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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 EMA BELL,

11 Plaintiff,

12 v.

13 AMERICAN SPORTING GOODS
14 CORPORATION, SEQUENTIAL BRANDS
15 GROUP, INC., THE TJX OPERATING
16 COMPANIES, INC., LIFEWORKS
TECHNOLOGY GROUP, LLC,

17 Defendant.
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Case No.: RG17882842

CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: July 12, 2018

Hearing Time: 3:45 PM

Reservation #: R-1966508

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell acting
3 in the public interest (“Bell”) and Lifeworks Technology Group, LLC (“Lifeworks Technology
4 Group”), with Bell and Lifeworks Technology Group collectively referred to as the “Parties” and
5 each of them as a “Party.” Bell is an individual residing in California who seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. Lifeworks Technology Group is alleged to
8 be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 *et seq.*

10 **1.2 Allegations and Representations.** (a) Bell alleges that Lifeworks Technology
11 Group has exposed individuals to Diisononyl phthalate (DINP) from sport bands or sport sleeves,
12 including those worn on the arms (collectively the “Avia Sport Bands”) without providing clear
13 and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
14 known to the State of California to cause cancer; and (b) Bell represents and warrants that as of the
15 date of her execution of this Consent Judgment, other than the violations alleged in the Notices as
16 to the Covered Products or the subject of a separate Settlement Agreement, she: (i) has no current
17 knowledge or information based upon any investigation or otherwise that Lifeworks Technology
18 Group is currently manufacturing, distributing, shipping, selling or offering for sale in California
19 any product(s) that Bell believes is causing a violation of Proposition 65; and (ii) that she has no
20 present intention of filing suit or providing a 60-Day Notice to Lifeworks Technology Group with
21 respect to any other listed chemical under Proposition 65 with respect to any products manufactured
22 or sold by Lifeworks Technology Group, including but not limited to the Covered Products.

23 **1.3 Notices of Violation.** On or about August 14, 2017, Bell served American Sporting
24 Goods Corporation (“ASG”), Sequential Brands Group, Inc. (“Sequential Brands”), The TJX
25 Operating Companies, Inc. (“TJX”)¹, and various public enforcement agencies with a document
26 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “First
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28 ¹ The term “TJX” includes all subsidiaries, parent companies and affiliates of TJX.

1 Notice”), alleging that ASG, Sequential Brands, and TJX were in violation of Proposition 65 for
2 failing to warn consumers and customers that the Avia Sport Bands exposed users in California to
3 DINP. On November 14, 2017, Bell served a Notice on the same parties as in the First Notice,
4 including the various public enforcement agencies, but added Lifeworks Technology Group in
5 order to provide Lifeworks Technology Group with identical notice of violation regarding the Avia
6 Sport Bands as in the First Notice (the “Amended Notice”). The First Notice and the Amended
7 Notice are collectively referred to as the “Notice.” No public enforcer has brought and is diligently
8 prosecuting the claims alleged in the Notice with respect to the Avia Sport Bands.

9 1.4 **Complaint.** On November 17, 2017, Bell filed a Complaint in the matter as
10 captioned above (“Complaint”). On January 25, 2018, Bell amended the Complaint to name
11 Lifeworks Technology Group as an additional defendant².

12 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over Lifeworks Technology Group as to the allegations contained in the complaint filed
14 in this matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction
15 to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
16 resolution of all claims which were or could have been raised in the Complaint based on the facts
17 alleged therein and/or in the Notice.

18 1.6 Lifeworks Technology Group denies the material allegations contained in Bell’s
19 Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
20 Judgment shall be construed as an admission by Lifeworks Technology Group of any fact, finding,
21 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
22 construed as an admission by Lifeworks Technology Group of any fact, finding, conclusion, issue
23 of law, or violation of law, such being specifically denied by Lifeworks Technology Group.
24 However, this section shall not diminish or otherwise affect the obligations, responsibilities, and
25 duties of Lifeworks Technology Group under this Consent Judgment.

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27 ² On May 24, 2018, Defendants ASG, Sequential Brands, and TJX were dismissed from
28 the action.

1 **2. DEFINITIONS**

2 2.1 **Covered Products.** The term “Covered Products” means all Avia Sport Bands, of
3 any style or type, including but not limited to those worn on the arm, marketed under the brand
4 name Avia that have been distributed, sold and/or offered for sale in or into California by Lifeworks
5 Technology Group, and that contain DINP.

6 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
7 entered as a Judgment of the Court.

8 **3. INJUNCTIVE RELIEF: WARNINGS**

9 3.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
10 Lifeworks Technology Group shall not manufacture or order from any supplier any Covered
11 Products intended for retail sale in California that contains DINP on any component to which
12 consumers are exposed in excess of 0.1% (1,000 ppm) (collectively the “Reformulated Products”)
13 unless the Product is accompanied by a warning that complies with Article 6 of Title 27 of the
14 California Code of Regulations. Products sold by Lifeworks Technology Group before Effective
15 Date may sell through and be sold by others downstream in the retail chain without a warning even
16 if not a Reformulated Product. Until August 30, 2018, the warning shall consist of either:

17 (a) The statement: “WARNING: This product contains a chemical known to the State
18 of California to cause cancer [and birth defects or other reproductive harm].”; or

19 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle
20 with a bold black outline to the left of the word “warning” in bold all capital letters, followed
21 by the statement “This product can expose you to chemicals including Diisononyl phthalate
22 (DINP), which is known to the State of California to cause cancer [and birth defects or other
23 reproductive harm]. For more information, go to www.P65Warnings.ca.gov.”; or (2) a
24 warning consisting of a symbol that is a black exclamation point in a yellow equilateral
25 triangle with a bold black outline to the left of the word “warning” in bold all capital letters,
26 followed by the statement “Cancer [and Reproductive Harm] - www.P65Warnings.ca.gov.”
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1 For Products manufactured on and after August 30, 2018, the warning set forth in Paragraph 2.1(b)
2 shall be used.

3 3.2 Language that appears within the brackets [...] may, but is not, required to be
4 included in the warning, depending on presence of a listed chemical. The warning provided
5 pursuant to Section 3.1 shall be affixed to or printed on the Covered Product's packaging or
6 labeling. The warning shall be prominently affixed to or printed on the packaging, labeling, or
7 instruction booklet and displayed with such conspicuousness, as compared with other words,
8 statements, or designs as to render it likely to be read and understood by an ordinary individual
9 under customary conditions of purchase or use. A warning may be contained in the same section
10 of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
11 concerning the use of the product and shall be at least the same size as those other safety warnings.

12 **4. MONETARY TERMS**

13 4.1 **Civil Penalty.** Lifeworks Technology Group shall pay a Civil Penalty of \$1,000.00
14 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
15 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
16 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
17 25% of the penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

18 4.1.1 Within ten (10) days of the Effective Date, Lifeworks Technology Group
19 shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
20 \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$250.00. Payment
21 owed to Bell pursuant to this Section shall be delivered to the following payment address:

22 Evan J. Smith, Esquire
23 Brodsky & Smith, LLC
24 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

27 For United States Postal Service Delivery:

28 Mike Gyurics

1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 P.O. Box 4010
4 Sacramento, CA 95812-4010

5 For Non-United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 1001 I Street
10 Sacramento, CA 95814

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

13 4.2 **Attorneys' Fees.** Lifeworks Technology Group shall pay \$24,000.00 to Brodsky &
14 Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Bell's attorneys' fees and
15 costs incurred as a result of investigating, bringing this matter to Lifeworks Technology Group's
16 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
17 interest, pursuant to Code of Civil Procedure section 1021.5. Payment shall be made within ten (10)
18 days of the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1,
19 above.

20 **5. FINALITY & RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
22 in the public interest, and Lifeworks Technology Group and its officers, directors, employees,
23 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and
24 affiliates, and their successors and assigns ("Defendant Releasees"), and all entities from whom
25 they obtain and to whom they directly or indirectly distribute or sell Covered Products, including
26 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,
27 licensees retailers, franchisees, and cooperative members, including but not limited to ASG, TJX,
28 Sequential Brands, Burlington Coat Factory, Inc., and each of their respective subsidiaries and
affiliates (collectively the "Downstream Defendant Releasees"), of all claims for violations of
Proposition 65 based on exposure to DINP from Covered Products as set forth in the Notice, with
respect to any Covered Products manufactured, distributed, or sold by Lifeworks Technology

1 Group prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes
2 compliance with Proposition 65 with regard to the Covered Products.

3 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
4 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
5 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
6 and releases Lifeworks Technology Group, all Defendant Releasees, and all Downstream
7 Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights,
8 suits, obligations, debts, contracts, agreements, promises, liabilities, penalties, damages, charges,
9 losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law
10 or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
11 Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by
12 Lifeworks Technology Group, any Defendant Releasee or any Downstream Defendant Releasee.
13 With respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically
14 waives any and all rights and benefits which she now has, or in the future may have, conferred by
15 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

21 5.3 Lifeworks Technology Group waives any and all claims against Bell, her attorneys
22 and other representatives, for any and all actions taken or statements made (or those that could have
23 been taken or made) by Bell and her attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to Covered Products.

26 5.4 These releases and waivers are effective on the date the Court approves this Consent
27 Judgment.
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1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 Lifeworks Technology Group shall have no further obligations pursuant to this Consent Judgment
11 with respect to, and to the extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified in this Consent Judgment, all correspondence and notices required
14 to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or
15 sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier
16 on any party by the other party at the following addresses:

17 For Lifeworks Technology Group:

18 Thomas N. FitzGibbon
19 Apex Law APC
20 233 Wilshire Blvd., Ste. 400
 Santa Monica, CA 90401

21 And

22 For Bell:

23 Evan Smith
24 Brodsky & Smith, LLC
25 2 Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

26 Any party, from time to time, may specify in writing to the other party a change of address,
27 including electronic mail address, to which all notices and other communications shall be sent. As
28 a courtesy, each notice that must or may be given under this Consent Judgment shall also be sent

1 by electronic mail at the same time it is given by other means.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
4 which shall be deemed an original, and all of which, when taken together, shall constitute one and
5 the same document.

6 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
7 **APPROVAL**

8 10.1 Bell shall comply with the requirements set forth in California Health & Safety Code
9 §25249.7(f) and will promptly bring a Motion for Approval of this Consent Judgment and
10 Lifeworks Technology Group shall support approval of such Motion.

11 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
12 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
13 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30-
14 days, the case shall proceed on its normal course. The Parties expressly waive their right to appeal
15 this Consent Judgment, in the event it is entered by the Court.

16 10.3 If the Court approves this Consent Judgment and it is reversed or vacated by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
18 Judgment. If the Parties do not jointly agree on a course of action, the case shall proceed on its
19 normal course on the trial court's calendar.

20 **11. MODIFICATION**

21 11.1 This Consent Judgment may be only modified: (a) by an order of the Court
22 approving a future stipulation of the Parties, or (b) an order of the Court in response to a motion by
23 either Party or of the Court's own accord.

24 **12. ATTORNEY'S FEES**

25 12.1 A party who unsuccessfully seeks or opposes enforcement or modification of this
26 Consent Judgment shall pay the prevailing party's reasonable attorney's fees and costs, in an
27 amount set by the Court, unless the Court finds that the unsuccessful party has acted with substantial
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1 justification. For purposes of this Consent Judgment, the term substantial justification shall carry
2 the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section
3 2016, *et seq.*

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 document and certifies that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided in this Stipulation, each Party is to bear its own fees and costs.

15
16 **AGREED TO:**

AGREED TO:

17
18 Date: 5/23/18

Date: 5/18/18

19 By: [Signature]

EMA BELL

By: [Signature]

LIFEWORKS TECHNOLOGY
GROUP, INC.

21
22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

23
24 Dated: _____

Judge of Superior Court