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16 SHARKNINJA OPERATING LLC, f/k/a  
17 EURO-PRO OPERATING LLC

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF ALAMEDA  
20 UNLIMITED JURISDICTION

21 EMA BELL,

22 Plaintiff,

23 v.

24 SHARKNINJA OPERATING LLC, f/k/a  
25 EURO-PRO OPERATING LLC,

26 Defendant.

27 Case No. RG15797631

28 **[PROPOSED]**  
**CONSENT JUDGMENT**

(Health & Safety Code §§ 25249.6 *et seq.*)

1     **1.     Introduction**

2             **1.1**     This Consent Judgment is entered into by and between Ema Bell (“Bell”), on the one  
3 hand, and SharkNinja Operating LLC, formerly known as Euro-Pro Operating LLC (collectively,  
4 “SharkNinja”), on the other hand. Together, Bell and SharkNinja are collectively referred to as the  
5 “Parties” and individually as a “Party.” Bell is an individual who resides in the State of California,  
6 and seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
7 reducing or eliminating hazardous substances contained in consumer products.

8             **1.2**     On June 3, 2015, Bell served Wal-Mart Stores, Inc. (“Wal-Mart”), SharkNinja, and  
9 various public enforcement agencies with a document entitled “Notice of Violation of California  
10 Health & Safety Code § 25249.5, *et seq.*” (the “Notice”). The Notice provided SharkNinja and such  
11 others, including public enforcers, with notice that alleged that SharkNinja was in violation of  
12 California Health & Safety Code § 25249.6 (“Proposition 65”), for failing to warn consumers and  
13 customers that Shark Bagless Hand Vacs, Model No. V15Z (the “Product” or “Products”) exposed  
14 users in California to the chemical Di(2-ethylhexyl) phthalate (“DEHP”). No public enforcer has  
15 diligently prosecuted the allegations set forth in the Notice.

16             **1.3**     On December 22, 2015, Bell filed a Complaint for Civil Penalties and Injunctive  
17 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG15797631, against  
18 SharkNinja alleging violations of Proposition 65.

19             **1.4**     SharkNinja is a corporation that employs more than ten persons under California  
20 Health and Safety Code § 25249.6 and offered the Product for sale within the State of California.

21             **1.5**     Bell’s Complaint alleges, among other things, that SharkNinja sold the Product in  
22 California and/or to California citizens, that the Product contains DEHP, and that the resulting  
23 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons to  
24 a chemical known to the State of California to cause both cancer and reproductive toxicity,  
25 developmental, male, without first providing a clear and reasonable warning to such individuals.

26             **1.6**     For purposes of this Consent Judgment only, the parties stipulate that this Court has  
27 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
28 over SharkNinja as to the acts alleged in the Complaint, that venue is proper in the County of

1 Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of the  
2 allegations contained in the Complaint.

3 1.7 The parties enter into this Consent Judgment pursuant to a full settlement of disputed  
4 claims between the parties as alleged in the Complaint for the purpose of avoiding prolonged  
5 litigation. By execution of this Consent Judgment, SharkNinja does not admit any violation of  
6 Proposition 65 and specifically denies that it has committed any such violation. SharkNinja denies  
7 the material factual and legal allegations contained in the Notice and Complaint, and maintains that,  
8 to the best of its knowledge, all products that are or have been sold and distributed in California,  
9 including the Product, have been and are in compliance with all laws, including Proposition 65.  
10 Nothing in this Consent Judgment shall be construed as an admission by SharkNinja of any fact,  
11 finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment  
12 constitute or be construed as an admission by SharkNinja of any fact, finding, conclusion, issue of  
13 law, or violation of law. However, this section shall not diminish or otherwise affect the  
14 obligations, responsibilities and duties under this Consent Judgment.

15 1.8 For purposes of this Consent Judgment, the term “Effective Date” shall mean the  
16 date on which this Consent Judgment is approved and entered by the Court.

17 **2. Injunctive Relief**

18 2.1 Commencing on the Effective Date, and continuing thereafter, SharkNinja shall only  
19 ship, sell, or distribute in California Products that either (1) qualify as Reformulated Products  
20 pursuant to Section 2.2 or (2) comply with the warning requirements of Section 2.3. Products that  
21 SharkNinja shipped, sold, or distributed before the Effective Date are not subject to the  
22 requirements of Section 2.1 but are nonetheless covered within the release of claims in Section 4.

23 2.2 A “Reformulated Product” shall mean a Product that contains no more than 1,000  
24 parts per million (“ppm”), each, of DEHP, Di-n-butyl phthalate (“DBP”), Butyl benzyl phthalate  
25 (“BBP”), Di-n-hexyl phthalate (“DnHP”), Di-isodecyl phthalate (“DIDP”), and Diisononyl  
26 phthalate (“DINP”) in any Accessible Component, when analyzed pursuant to U.S. Environmental  
27 Protection Agency testing methodologies 3580A and 8270C or pursuant to any other methodology  
28 utilized by federal or state agencies for the purpose of determining phthalate content in a solid

1 substance. For purposes of this Consent Judgment, an Accessible Component refers to a component  
2 of a Product that can be touched by a person during normal and reasonably foreseeable use.

3 **2.3** If SharkNinja provides a warning for a Product pursuant to Section 2.1, SharkNinja  
4 shall provide the following warning statement (“Warning”) using at least one of the methods set  
5 forth in Section 2.3.1 or 2.3.2:

6 [California Proposition 65] **WARNING:** This product contains one  
7 or more chemicals known to the State of California to cause cancer  
and birth defects or other reproductive harm.

8 Terms in brackets may be used by SharkNinja at its option.

9 **2.3.1 Product Labeling**

10 SharkNinja may affix or print the Warning upon the Product or the unit package of such  
11 Product. The Warning shall be prominently placed with such conspicuousness as compared with  
12 other words, statements, designs, or devices as to render it likely to be read and understood by an  
13 ordinary individual under customary conditions before purchase or use.

14 **2.3.2 Product Manual Warning**

15 SharkNinja may provide the Warning in an owner’s manual included in the unit package of  
16 the Product. If the Warning is given in the owner’s manual, it shall be located in one of the  
17 following places in the manual: the outside of the front cover; the inside of the front cover; the first  
18 page other than the cover; or the outside of the back cover. The Warning shall be printed or  
19 stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no  
20 smaller than the font used for other safety warnings in the manual. Alternatively, the Warning may  
21 be included in a safety warning section of the owner’s manual consistent with the specifications  
22 issued by Underwriters Laboratories.

23 **3. Entry of Consent Judgment**

24 **3.1** The parties hereby request that the Court promptly enter this Consent Judgment.  
25 Upon entry of this Consent Judgment, Bell and SharkNinja waive their respective rights to a hearing  
26 or trial on the allegations of the Complaint and Notice.  
27  
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1           3.2     In the event that the Attorney General objects or otherwise comments on one or more  
2 provisions of this Consent Judgment, Bell and SharkNinja agree to take reasonable steps to attempt  
3 to satisfy such concerns or objections.

4     **4.     Release of Claims**

5           **4.1     Release of SharkNinja and Downstream Customers and Entities**

6           This Consent Judgment is a full, final, and binding resolution between Bell, on behalf of  
7 herself and in the public interest, and SharkNinja, of any alleged violation of Proposition 65 for  
8 alleged failure to provide Proposition 65 warnings for alleged exposures to DEHP in the Product.  
9 Bell acting on her own behalf and on behalf of her past and current agents, representatives,  
10 attorneys, successors, and/or assignees, and acting in a representative capacity in the public interest  
11 pursuant to Health & Safety Code § 25249.7(d), waives all rights to institute or participate in  
12 (directly or indirectly) any form of legal action and releases and discharges (a) SharkNinja and its  
13 parents, subsidiaries, affiliated entities under common ownership, predecessors, successors, assigns,  
14 directors, officers, agents, employees, attorneys; and (b) each entity to whom SharkNinja directly or  
15 indirectly has distributed or sold the Product, including but not limited to, downstream distributors,  
16 wholesalers, customers, retailers (including but not limited to Wal-Mart Stores, Inc., Walmart.com  
17 USA LLC, and any of their affiliates and subsidiaries), franchisees, cooperative members, and  
18 licensees, and their respective parents, subsidiaries, affiliated entities under common ownership,  
19 predecessors, successors, assigns, directors, officers, agents, employees, and attorneys (the entities  
20 and individuals released above in subsections (a) and (b) are collectively referred to as  
21 “Releasees”), from all claims that she may have against Releasees, including, without limitation, all  
22 actions and causes of action in law and in equity, all suits, liabilities, demands, obligations,  
23 damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation  
24 fees, expert fees, and attorneys’ fees (collectively, “Claims”) for violations of Proposition 65  
25 asserted in the Notice based on SharkNinja’s failure to warn about alleged exposures to the  
26 chemical DEHP contained in the Products that were manufactured, distributed, or sold by  
27 SharkNinja prior to the Effective Date. Compliance by SharkNinja with the terms of this Consent  
28

1 Judgment shall constitute compliance with Proposition 65 with respect to any DEHP, DBP, BBP,  
2 DnHP, DIDP, and DINP contained in the Products.

3 In further consideration of the promises and agreements herein contained, and for the  
4 payments to be made pursuant to Section 7 below, Bell, on behalf of herself and on behalf of her  
5 past and current agents, representatives, attorneys, successors, and/or assignees, and *not* in her  
6 representative capacity, hereby covenants not to sue and waives any right to institute or participate  
7 in, directly or indirectly, any form of legal action and discharges and releases all Claims of any  
8 nature, character or kind, known or unknown, suspected or unsuspected, arising under Proposition  
9 65 with respect to any DEHP, DBP, BBP, DnHP, DIDP, and DINP contained in the Products  
10 manufactured, distributed, or sold by SharkNinja before the Effective Date. Furthermore,  
11 SharkNinja agrees to treat all vacuums that it manufactures, distributes or sells (“Vacuums”) as if  
12 they were subject to all of the terms and conditions set forth in Section 2 of this Consent Judgment;  
13 as such, Bell, on behalf of herself and her past and current agents, representatives, attorneys,  
14 successors, and/or assignees, and *not* in her representative capacity, agrees to include Vacuums in  
15 the release provisions of Section 4 to the same extent that she has released the Product.

16 The release in this Section 4 is effective as a full and final accord and satisfaction, as a bar to  
17 all actions. Bell acknowledges that she is familiar with Section 1542 of the California Civil Code,  
18 which provides as follows:

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 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR.

22 Bell, in her individual capacity only and not in her representative capacity, expressly waives and  
23 relinquishes any and all rights and benefits which she may have under, or which may be conferred  
24 on her by, the provisions of Civil Code § 1542 to the fullest extent that she may lawfully waive such  
25 rights or benefits pertaining to the released matters.

26 **4.2 SharkNinja’s Release of Bell**

27 SharkNinja, on behalf of itself and its past and current agents, representatives, attorneys,  
28 successors, and/or assignees, hereby waives any and all claims against Bell and her attorneys and

1 other representatives, for any and all actions taken or statements made (or those that could have  
2 been taken or made) by Bell and/or her attorneys and other representatives, whether in the course of  
3 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with  
4 respect to the Product.

5 **5. Enforcement of Judgment**

6 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the parties  
7 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
8 Alameda County, giving the notice required by law, enforce the terms and conditions contained  
9 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party may  
10 seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of  
11 Proposition 65 or this Consent Judgment.

12 **6. Modification of Judgment**

13 **6.1** This Consent Judgment may be modified only by written agreement of the parties  
14 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
15 provided by law and upon entry of a modified Consent Judgment by the Court.

16 **6.2** Should any court enter final judgment in a case brought by Bell or the People  
17 involving the Product that sets forth standards defining when Proposition 65 warnings will or will  
18 not be required (“Alternative Standards”), or if the California Attorney General’s office otherwise  
19 provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not  
20 intended for the purpose of soliciting further input or comments) of Alternative Standards  
21 applicable to the products that are of the same general type and function as the Product and  
22 constructed from the same materials, SharkNinja, at its sole option, shall be entitled to seek a  
23 modification of this Consent Judgment on sixty (60) days’ notice to Bell so as to be able to utilize  
24 and rely on such Alternative Standards in lieu of those set forth in Section 2 of this Consent  
25 Judgment. Bell shall not unreasonably contest any proposed application to effectuate such a  
26 modification provided that the Product for which such a modification is sought are of the same  
27 general type and function as those to which the Alternative Standards apply.

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1     **7.     Settlement Payment**

2             **7.1**     In settlement of all the claims referred to in this Consent Judgment, and without any  
3 admission of liability therefore, SharkNinja shall make the following monetary payments:

4                     **7.1.1**     SharkNinja shall pay a total of \$8,625.00 in civil penalties in accordance with  
5 Section 7.1.2. The civil penalty payment will be allocated in accordance with California Health &  
6 Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
7 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the civil penalty  
8 remitted to Bell.

9                     **7.1.2**     Within seven (7) business days of the Effective Date, SharkNinja shall issue  
10 two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$6,468.75; and  
11 (b) “Brodsky & Smith, LLC in Trust for Bell” in the amount of \$2,156.25. Payment owed to Bell  
12 pursuant to this Section shall be delivered to the following payment address:

13                                     Evan J. Smith, Esquire  
14                                     Brodsky & Smith, LLC  
15                                     Two Bala Plaza, Suite 510  
16                                     Bala Cynwyd, PA 19004

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

18             For United States Postal Service Delivery:

19                                     Mike Gyurics  
20                                     Fiscal Operations Branch Chief  
21                                     Office of Environmental Health Hazard Assessment  
22                                     P.O. Box 4010  
23                                     Sacramento, CA 95812-4010

22             For Non-United States Postal Service Delivery:

23                                     Mike Gyurics  
24                                     Fiscal Operations Branch Chief  
25                                     Office of Environmental Health Hazard Assessment  
26                                     1001 I Street  
27                                     Sacramento, CA 95814

26     A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
27 set forth above as proof of payment to OEHHA.



1                   7.1.3 In addition to the payment above, SharkNinja shall pay \$48,875.00 to  
2 Brodsky & Smith, LLC (“Brodsky & Smith”) as complete reimbursement for Plaintiff Bell’s  
3 attorneys’ fees and costs, including any investigation and laboratory costs or expert fees, incurred in  
4 the course of bringing the Bell action, and in enforcing Proposition 65, including without limitation,  
5 preparation of the Notice letter and discussions with the Office of the Attorney General. Payment  
6 shall be made within seven (7) business days of the Effective Date and sent to the address for  
7 Brodsky & Smith set forth in Section 7.1.2, above.

8       **8. Notices**

9                   8.1 Any and all notices between the parties provided for or permitted under this  
10 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
11 registered or certified mail, return receipt requested; or (ii) overnight or two-day courier on any  
12 party by the other party to the following addresses:

13                  For SharkNinja:

14                   Sarah Esmaili  
15                   ARNOLD & PORTER LLP  
16                   Three Embarcadero Center, 10th Floor  
                      San Francisco, CA 94111  
                      T: 415.471.3283

17                  For Bell:

18                   Evan J. Smith  
19                   BRODSKY & SMITH, LLC  
20                   9595 Wilshire Blvd., Suite 900  
                      Beverly Hills, CA 90212  
                      T: 877.354.2590

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

23       **9. Authority to Stipulate**

24                   9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
26 the party represented and legally to bind that party.

1 **10. Counterparts**

2 10.1 This Stipulation may be signed in counterparts and shall be binding upon the parties  
3 hereto as if all said parties executed the original hereof.

4 **11. Retention of Jurisdiction**

5 11.1 This Court shall retain jurisdiction of this matter to implement the Consent  
6 Judgment.

7 **12. Service on the Attorney General**

8 12.1 Bell shall serve a copy of this Consent Judgment, signed by both parties, on the  
9 California Attorney General on behalf of the parties so that the Attorney General may review this  
10 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)  
11 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
12 and in the absence of any written objection by the Attorney General to the terms of this Consent  
13 Judgment, the parties may then submit it to the Court for Approval.

14 **13. Entire Agreement**

15 13.1 This Consent Judgment contains the sole and entire agreement and understanding of  
16 the parties with respect to the entire subject matter hereof, and any and all discussions, negotiations,  
17 commitments and understandings related thereto. No representations, oral or otherwise, express or  
18 implied, other than those contained herein have been made by any party hereto. No other  
19 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind  
20 any of the parties.

21 **14. Governing Law and Construction**

22 14.1 The validity, construction and performance of this Consent Judgment shall be  
23 governed by the laws of the State of California, without reference to any conflicts of law provisions  
24 of California law.

25 **15. Court Approval**

26 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
27 effect, and cannot be used in any proceeding for any purpose.


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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

Dated: 1/27/2016

By:   
EMA BELL

By:   
SHARKNINJA OPERATING LLC

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT