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9 Attorneys for Plaintiff
10 Kim Embry

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 KIM EMBRY, an individual,

14 Plaintiff,

15 v.

16 DICK'S SPORTING GOODS, INC., a
17 Delaware corporation, BULLET WEIGHTS,
18 INC., a Nebraska corporation, PITMAN
CREEK WHOLESALE, LLC and DOES 2
through 100, inclusive,

19 Defendants.
20

Case No. HG19044772

**[PROPOSED] AMENDED CONSENT
JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Kim Embry (“Embry”), on the one
4 hand, and Dick’s Sporting Goods, Inc. (“Dick’s”), Bullet Weights, Inc. (“Bullet Weights”), and Pitman
5 Creek Wholesale, LLC (“Pitman Creek”) on the other hand, with Embry, Dick’s, Bullet Weights, and
6 Pitman Creek each individually referred to as a “Party” and collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

8 Embry is a citizen of the state of California, acting in the interest of the general public. She
9 seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing
10 or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendants**

12 Dick’s, Bullet Weights, and Pitman Creek (hereinafter, the “Defendants”) each employ ten or
13 more individuals and are “person[s] in the course of doing business” for purposes of the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.*
15 (“Proposition 65”).

16 **1.4 General Allegations**

17 Embry alleges that Defendants manufacture, import, sell, and distribute for sale fishing weights
18 that contain lead. Embry further alleges that Defendants do so without providing a sufficient warning
19 to consumers prior to purchase online as required by Proposition 65 and related Regulations. Pursuant
20 to Proposition 65, lead is listed as a chemical known to cause cancer, birth defects and other
21 reproductive harm.

22 **1.5 Notices of Violation**

23 On various dates, including but not limited to July 15, 2019, April 15, 2020, and May 12, 2020,
24 Embry served Bullet Weights, Dick’s, and/or Pitman Creek, as well as the California Attorney
25 General, and all other required public enforcement agencies, with 60-Day Notices of Violation of
26 Proposition 65. (“Notices”). The Notices alleged that one or more of the Defendants violated
27 Proposition 65 by failing to sufficiently warn consumers in California of exposures to lead contained
28

1 in the Covered Products.

2 On April 15, 2020, Embry issued an Amended 60-Day Notice of Violation of Proposition 65
3 (“Amended Notice”) adding Pitman Creek. On May 12, 2020, Embry issued an Second Amended 60-
4 Day Notice of Violation of Proposition 65 (“Second Amended Notice”) to correctly label Bullet
5 Weights as the manufacturer, Dick’s as the retailer, and Pitman Creek as the distributor.

6 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
7 violations alleged in the Notice, Amended Notice, or Second Amended Notice (hereinafter, the
8 “Notices”).

9 **1.6 “Covered Products” Description**

10 “Covered Products” as used in this Consent Judgment is defined as, and expressly limited to,
11 fishing weights that contain lead, examples of which include but are not limited to Bullet Weights Slip
12 Sinker, 1/8 oz, 25 pack; Bullet Weights Original Slip Sinkers Pack, 1 oz; Bullet Weights Solid Core
13 Lead Wire, 1/4 inch; and Bullet Weights Hollow Core Lead Wire, 1/4 inch that contain lead and that
14 are manufactured, sold, imported, or distributed for sale in California by Defendants.

15 **1.7 Complaint**

16 On November 26, 2019, Embry filed a Complaint against Dick’s and Bullet Weights for the
17 alleged violations of Proposition 65 that are the subject of the Notices (“Complaint”). On August 18,
18 2020, Embry amended her Complaint to add Pitman Creek as a DOE defendant.

19 **1.8 No Admission**

20 Defendants deny the material factual and legal allegations of the Notices and Complaint and
21 maintain that all of the products it has manufactured, imported, sold, and/or distributed for sale in
22 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing
23 in this Consent Judgment nor compliance with its terms shall be construed as an admission of any fact,
24 finding, conclusion of law, issue of law, or violation of law wrongdoing, or liability by and Defendant,
25 its officers, directors, employees, or parents, subsidiaries or affiliated corporations, or be offered or
26 admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or
27 forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right,
28 remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as

1 expressly provided in this Consent Judgment.

2 This Section shall not, however, diminish or otherwise affect Defendants' obligations,
3 responsibilities, and duties under this Consent Judgment.

4 **1.9 Jurisdiction**

5 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
6 Court has jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in
7 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
8 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" means the date on which the
11 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.


12 **2. INJUNCTIVE RELIEF**

13 **2.1 Clear and Reasonable Warnings**


14 Commencing on the Effective Date, and continuing thereafter, Defendants agree to only
15 manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California
16 Covered Products that are sold online with a warning as provided for in Section 2.2.

17 **2.2 General Warning Requirements**

18 For purposes of this Consent Judgment, a clear and reasonable warning shall consist of a
19 warning (as shown below) prominently placed on the product display page with such conspicuousness,
20 as compared with other words, statements, designs, or devices as to render it likely to be seen, read,
21 and understood by an ordinary individual under customary conditions prior to completing an online
22 purchase. The warning shall also include a symbol consisting of a black exclamation point in a yellow
23 equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of the
24 warning, in a size no smaller than the height of the word "WARNING".

25
26  **WARNING:** This product can expose you to chemicals including lead, which
27 is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

28 OR

1  **WARNING:** Cancer and birth defects or other reproductive harm.
2 www.P65Warnings.ca.gov

3 For Defendants selling Covered Products via an internet website to customers located in
4 California, the warning requirements of this section shall be satisfied if the foregoing warning appears:
5 (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as
6 the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase
7 during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a
8 yellow or white equilateral triangle may appear adjacent to or immediately following the display,
9 description, price, or checkout listing of the Product, if the warning statement appears elsewhere on
10 the same web page in a manner that clearly associates it with the product(s) to which the warning
11 applies.

12 **2.3 Grace Period for Existing Inventory of Covered Products**

13 The injunctive requirements of Section 2 shall not apply to Covered Products that are already
14 in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to
15 the releases provided in Section 4.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 Defendants shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of
19 all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
20 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
21 section 25249.7(b) and attorney's fees and costs in the amount of forty-five thousand dollars
22 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

23 **3.2 Civil Penalty**

24 The portion of the settlement attributable to civil penalties shall be allocated according to
25 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty
26 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the
27 remaining twenty-five percent (25%) of the penalty paid to Embry individually.
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1 All payments owed to Embry shall be delivered to the following address:

2 Environmental Health Advocates
3 225 Broadway, Suite 1900
4 San Diego, CA 92101

5 All payments owed to OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA
(Memo Line "Prop 65 Penalties") at the following addresses:

6 For United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 P.O. Box 4010
11 Sacramento, CA 95812-4010

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

18 Defendants agree to provide Embry's counsel with a copy of the check payable to OEHHHA,
19 simultaneous with its penalty payments to Embry.

20 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

21 Relevant information is set out below:

- 22 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.3;
- 23 • "Jurisprudent Deferral Solutions, LLC." (EIN: 47-1572843) at the address provided in
24 Section 3.3.

25 **3.3 Attorney's Fees and Costs**

26 The portion of the settlement attributable to attorney's fees and costs shall be paid to Embry's
27 counsel, who are entitled to attorney's fees and costs incurred by it in this action, including but not
28 limited to investigating potential violations, bringing this matter to Defendants' attention, as well as
litigating and negotiating a settlement in the public interest. Each firm may, at counsel's option, elect
to have all or part of the Court-approved attorneys' fees allocated to a structured settlement permitting
payment of such fees to be made in a series of periodic payments. If a firm elects to have its award of

1 all or a portion of the Court-approved attorneys' fees in a structured settlement, their interest in such
2 funds will be assigned to an independent third party to make payment of attorneys' fees to counsel.

3 Defendants shall provide its payment to Embry's counsel in two checks, divided equally,
4 payable to Glick Law Group, PC (\$22,500.00) and to Jurisprudent Deferral Solutions, LLC per
5 Deferred Payment Agreement entered into by and between Nicholas & Tomasevic, LLP and
6 JurisPrudent Deferral Solutions, LLC., (\$22,500.00) respectively. The addresses for these two entities
7 are:

8 Noam Glick
9 Glick Law Group
10 225 Broadway, Suite 1900
11 San Diego, CA 92101

12 JurisPrudent Deferral Solutions, LLC.
13 RE: Nicholas & Tomasevic, LLP
14 200 Providence Road, Suite 100
15 Charlotte, NC 28207

16 **3.4 Timing**

17 The above-mentioned checks will be issued within fourteen (14) days after the Effective
18 Date.

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 EMBRY's Public Release of Proposition 65 Claims**

21 For any claim or violation arising under Proposition 65 alleging a failure to warn about
22 exposures to lead from Covered Products manufactured, imported, sold, or distributed by Defendants
23 prior to the Effective Date, Embry, acting in the public interest, releases Defendants of any and all
24 liability. This includes Defendants' owners, parents, subsidiaries, affiliated entities under common
25 ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Defendants
26 directly or indirectly distributes or sells Covered Products, including but not limited to downstream
27 distributors, wholesales, customers, retailers, online marketplaces, franchisees, cooperative members
28 and licensees, (collectively, the "Releasees"). Releasees include defendants, their parents, and all
subsidaries and affiliates thereof and their respective employees, agents, and assigns that sell

1 Defendants' Covered Products. Compliance with the terms of this Consent Judgment constitutes
2 compliances with Proposition 65 with respect to the alleged or actual failure to warn about exposures
3 to lead from the Covered Products manufactured, imported, sold, or distributed by Defendants after
4 the Effective Date. This Consent Judgment is a full, final and binding resolution of all claims that
5 were or could have been asserted against Defendants and/or Releasees for failure to provide warnings
6 for alleged exposure to lead contained in Covered Products.

7 **4.2 Embry's Individual Release of Claims**

8 Embry, in her individual capacity, also provides a release to Defendants and/or Releasees,
9 which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of
10 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands
11 of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising
12 out of alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or
13 distributed by Defendants before the Effective Date.

14 **4.3 Defendants' Release of Embry**

15 Defendants on their own behalf, and on behalf of Releasees as well as its past and current
16 agents, representatives, attorneys, successors, and assignees, hereby waive any and all claims against
17 Embry and her attorneys and other representatives, for any and all actions taken or statements made
18 by Embry and her attorneys and other representatives, whether in the course of investigating claims,
19 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered
20 Products.

21 **4.4 California Civil Code § 1542.**

22 It is possible that other claims not known to the Parties arising out of the facts alleged in the
23 Notice and relating to the Covered Products will develop or be discovered. The Parties acknowledge
24 that this Consent Judgment is expressly intended to cover and include all such claims up through the
25 Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released
26 in §§ 4.2 and 4.3, above, may include unknown claims, and nevertheless waive California Civil Code
27 § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.5 Deemed Compliance with Proposition 65.

The Parties agree that compliance by Defendants with this Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Coverd Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved by the Court and shall be null and void if it is not approved by the Court within one year after it has been fully executed by the Parties, or by such additional time as the Parties may agree to in writing.

6. SEVERABILITY

Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then Defendants may provide written notice to Embry of any asserted change, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

8. NOTICE

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

1 If to Defendant Dick's Sporting Goods:

If to Embry:

2 Todd O. Maiden
3 ReedSmith
4 101 Second Street, Suite 1800
5 San Francisco CA 94105

Jake Schulte
Nicholas & Tomasevic LLP
225 Broadway, 19th Floor
San Diego, CA 92101

6 If to Defendant Bullet Weights:

7 Jeffrey Margulies
8 Norton Rose Fulbright US LLP
9 555 South Flower Street, 41st Floor
10 Los Angeles CA 90071

11 If to Defendant Pitman Creek:

12 Paul S. Rosenlund
13 Duane Morris LLP
14 Spear Tower
15 One Market Plaza, Suite 2200
16 San Francisco, CA 94105

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

19 **9. COUNTERPARTS; DIGITAL SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
22 same document.

23 **10. POST EXECUTION ACTIVITIES**

24 Embry agrees to comply with the reporting form requirements referenced in Health and Safety
25 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
27 motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to
28 mutually employ their best efforts, including those of their counsel, to support the entry of this
agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
approval, responding to any objection that any third-party may make, and appearing at the hearing
before the Court if so requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

8 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

9 If a dispute arises with respect to either Party's compliance with the terms of this Consent
10 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
11 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
12 in the absence of such a good faith attempt to resolve the dispute beforehand.

13 **14. ENTIRE AGREEMENT**


14 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
15 with respect to the entire subject matter herein, and nay and all prior discussions, negotiations,
16 commitments, and understandings related hereto. No representations, oral or otherwise, express or
17 implied, other than those contained herein have been made by any Party. No other agreements, oral or
18 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

19
20 **AGREED TO:**

AGREED TO:

21
22 Date: 01/06/2021

Date: 01/11/2021

23 By: 
24 KIM EMBRY

By: Thomas Smith
DICK'S SPORTING GOODS, INC.

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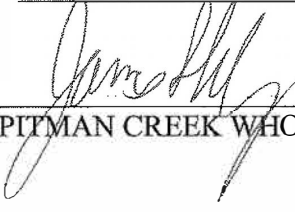
AGREED TO:

Date: 1-8-22

By: 
BULLET WEIGHTS, INC.

AGREED TO:

Date: 1/12/21

By: 
PITMAN CREEK WHOLESALE, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT