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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 UNIQUE SPORTS PRODUCTS, INC.,  
15 DICK'S SPORTING GOODS, INC.,

16 Defendants.

Case No.: HG21090718

**CONSENT JUDGMENT**

Judge: Eumi Lee

Dept.: 512

Hearing Date: 4/20/22

Hearing Time: 9:00 AM

Reservation #: 890587158704

1       **1. INTRODUCTION**

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

10          1.2     **Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11     individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Tourna ball totes/cases without  
12     providing a clear and reasonable exposure warning pursuant to Proposition 65. Ferreiro alleges that  
13     DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer  
14     and reproductive toxicity.

15          1.3     **Notice of Violation/Complaint.** On or about February 18, 2020, Ferreiro served  
16     Unique Sports, and various public enforcement agencies with documents entitled “60-Day Notice  
17     of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that  
18     Defendant violated Proposition 65 for failing to warn consumers and customers that use of Tourna  
19     ball totes/cases expose users in California to DEHP. No public enforcer has brought and is  
20     diligently prosecuting the claims alleged in the Notice. On February 3, 2021, Ferreiro filed a  
21     complaint (the “Complaint”) in the matter.

22          1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23     jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
24     venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
25     and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
26     claims which were or could have been raised in the Complaint based on the facts alleged therein  
27     and/or in the Notice.

1           1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and  
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8           **2.       DEFINITIONS**

9           2.1       **Covered Products.** The term “Covered Products” means Tourna ball totes/cases  
10 that are manufactured, distributed and/or offered for sale in California by Unique Sports.

11           2.2       **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
12 entered as a Judgment of the Court.

13           **3.       INJUNCTIVE RELIEF: WARNINGS**


14           3.1       **Reformulation of Covered Products.** As of the Effective Date, and continuing  
15 thereafter, Covered Products that Unique Sports directly manufactures, imports, distributes, sells,  
16 or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below;  
17 or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.  
18 For purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in  
19 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3  
20 and 3.4 shall not apply to any Reformulated Product.

21           3.2       **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP  
23 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
24 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
25 of determining the phthalate content in a solid substance.

26           3.3       **Clear and Reasonable Warning.** As of the Effective Date, and continuing  
27 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be  
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1 provided for all Covered Products that Defendant manufactures, imports, distributes, sells, or offers  
2 for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant  
3 to provide a warning for Covered Products that enter the stream of commerce prior to the Effective  
4 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§  
5 3.3(a) or (b), respectively:

6 (a) **Warning.** The “Warning” shall consist of the statement:

7  **WARNING:** This product can expose you to chemicals including DEHP, which  
8 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](http://www.P65Warnings.ca.gov).

9 (b) **Alternative Warning:** Unique Sports may, but is not required to, use the alternative  
10 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

11  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

12 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
13 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
14 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
15 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
16 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
17 than the height of the word “**WARNING:**”. The warning shall be on the Covered Product, or  
18 affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign  
19 or electronic device or automatic process, provided that the warning is displayed with such  
20 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
21 read and understood by an ordinary individual under customary conditions of purchase or use. A  
22 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
23 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at  
24 least the same size as those other safety warnings.

25 The same warning shall be posted on any websites under the exclusive control of Unique  
26 Sports where Covered Products are sold by Unique Sports directly to consumers located in  
27 California. The warning requirements of this section shall be satisfied if the foregoing warning  
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1 appears either: (a) on the same web page on which a Covered Product is displayed and/or  
2 described or providing a clearly marked hyperlink using the word “WARNING”;; (b) on the same  
3 page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
4 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
5 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
6 immediately following the display, description, price, or checkout listing of the Covered Product,  
7 if the warning statement appears elsewhere on the same web page in a manner that clearly  
8 associates it with the product(s) to which the warning applies.

9           **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
10 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
11 Judgment or by complying with warning requirements adopted by the State of California’s Office  
12 of Environmental Health Hazard Assessment (“OEHHA”). Unique Sports may comply with the  
13 warning requirements of sections 3.3 and 3.4 by any other means authorized pursuant to Health and  
14 Safety Code 25249.5 *et. seq.* and/or 27 CCR § 25600 *et seq.*, as may be amended from time to time.

15 **4. MONETARY TERMS**

16           **4.1 Civil Penalty.** Unique Sports shall pay \$2,000.00 as a Civil Penalty pursuant to  
17 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health  
18 & Safety Code Sections § 25249.12(c)(1) and 25249.12(d), with 75% of these funds remitted to  
19 OEHHA and the remaining 25% of the Civil Penalty remitted to Ferreiro.

20           **4.1.1** Within ten (10) days of the Effective Date, Unique Sports shall issue two  
21 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and  
22 to (b) “Brodsky Smith in Trust for Ferreiro” in the amount of \$500.00. Payment owed to Ferreiro  
23 pursuant to this Section shall be delivered to the following payment address:

24           Evan J. Smith, Esquire  
25           Brodsky Smith  
26           Two Bala Plaza, Suite 805  
27           Bala Cynwyd, PA 19004

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

1 For United States Postal Service Delivery:

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

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics  
9 Fiscal Operations Branch Chief  
10 Office of Environmental Health Hazard Assessment  
11 1001 I Street  
12 Sacramento, CA 95814

13 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth  
14 above as proof of payment to OEHHA.

15 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Unique Sports shall  
16 pay \$23,000.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Ferreiro's  
17 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Unique Sports  
18 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
19 interest, pursuant to Code of Civil Procedure § 1021.5.

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
22 acting on his own behalf, and on behalf of the public interest, and Unique Sports, Dick's Sporting  
23 Goods, Inc., and each of their parents, shareholders, members, directors, officers, managers,  
24 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister  
25 companies, and affiliates, and their predecessors, successors and assigns ("Defendant Releasees"),  
26 and all entities from whom they obtain and to whom they directly or indirectly distribute or sell  
27 Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,  
28 customers, licensors, licensees, retailers, franchisees, and cooperative members ("Downstream  
Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP from use of  
the Covered Products manufactured, distributed, or sold by Unique Sports or Dick's Sporting  
Goods, Inc. prior to the Effective Date as set forth in the Notice. It is the Parties' intention that this

1 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,  
2 whether purporting to act in his, her, or its interests or the public interest shall be permitted to  
3 pursue and/or take any action with respect to any violation of Proposition 65 based on exposure to  
4 DEHP from use of the Covered Products that was alleged in the Complaint, or that could have been  
5 brought pursuant to the Notice against Unique Sports, Dick's Sporting Goods, Inc., and/or the  
6 Downstream Releasees ("Proposition 65 Claims"). Compliance with the terms of this Consent  
7 Judgment constitutes compliance with Proposition 65 with regard to exposure to DEHP from use  
8 of the Covered Products.

9           5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
10 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
11 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
12 legal action and releases Unique Sports, Dick's Sporting Goods, Inc., Defendant Releasees, and  
13 Downstream Releasees from any and all manner of actions, causes of action, claims, demands,  
14 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,  
15 losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law  
16 or equity, fixed or contingent, now or in the future, with respect to any alleged violations of  
17 Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by  
18 Unique Sports, Dick's Sporting Goods, Inc., Defendant Releasees, or Downstream Releasees. With  
19 respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives  
20 any and all rights and benefits which he now has, or in the future may have, conferred by virtue of  
21 the provisions of § 1542 of the California Civil Code, which provides as follows:

22           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
25 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
26 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
27 DEBTOR OR RELEASED PARTY.

28           5.3 Unique Sports waives any and all claims against Ferreiro, his attorneys and other  
representatives, for any and all actions taken or statements made (or those that could have been  
taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
2 and/or with respect to Covered Products.

3 **6. INTEGRATION**

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

8 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 For Defendant:

20 Ruben A. Castellón  
21 RAF Law Group  
22 811 Wilshire Boulevard, Suite 1050  
Los Angeles, CA 90017

23 And

24 For Ferreiro:

25 Evan Smith  
26 Brodsky Smith  
9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

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 Ferreiro agrees to comply with the requirements set forth in California Health &  
9 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
10 Defendant agrees it 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.

15 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
16 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
17 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
18 its normal course on the trial court's calendar.

19 **11. MODIFICATION**

20 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
21 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

22 **12. ATTORNEY'S FEES**

23 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

25 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
26 pursuant to law.

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**13. RETENTION OF JURISDICTION**

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

**14. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

ANTHONY FERREIRO

By: \_\_\_\_\_

UNIQUE SPORTS PRODUCTS, INC.

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

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

\_\_\_\_\_  
Judge of Superior Court

