safety Code § 25249.5, *et seq.*)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Safe Products for Californians, LLC ("SPFC") and defendants Bass Pro Outdoor World LLC ("Bass Pro") and Sunrize Tackle, Inc. ("Sunrize") (collectively "Defendants"). SPFC, Bass Pro, and Sunrize are each referred to individually as a "Party" and collectively as the "Parties."

1.2 Plaintiff

SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

~~PROPOSED~~ CONSENT JUDGMENT

1 **1.3.1 Bass Pro**

2 Defendant Bass Pro is a Missouri limited liability company registered to conduct
3 business within the State of California that employs ten or more persons and is a person in the
4 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act
5 of 1986, California Health & Safety Code sections 25249.5 et seq. (“Proposition 65”).

6 **1.3.2 Sunrize**

7 For purposes of this Consent Judgment only, SPFC alleges, and Sunrize does not dispute,
8 that defendant Sunrize employs ten or more persons and is a person in the course of doing
9 business for purposes of Proposition 65.

10 **1.4 General Allegations**

11 SPFC alleges that certain soft plastic lures that Defendants manufacture, import, sell
12 and/or distribute for sale in California cause exposure to di(2-ethylhexyl) phthalate (“DEHP”)
13 and that Defendants did so without providing the health hazard warning that SPFC alleges is
14 required by Proposition 65.

15 **1.5 Product Description**

16 The products that are covered by this Settlement Agreement are soft plastic lures that
17 contain excessive levels of DEHP, including but not limited to “Big Hammer Perch Grubs 1 ¾”
18 Pumpkinseed (#95),” UPC 727562101050 that are manufactured, imported, distributed, sold
19 and/or offered for sale in California by Defendants and/or their customers, hereinafter the
20 “Products.”

21 **1.6 Notice of Violation**

22 On September 21, 2017, SPFC served Bass Pro, Sunrize, and the requisite public
23 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Bass Pro and
24 Sunrize violated Proposition 65 when they failed to warn their customers and consumers in
25 California that the Product exposes users to DEHP. To the best of the Parties’ knowledge, no
26 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations
27 set forth in the Notice. The California Office of the Attorney General subsequently assigned this
28 case number AG #2017-02185.

1 On June 5, 2018, SPFC served Dick's Sporting Goods, Inc. ("Dick's"), Bass Pro,
2 Wilderness Sports Warehouse, LLC, and the enforcement agencies with an amended notice. The
3 California Office of the Attorney General subsequently assigned this case number AG # 2018-
4 00918. In a letter to the Office of the Attorney General dated June 27, 2018, SPFC stated that
5 this notice was withdrawn as to Wilderness Sports Warehouse, LLC.

6 **1.7 Complaint**

7 On September 19, 2018, SPFC filed a Complaint initiating this action ("the Action")
8 against Dick's and Bass Pro for the alleged violations of Proposition 65 that are the subject of
9 the Notice.

10 On May 1, 2019, SPFC filed its First Amended Complaint in the Action against Sunrize
11 for the alleged violations of Proposition 65 that are the subject of the Notice.

12 **1.8 No Admission**

13 Defendants deny the material, factual, and legal allegations contained in the Notice and
14 Complaint, and maintain that all of the products that they have sold or distributed for sale in
15 California, including the Products, have been, and are, in compliance with all laws. Nothing in
16 this Consent Judgment shall be construed as an admission by Defendants of any fact, finding,
17 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
18 Judgment constitute or be construed as an admission by Defendants of any fact, finding,
19 conclusion of law, issue of law, or violation of law, the same being specifically denied by
20 Defendants. This Section shall not, however, diminish or otherwise affect Defendants'
21 obligations, responsibilities, and duties under this Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper
25 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
26 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
27 section 664.6.

28 //

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
3 which notice of entry of the Consent Judgment by the Court is served upon Sunrize.

4 **2. INJUNCTIVE RELIEF**

5 **2.1 Product Removal**

6 Upon the Effective Date, Sunrize shall not directly sell, or ship for sale in California any
7 Products that exceed the DEHP concentration levels of the Reformulated Products or
8 accompanied by a Warning as set forth below.

9 **2.2 Reformulation**

10 For the purposes of this Consent Judgment, “Reformulated Products” are defined as
11 Products that contain DEHP in concentrations that do not exceed 500,000 parts per million (50%)
12 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
13 3580A, 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by state or federal
14 agencies for the purpose of determining DEHP content in a solid substance.

15 **2.3 Clear and Reasonable Warnings**

16 For any Products directly sold or offered for sale in California by Sunrize after the
17 Effective Date having DEHP concentration levels exceeding those specified in the Reformulated
18 Products, Sunrize shall only sell or offer for sale in California Products accompanied with a clear
19 and reasonable warning pursuant to Title 27, California Code of Regulations, Article 6, § 25602.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

22 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
23 claims referred to in this Consent Judgment, Sunrize shall pay \$1,000.00 in civil penalties in
24 accordance with this Section. The penalty payment will be allocated in accordance with
25 California Health & Safety Code § 25249.12(c)(l) & (d), with 75% of the funds remitted to the
26 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
27 25% of the penalty remitted to SPFC. SPFC’s counsel shall be responsible for remitting the
28 penalty payment(s) under this Consent Judgment to OEHHA. Within 10 business days of the

Effective Date, Sunrize shall issue a check payable to “Safe Products for Californians, LLC” in the amount of \$250.00, and a check payable to OEHHA in the amount of \$750.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of Attorneys’ Fees and Costs

For all work performed as a result of investigating, bringing this matter to Sunrize’s attention and negotiating a settlement in the public interest through the mutual execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any, Sunrize shall reimburse SPFC and its counsel \$4,000.00. The Parties negotiated this resolution of the compensation due to SPFC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. Sunrize’s payment shall be due within 10 business days of the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to “Moore Law Firm, P.C.” The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Defendants’ attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Procedures

The payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following address:

Moore Law Firm, P.C.
Attn: Proposition 65 (SPFC)
300 South First Street, Suite 342
San Jose, California 95113

4. CLAIMS COVERED AND RELEASED

4.1 SPFC’s Release of Proposition 65 Claims

SPFC, acting on its own behalf and in the public interest, releases Sunrize and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys and the predecessors, successors, or assigns of each of them (“Releasees”) and each entity to whom Sunrize directly or indirectly distributes or sells the Products including, but not

1 limited to, Dick's Sporting Goods, Inc., Bass Pro Outdoor World, L.L.C., their downstream
2 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
3 licensees ("Downstream Releasees") for any violations arising under Proposition 65 for the
4 Products manufactured, imported, distributed or sold by Sunrize prior to the Effective Date, as
5 set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
6 compliance with Proposition 65 with respect to Products manufactured, sold or distributed for
7 sale by Sunrize after the Effective Date.

8 **4.2 SPFC's Individual Release of Claims**

9 SPFC, in its own capacity only and on its own behalf and on behalf of its past and current
10 agents, representatives, attorneys, successors, and/or assignees and *not* in its representative
11 capacity, also provides a release to Defendants, Releasees, and Downstream Releasees, which
12 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
13 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
14 demands of SPFC of any nature, character or kind, whether known or unknown, suspected or
15 unsuspected, arising out of alleged or actual exposures to DEHP in Products manufactured,
16 imported, distributed or sold by Defendants before the Effective Date.

17 **4.3 Defendants' Release of SPFC**

18 Defendants, on behalf of themselves and on behalf of their past and current agents,
19 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
20 SPFC and its attorneys and other representatives, for any and all actions taken or statements
21 made (or those that could have been taken or made) by SPFC and its attorneys and other
22 representatives in the course of investigating claims, seeking to enforce Proposition 65 against
23 it in this matter, or with respect to the Products.

24 4.4 Known and Unknown Claims. The Releases above extend to claims that the Parties
25 do not know or suspect to exist in their favor, which, if known by them would have materially
26 affected their decision to enter into this Consent Judgment. The Parties each acknowledge they
27 are familiar with Section 1542 of the California Civil Code, which provides as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
THAT THE CREDITOR OR RELEASING PARTY DOES NOT

1 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
2 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
3 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
4 AFFECTED HIS OR HER SETTLEMENT WITH THE
5 DEBTOR OR RELEASED PARTY.

6 Each Party expressly waives and relinquished any right or benefit that it has or may have
7 under Section 1542 of the California Civil Code and under any other statute or legal principle
8 with similar effect. In connection with such waiver and relinquishment, each Party acknowledges
9 that it is aware that, after executing this Consent Judgment, it or its attorneys or agents may
10 discover claims or facts in addition to, or different from, those which they now know or believe
11 to exist with respect to the Products or the Parties hereto, but that it is each Party's intention
12 hereby to fully, finally, and forever settle and release all Proposition 65 claims relating to the
13 Products, whether known or unknown, suspected or unsuspected, which now exist, may exist,
14 or heretofore may have existed between them. In furtherance of this intention, the release herein
15 given shall be, and remain in effect as, a full and complete release notwithstanding the discovery
16 or existence of any such additional or different claim or fact.

16 **5. COURT APPROVAL**

17 This Consent Judgment shall become effective upon the date signed by SPFC and
18 Defendants, whichever is later, provided however, that SPFC shall prepare and file a Motion for
19 Approval of this Consent Judgment and Defendants will not oppose entry of this Consent
20 Judgment by the Court.

21 If the Consent Judgement is not entered by the Court, it shall be null and void and shall
22 not be introduced into evidence or used in any proceeding for any purpose other than to allow
23 the Court to determine if there was a material breach of preceding paragraph.

24 **6. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment as a judgment, any provision of
26 this Consent Judgment is held by a court to be unenforceable, the validity of the remaining
27 provisions shall not be adversely affected.

28 //

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
5 Products, then Sunrize may provide SPFC with written notice of any asserted change in the law,
6 and shall have no further obligations pursuant to this Consent Judgment, with respect to, and to
7 the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
8 interpreted to relieve Sunrize from its obligation to comply with any pertinent state or federal
9 law or regulation.

10 **8. NOTICE**

11 Unless specified herein, all correspondence and notice required by this Consent
12 Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or
13 certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the
14 other at the following addresses:

15 To Defendants:
16 Allonn E. Levy
17 Hopkins & Carley, ALC
18 70 South First Street
19 San Jose, CA 95113

20 To SPFC:
21 Moore Law Firm, P.C.
22 Attn: Proposition 65 (SPFC)
23 300 South First Street, Suite 342
24 San Jose, California 95113

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

27 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

28 This Consent Judgment may be executed in counterparts and by facsimile or portable
document format (pdf) signature, each of which shall be deemed an original and, all of which,
when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH REPORTING REQUIREMENTS

SPFC and its counsel agree to comply with the reporting form requirements referenced
in California Health and Safety Code section 25249.7(f).

//

1 **11. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
3 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
4 motion of any Party and the entry of a modified Consent Judgment by the Court thereon.

5 **12. OTHER TERMS**

6 **12.1 No Other Agreements**

7 This Consent Judgment contains the sole and entire agreement and understanding of the
8 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
9 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
10 deemed merged. There are no warranties, representations, or other agreements between the
11 Parties except as expressly set forth in this Consent Judgment. No representations, oral or
12 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
13 have been made by any Party. No other agreements not specifically contained or referenced in
14 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.
15 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
16 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions
17 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
18 provisions whether or not similar, nor shall such waiver constitute a continuing waiver. Nothing
19 in this Consent Judgment shall release, or in any way affect any rights that Sunrize might have
20 against any other party.

21 **12.2 Construction**

22 The Parties, including their counsel, have participated in the preparation of this Consent
23 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent
24 Judgment was subject to revision and modification by the Parties and has been accepted and
25 approved as to its final form by all Parties and their Counsel. Accordingly, any uncertainty or
26 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
27 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
28 agrees that any statute or rule of construction providing that ambiguities are to be resolved

1 against the drafting Party should not be employed in the interpretation of this Consent Judgment
2 and, in this regard the Parties hereby waive California Civil Code section 1654.

3 **13. DISMISSAL**

4 The Court's entry of this Consent Judgment resolves all claims arising under Proposition
5 65 relating to the Products and terminates Defendants' involvement in this Action. To the extent
6 it does not, within ten business days of receipt of the Court's entry of this Consent Judgment,
7 SPFC shall file a request for dismissal with prejudice of Sunrize and Bass Pro from the Action.

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

12
13 Dated: Oct 8, 2020 _____


K R Moore (Oct 8, 2020 19:31 PDT)

Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

14
15
16 Dated: _____

Sunrize Tackle, Inc.

Print Name: _____
Print Title: _____

17
18
19
20
21 Dated: _____

Bass Pro Outdoor World LLC

Print Name: _____
Print Title: _____

22
23
24
25 **IT IS SO ORDERED.**

26
27 Dated: _____

Judge of the Superior Court

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12
13 Dated: _____

Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

14
15
16 Dated: _____

Sunrize Tackle, Inc. 

Print Name: Peter S. Wolf

Print Title: Owner

17
18
19
20 Dated: _____

Bass Pro Outdoor World LLC

Print Name: _____

Print Title: _____

21
22
23
24
25 **IT IS SO ORDERED.**

26
27 Dated: _____

Judge of the Superior Court

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12
13 Dated: _____

Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

14
15
16 Dated: _____

Sunrize Tackle, Inc.

17
18 Print Name: _____
19 Print Title: _____

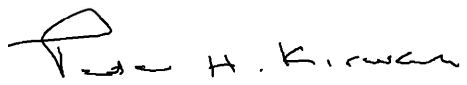
20 Dated: 10/12/2020

21  Bass Pro Outdoor World LLC 

22 Print Name: Kevin Maliszewski
23 Print Title: CFO

24
25 **IT IS SO ORDERED.**

26 Dated: _____ Signed: 4/16/2021 11:09 AM

27 
28 Judge of the Superior Court
Peter H. Kirwan

~~PROPOSED~~ CONSENT JUDGMENT