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FILED
ALAMEDA COUNTY

JAN 16 2020

CLERK OF THE SUPERIOR COURT

By A. Mendez Deputy

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Attorneys for Plaintiff the Center for Advanced Public Awareness, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR ADVANCED PUBLIC
AWARENESS, INC., in the public interest,

Plaintiff,

vs.

COULTER VENTURES, LLC dba ROGUE
FITNESS, an Ohio Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case Number: RG19010620

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health and Safety Code § 25249.5 *et*
seq.)

Date: September 16, 2019

Time: 3:00 p.m.

Dept.: 19

Judge: Honorable Stephen Kaus

Reservation No.: R-2102070

AUG 01 2019

Reserved

~~PROPOSED~~ JUDGMENT

1 Plaintiff Center for Advanced Public Awareness, Inc., and defendant Coulter Ventures,
2 LLC dba Rogue Fitness having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a stipulated judgment ("Consent
4 judgment"), and following this Court's issuance of an order approving their Proposition 65
5 settlement and Consent Judgment, and for good cause being shown,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
8 judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto
9 as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of
10 the Consent Judgment under Code of Civil Procedure section 664.6.

11
12 **IT IS SO ORDERED.**

13
14
15 Dated: _____

HONORABLE JUDGE OF THE SUPERIOR
COURT

EXHIBIT 1

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2 KAWAHITO LAW GROUP APC
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5 Attorneys for Plaintiff the Center for Advanced Public Awareness

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ALAMEDA**

9 **CENTER FOR ADVANCED PUBLIC**
10 **AWARENESS, in the public interest,**

11 **Plaintiff,**

12 **vs.**

13 **COULTER VENTURES, LLC dba ROGUE**
14 **FITNESS, an Ohio Corporation; and DOES 1**
15 **through 50, inclusive,**

16 **Defendants.**

Case Number: RG19010620

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

1
2 **1. INTRODUCTION**

3 **1.1. Center for Advanced Public Awareness and Coulter Ventures, LLC dba**
4 **Rogue Fitness.**

5 This Consent Judgment is entered into by and between plaintiff the Center for Advanced
6 Public Awareness ("CAPA" or "Plaintiff") and defendant Coulter Ventures, LLC dba Rogue
7 Fitness. ("Rogue Fitness" or "Defendant") with Rogue Fitness and CAPA each individually
8 referred to as a "Party" and collectively as the "Parties."

9 **1.2. Plaintiff**

10 CAPA is a not-for-profit corporation duly organized and existing in the State of
11 California, which seeks to promote awareness of exposures to toxic chemicals and to improve
12 human health by reducing or eliminating hazardous substances used in consumer products.

13 **1.3. Defendant**

14 Plaintiff alleges Rogue Fitness employs ten or more persons and is a person in the course
15 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

17 **1.4. General Allegations**

18 CAPA alleges that Rogue Fitness has manufactured, sold, and/or distributed for sale in
19 California, certain products described more specifically below containing Di-(2-ethylhexyl)
20 phthalate ("DEHP"), a chemical listed by the State of California under Proposition 65, in
21 concentrations that exceed levels prescribed in Proposition 65 as requiring a Proposition 65
22 warning. DEHP shall be referred to hereinafter as the "Listed Chemical."

23 **1.5. Product Description**

24 The products covered by this Consent Judgment is the Rogue Fitness Speed Rope, which
25 was imported, sold and/or distributed for sale in California by Rogue Fitness with UPC No:
26 AD0071-94 ("Covered Products").

27 **1.6. Notice of Violation**
28

1
2 On September 26, 2018, CAPA served Rogue Fitness and the requisite public
3 enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Rogue Fitness
4 violated Proposition 65. The Notice alleged that Rogue Fitness failed to warn its customers and
5 consumers in California that the Covered Products contain DEHP in concentrations that exceed
6 levels determined to be safe under Proposition 65.

7 **1.7. Complaint**

8 On March 12, 2019, Plaintiff, filed a complaint ("Complaint" or "Action") in the Alameda
9 County Superior Court against Rogue Fitness and Does 1 through 50, alleging violations of
10 Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in the
11 Covered Products sold by Rogue Fitness.

12 **1.8. No Admission**

13 The Parties enter into this Consent Judgment as a full and final settlement of all claims
14 that were raised or that could have been raised in the Notice, arising out of the facts and/or
15 conduct alleged therein related to the Covered Products. Rogue Fitness denies the material,
16 factual and legal allegations contained in CAPA's Notice and the Complaint and maintains that
17 all Covered Products that they have sold and distributed in California have been and are in
18 compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an
19 admission by Rogue Fitness of any fact, finding, conclusion, issue of law, or violation of law,
20 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
21 Rogue Fitness of any fact, finding, conclusion, issue of law, or violation of law, such being
22 specifically denied by Rogue Fitness. However, this section shall not diminish or otherwise
23 affect Rogue Fitness' obligations, responsibilities, and duties as set forth with specificity
24 hereunder.

25 **1.9. Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has
27 jurisdiction over Rogue Fitness as to the allegations contained in the Complaint; (2) that venue is
28 proper in the County of Alameda; and (3) that this Court has jurisdiction to enter and enforce the
provisions of this Consent Judgment.

1
2 **1.10. Effective Date**

3 The date CAPA serves notice on Rogue Fitness of entry of this Consent Judgment is the
4 "Effective Date".

5 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

6 **2.1. Reformulation Standard and Schedule**

7 Commencing on the Effective Date, and continuing thereafter, Covered Products that are
8 offered for sale in, or that will be shipped direct to a customer in California, shall be deemed to
9 comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with
10 respect to DEHP if they meet the standard of "Reformulated Products." "Reformulated Products"
11 shall mean Covered Products with accessible components containing less than or equal to 1,000
12 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to
13 Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-
14 09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of
15 determining DEHP content in a solid substance.

16 **2.2. Warning Option**

17 Covered Products sent to California by Rogue Fitness, or by any agent on behalf of Rogue
18 Fitness after the Effective Date that do not meet the warning exemption standard set forth in
19 Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This
20 warning shall only be required as to Covered Products that Defendant manufactures, sells or ships
21 to consumers, retailers, distributors or other downstream entities located in California after 60
22 days from the Effective Date. No Proposition 65 warning for DEHP shall be required as to any
23 Covered Products that are already in the stream of commerce as of the Effective Date.

24 **2.3. Warning Language**

25 Commencing on the Effective Date, Rogue Fitness shall ensure that any unreformulated
26 Covered Products that it ships to California retailers or for sale in California include a clear and
27 reasonable warning. The warning shall be affixed to the packaging or labeling using language
28 similar to the warnings below:

- 1
- 2
- 3 • **WARNING:** This product can expose you to chemicals including DI-(2-ethylhexyl), *Phthalate*
4 which is known to the State of California to cause cancer and birth defects or
5 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

6 OR

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

8 The warning shall be displayed pursuant to the requirements of Proposition 65. In the
9 event that the Office of Environmental Health Hazard Assessment promulgates one or more
10 regulations requiring or permitting warning text and/or methods of transmission different than
11 those set forth above, Rogue Fitness shall be entitled to use, at its discretion, such other warning
12 text and/or methods of transmission without being deemed in breach of this Agreement.

13 2.4. Accessible Component

14 The term "Accessible Component" shall mean any component of the Covered Product that
15 could be touched by a person in a manner that would result in exposures exceeding those set forth
16 in Proposition 65 during reasonably foreseeable use of the Covered Product.

17 3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

18 Rogue Fitness shall pay a civil penalty of \$3,000, to be apportioned in accordance with
19 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
20 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
21 remaining 25% of the penalty remitted to CAPA. Rogue Fitness shall issue two separate checks
22 for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the
23 State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA")
24 in the amount of \$2,250, representing 75% of the initial civil penalty and (b) one check to
25 "Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.," in the amount
26 of \$750, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the
27 above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA
28 95814 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who
shall furnish a W2 at least five calendar days before payment is due.

1
2 The payments shall be delivered to CAPA's counsel at the following address within ten
3 working days of the Effective Date of this Consent Judgment:

4 James Kawahito, Esq.
5 Kawahito Law Group APC
6 222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

7 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

8 The Parties acknowledge that CAPA and its counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
10 any fee reimbursement issue to be resolved after the material terms of the agreement had been
11 settled. The parties reached an accord on the compensation due to CAPA and its counsel under
12 general contract principles and the private attorney general doctrine codified at California Code of
13 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
14 Consent Judgment. Rogue Fitness shall reimburse CAPA and its counsel in the total amount of
15 \$27,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to
16 the attention of Rogue Fitness, negotiating this Consent Judgment, drafting the Complaint, and
17 preparing the papers necessary to obtain the Consent Judgment from this Court. Rogue Fitness
18 shall make the check payable to "Kawahito Law Group APC" and shall deliver payment within
19 ten working days of the Effective Date to:

20 James Kawahito, Esq.
21 Kawahito Law Group APC
22 Attn. CAPA v. Rogue Fitness
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

23 To allow for the issuance of a timely payment to be rendered pursuant to the above,
24 CAPA shall provide Rogue Fitness with a completed IRS Form W-9 for the Kawahito Law Group
25 APC upon request.

26 **5. RELEASE OF CLAIMS**

27 **5.1. CAPA's Release of Rogue Fitness**
28

1
2 This Consent Judgment is a full, final and binding resolution between CAPA, on behalf of
3 itself and the public interest, and its past and current agents, representatives, attorneys, successors
4 and/or assignees (the "Releasors"), on the one hand, and Rogue Fitness, its respective parents,
5 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
6 licensors, licensees, and each entity to whom Rogue Fitness directly or indirectly distributes or
7 sells the Covered Products, including but not limited to downstream retailers, distributors,
8 wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors,
9 licensees, and the predecessors, successors and assigns of any of them ("Releasees"), on the other
10 hand, of any violation of Proposition 65 that was or could have been asserted by CAPA against
11 Rogue Fitness or the Releasees based on the alleged failure to warn about alleged exposures to
12 DEHP contained in the Covered Products that were manufactured, imported, distributed, sold
13 and/or offered for sale by Rogue Fitness (either directly or through any of the Releasees) in
14 California before the Effective Date. Compliance with the terms of this Consent Judgment
15 constitutes compliance with Proposition 65 by Rogue Fitness with respect to the alleged or actual
16 failure to warn about exposures to DEHP from Covered Products manufactured, imported, sold or
17 distributed for sale by Rogue Fitness after the Effective Date. Compliance with the terms of this
18 Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to the
19 alleged or actual failure to warn about exposures to DEHP from Covered Products manufactured,
20 imported, sold or distributed for sale by Rogue Fitness after the Effective Date.

21 **5.2. Rogue Fitness' Release of CAPA**

22 Rogue Fitness on behalf of itself, its past and current agents, representatives, attorneys,
23 successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and
24 other representatives, for any and all actions taken or statements made (or those that could have
25 been taken or made) by CAPA and its attorneys and other representatives, whether in the course
26 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
27 with respect to the Covered Products.

28 **6. COURT APPROVAL**

1
2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court.

4 **7. SEVERABILITY**

5 If, subsequent to the execution of this Consent Judgment, any provisions of this Consent
6 Judgment are deemed by a court to be unenforceable, the validity of the remaining provisions
7 shall not be adversely affected.

8 **8. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and laws that apply within the State of California. In the event that Proposition 65 is
11 repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
12 Products, then Rogue Fitness may provide Plaintiff with written notice of any asserted change in
13 the law, and shall have no further obligations pursuant to this Consent Judgment, with respect to,
14 and to the extent that, the Covered Products are so affected.

15 **9. NOTICES**

16 Unless specified herein, all correspondence and notice required to be provided pursuant to
17 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
18 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
19 or (c) a recognized overnight courier on any Party by the other at the following addresses:

20 For Rogue Fitness:

21 General Counsel
22 Rogue Fitness HQ
23 545 E 5th Ave
Columbus, OH 43201

24 with a copy to: Kristin Larson, Esq.

25 Stradling Yocca Carlson & Rauth, P.C.
26 800 Anacapa Street, Suite A
27 Santa Barbara, CA 93101
28 klarson@sycr.com

1
2
3 For CAPA: Center for Advanced Public Awareness, Inc.
4 2342 Shattuck Ave. #347
5 Berkeley, CA 94704

6 with a copy to: James K. Kawahito
7 Kawahito Law Group APC
8 Attn. CAPA v. Rogue Fitness
9 222 N. Pacific Coast Hwy., Suite 2222
10 El Segundo, CA 90245
11 jkawahito@kawahitolaw.com

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

14 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

19 CAPA and his attorneys agree to comply with the reporting form requirements referenced
20 in California Health and Safety Code Section 25249.7(f).

21 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

22 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
23 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
24 obtaining such approval, CAPA and Rogue Fitness and their respective counsel agree to mutually
25 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
26 approval of the Consent Judgment by the Court in a timely manner. For purposes of this
27 paragraph, best efforts shall include at a minimum, cooperating on the drafting and filing any
28 papers in support of the required motion for judicial approval.

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and

1
2 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
3 of any party and entry of a modified consent judgment by the Court. The Attorney General shall
4 be served with notice of any proposed modification to this Consent Judgment at least fifteen days
5 in advance of its consideration by the Court.

6 **14. AUTHORIZATION**

7 The undersigned are authorized to stipulate to, enter into, and execute this Consent
8 Judgment on behalf of their respective parties, and have read, understood, and agree to all of the
9 terms and conditions of this Consent Judgment.

10
11 **AGREED TO:**

12
13 Date: 7/24/19

14
15 By: [Signature]
Center for Public Awareness, Inc.

AGREED TO:

Date: 7/19/2019

16
17 By: [Signature]
Goulter Ventures, LLC

18
19 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, pursuant to Health &
20 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

21
22 Dated: 1-15-2020

23
24 [Signature]
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG19010620

Case name: CENTER FOR ADVANCED PUBLIC AWARENESS, INC., in the public interest
v. COULTER VENTURES, LLC dba ROGUE FITNESS, an Ohio Corporation

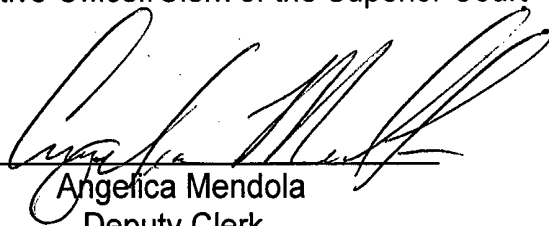
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy **Judgment Pursuant To The Terms of Proposition 65 Settlement and Consent Judgment** filed on January 16, 2020 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 17, 2020.

Chad Finke, Executive Officer/Clerk of the Superior Court

By: _____



Angelica Mendola
Deputy Clerk

James Kawahito
Kawahito Law Group
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90355