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Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company, Plaintiff, v. SUNFISH, INC., a corporation, ROGER DUNN, INC., a corporation, WORLDWIDE GOLF SHOPS COMPANY, a corporation, and DOES 1 through 100, inclusive, Defendants.	CASE NO. 21STCV10070 **[PROPOSED] CONSENT JUDGMENT** Judge: Hon. Stephen I. Goorvitch Dept.: 39 Compl. Filed: March 15, 2021 Unlimited Jurisdiction

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1. RECITALS

1.1 The Parties

1.1.1 This Consent Judgment ("Consent Judgment") is entered into by and between APS&EE, LLC ("Plaintiff") and SUNFISH, INC. ("Defendant"). Plaintiff and Defendant shall hereinafter collectively be referred to as the "Parties."

1.1.2 Plaintiff is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 Plaintiff alleges that Defendant is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. ("Proposition 65").

1.2 Allegations

1.2.1 Plaintiff alleges that Defendant sold: (1) Sunfish brand of Golf Headcovers, including but not limited to American Flag themed "Liberty" hybrid cover, 2088828 (hereinafter, the "Headcovers"); and (2) Sunfish brand of Uncle Sam scorecard holder, 2088859 (hereinafter, the "Scorecard Holders", and collectively with the Headcovers, the "Products"), in the State of California causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl) Phthalate ("DEHP") without providing "clear and reasonable warnings", in violation of Proposition 65. DEHP is potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and reproductive toxicity.

1.2.2 On September 21, 2020, Plaintiff sent a Sixty-Day Notice of Violation (the "Notice") to Defendant, as well as Roger Dunn, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Headcovers. On December 11, 2020, Plaintiff sent a Supplemental Sixty-Day Notice of Violation (the "Supplemental Notice") to Defendant, as well as Roger Dunn, Inc., Worldwide Golf Shops Company, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The Notice and Supplemental Notice shall

hereinafter collectively be referred to as the "Notices". On March 15, 2021, Plaintiff, acting in the public interest, filed the instant action (the "Complaint") in the Superior Court for the County of Los Angeles, alleging violations of Proposition 65.

1.3 No Admissions

Defendant denies all allegations in Plaintiff's Notices and Complaint and maintains that the Products have been, and are, in compliance with all laws, and that Defendant has not violated Proposition 65. This Consent Judgment shall not be construed as an admission of liability by Defendant but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Consent Judgment.

1.4 Compromise

The Parties enter into this Consent Judgment in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Jurisdiction and Venue

For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and Proposition 65.

1.6 Effective Date

The "Effective Date" shall be the date this Consent Judgment is approved and entered by the Court.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

After the Effective Date, Defendant shall not distribute for sale in California, sell or offer for sale the Products in California unless (a) the Product contains no more than 1,000 parts per

million (0.1%) of DEHP ("Reformulated Product"), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Clear And Reasonable Warnings

For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Defendant shall provide a warning statement substantially similar to the following:

> **WARNING:** This product can expose you to Di (2-ethylhexyl) Phthalate which is known to the State of California to cause cancer and reproductive harm. For more information go to www.P65Warnings.ca.gov.

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant on the internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Defendant provides for a downstream entity to sell on the internet, Defendant shall include an instruction that the entity comply with the warning requirements of this section.

2.3 Additional Warnings Required or Permitted By Law or Regulation

In addition to the warning requirements set forth in Section 2.2 above, Defendant may comply with this agreement by using other warning text and transmission methods set forth in 27 Cal. Code Regs. § 25601, et seq., and amended subsequently thereafter, or other text or methods authorized or mandated by those regulations, or other State of California regulations or legislation pertaining to Proposition 65 warnings related to such Products.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a total civil penalty of three thousand thousand dollars ($3,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% ($2,250.00) for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% ($750.00) for Plaintiff.

Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "OEHHA" in the amount of $2,250.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of $750.00. Defendant shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

Upon receipt of the above civil penalty checks, Law Offices of Lucas T. Novak shall forward the payments to OEHHA and Plaintiff.

3.2 Reimbursement Of Plaintiff's Fees And Costs

Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action for all work performed through execution and approval of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of twenty-seven thousand dollars ($27,000.00). Defendant shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

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4. RELEASES

4.1 Plaintiff's Release Of Defendant

Plaintiff, acting in its individual capacity, and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees, including Roger Dunn, Inc. and Worldwide Golf Shops Company (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in Plaintiff's Notices or Complaint regarding failure to warn about exposure to DEHP from the Products sold by Defendant before and up to the Effective Date.

4.2 Defendant's Release Of Plaintiff

Defendant, by this Consent Judgment, waives all rights to institute any form of legal action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Defendant in this matter. If any Released Party should institute any such action, then Plaintiff's release of said Released Party in this Consent Judgment shall be rendered void and unenforceable.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

> 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.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,

or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Consent Judgment and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. COURT APPROVAL

Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent Judgment is not effective until it is approved and entered by the Court. It is the intention of the Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement in a timely manner, including cooperating on drafting and filing any papers in support of the required motion for judicial approval.

6. SEVERABILITY

Should any part or provision of this Consent Judgment for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California.

8. NOTICES

All correspondence and notice required to be provided under this Consent Judgment shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO DEFENDANT:	TO PLAINTIFF:
Barbara R. Adams, Esq. Scali Rasmussen, PC 1901 Harrison St., 14th Fl. Oakland, CA 94612	Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069

9. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed

an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the originals.

10. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Consent Judgment by said Party.

AGREED TO:

Date: 9/7/21

By: _____

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 8/27/21

By: _____

Authorized Representative of Sunfish, Inc.

IT IS SO ORDERED.

Dated: _____

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JUDGE OF THE SUPERIOR COURT