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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**

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

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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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WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

4. SETTLEMENT PAYMENT

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

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

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

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

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

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 (̄NOĒ)
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 become null and void, and the actions shall revert to the status that existed prior to the execution
2 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
3 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
4 have any effect, nor shall any such matter be admissible in evidence for any purpose in this action,
5 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
6 modify the terms of the Consent Judgment and to resubmit it for approval.

7 7.3 CAG will file a request for a dismissal without prejudice as to Defendants Big 5
8 Sporting Goods Corp., Big 5 Corp., The True Value Company, and Dick's True Value, within ten
9 days of the Effective Date.

10 **8. MODIFICATION OF JUDGMENT**

11 8.1 This Consent Judgment may be modified only upon written agreement of the
12 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
13 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

14 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

16 **9. RETENTION OF JURISDICTION**

17 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
18 of this Consent Judgment under Code of Civil Procedure § 664.6.

19 **10. DUTIES LIMITED TO CALIFORNIA**

20 10.1 This Consent Judgment shall have no effect on Covered Products sold by Defendant
21 outside the State of California.

22 **11. SERVICE ON THE ATTORNEY GENERAL**

23 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
24 California Attorney General so that the Attorney General may review this Consent Judgment prior
25 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
26 General has received the aforementioned copy of this Consent Judgment, and in the absence of
27

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 **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: _____

16 JUDGE OF THE SUPERIOR COURT