

GLICK LAW GROUP, P.C.

Noam Glick (SBN 251582)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 382-3400
Email: noam@glicklawgroup.com

NICHOLAS & TOMASEVIC, LLP.

Craig M. Nicholas (SBN 178444)
Jake Schulte (SBN 293777)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 325-0492
Email: cnicholas@nicholaslaw.org
Email: jschulte@nicholaslaw.org

Attorneys for Plaintiff
Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

UNIQUE SPORTS PRODUCTS INC., a
Georgia corporation, AMAZON.COM, INC., a
Delaware corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. RG21089959

[PROPOSED] CONSENT JUDGMENT

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

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Environmental Health Advocates, Inc., (“EHA” or “Plaintiff”), on the one hand, and Unique Sports Products Inc. (“Defendant” or “USP”), on the other hand, with EHA and USP each individually referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Plaintiff

EHA is a corporation organized in the state of California, acting in the interest of the general public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

USP employs ten or more individuals and is a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

EHA alleges that USP manufactures, imports, sells, and distributes for sale Unique Sports Football Playbook Band Wristcoach that contain Di (2-ethylhexyl) phthalate (DEHP). EHA further alleges that USP does so without providing a sufficient health hazard warning as required by Proposition 65 and related regulations pursuant to Proposition 65 and alleges that DEHP is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

1.5 Notice of Violation

On or around December 4, 2020, EHA served USP, Amazon.com, Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that USP had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to DEHP contained in wristbands, including but not limited to Unique Sports Football Playbook Band Wristcoach.

No public enforcer has commenced or is otherwise prosecuting an action to enforce the

violations alleged in the Notice.

1.6 Product Description

The products covered by this Consent Judgment are wristbands, including but not limited to Unique Sports Football Playbook Band Wristcoach, manufactured, processed, distributed, shipped, or sold by USP that allegedly contain DEHP and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered Products”).

1.7 State of the Pleadings

On or around February 26, 2021, EHA filed a Complaint against USP for the alleged violations of Proposition 65 that are the subject of the Notice (“Complaint”).

1.8 No Admission

USP denies the material factual and legal allegations of the Notice and Complaint and maintains that all of the Covered Products it has manufactured, produced, packaged, imported, supplied, sold, and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect USP’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

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

1.10 Effective Date

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

///

///


1 **2. INJUNCTIVE RELIEF**

2 **2.1 Clear and Reasonable Warnings**


3 As of the Effective Date, and continuing thereafter, a clear and reasonable Proposition 65
4 warning as set forth in this §§ 2.1 and 2.2 must be provided for all Covered Products that USP
5 manufactures, supplies and distributes for sale in California except for Covered Products that are
6 Reformulated. A Covered Product is Reformulated if it contains concentrations less than or equal to
7 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental
8 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal
9 or state government agencies for the purpose of determining the phthalate content in a solid substance.
10 The warning requirements set forth in this § 2.1 shall not apply to any Reformulated Covered Product.

11 On or after the Effective Date, for Covered Products, USP shall provide one of the following
12 warning statements:

13 **Option 1:**

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

17 **Option 2:**

18  **WARNING:** Cancer and Reproductive Harm –
 www.P65Warnings.ca.gov

19 This warning statement shall be prominently displayed on the Covered Products, on the
20 packaging of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
21 displayed with such conspicuousness, as compared with other words, statements, or designs as to
22 render it likely to be read and understood by an ordinary individual under customary conditions prior
23 to sale. If the warning statement is displayed on the Covered Products' packaging, it must be in a type
24 size no smaller than the largest type size used for other consumer information on the product. In no
25 case shall a warning statement displayed on the Covered Products' packaging appear in a type size
26 smaller than 6-point type. Where the sign, label or shelf tag for the product is not printed using the
27 color yellow, the symbol may be printed in black and white. The same warning shall be posted on
28 any websites under the exclusive control of USP where Covered Products are sold by USP directly to

1 consumers located in California. Unique shall instruct any known third-party that sells the Covered
2 Product on a website to provide either of the above warnings in a manner consistent with the
3 requirements of Proposition 65.

4 USP may comply with the warning requirements of this Section by any other means
5 authorized pursuant to Health and Safety Code 25249.5 *et seq.*, and/or 27 CCR § 25600 *et seq.*, as
6 may be amended from time to time. For example, should USP determine that an additional chemical
7 needs to be added (or referenced), additional endpoint, or should the chemical endpoint change, then,
8 in either of the above warnings, USP may modify the content of such warnings to address the new
9 chemical, provided the revised warnings also comply with title 27 Cal. Code Regs. § 25600 *et seq.*

10 **2.2 Sell-Through Period**

11 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
12 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to
13 this Consent Judgment, without regard to when such Covered Products were, or are in the future,
14 distributed or sold to customers. As a result, the obligation of USP, or any Releasees (if applicable),
15 do not apply to these Covered Products manufactured on or prior to the Effective Date.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 USP shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
19 claims referred to in the Notice, 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 attorneys' 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
26 penalty, three thousand seven hundred and fifty dollars (\$3,750.00), paid to the California Office of
27 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
28

of the penalty, one thousand two hundred and fifty dollars (\$1,250.00), paid to EHA individually.
These payments will be sent to the below addresses within fourteen (14) days of the Effective Date.

All payments owed to EHA shall be delivered to the following address:

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

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

USP agrees to provide EHA's counsel with a copy of the check payable to OEHHHA,
simultaneous with its penalty payments to EHA.

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

Relevant information is set out below:

- "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i); and
- "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

3.3 Attorneys' Fees and Costs

The portion of the settlement attributable to attorneys' fees and costs, forty-five thousand
dollars (\$45,000.00), shall be paid to Glick Law Group, P.C. and Nicholas & Tomasevic, LLP

(collectively, “EHA’s Counsel”), who are entitled to attorneys’ fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to USP’s attention, as well as litigating and negotiating a settlement in the public interest.

USP shall provide their payment to EHA’s Counsel in two installments as follows. Payment may be by physical check or by electronic means, including wire transfers, at USP’s discretion:

- The First Installment shall be in the amount of thirty-five thousand dollars (\$35,000.00), divided equally, in one check for seventeen thousand five hundred dollars (\$17,500.00) payable to “Glick Law Group, PC”, and in one check for seventeen thousand five hundred dollars (\$17,500.00) payable to “Nicholas & Tomasevic, LLP”, within ten (10) days of the transmittal to USP’s counsel of the Effective Date (“First Installment”).
- The Second Installment shall be in the amount of ten thousand dollars (\$10,000.00), divided equally, in one check for five thousand dollars (\$5,000.00) payable to “Glick Law Group, PC”, and in one check for five thousand dollars (\$5,000.00) payable to “Nicholas & Tomasevic, LLP”, within forty (40) days of the Effective Date (“Second Installment”). If the First Installment is timely made by USP or its counsel, then EHA and its counsel agree to waive the Second Installment. The addresses for these two entities are:

Noam Glick
Glick Law Group
225 Broadway, 19th Floor
San Diego, CA 92101

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA’s Public Release of Proposition 65 Claims

Plaintiff acting on its own behalf and in the public interest releases USP, Amazon.com, Inc., and each of their parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant Entities”), each entity to whom USP directly or indirectly distributes, ships, or

1 sells the Covered Products including but not limited to downstream distributors, wholesalers, customers,
2 retailers , franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of
3 the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers,
4 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
5 "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on
6 exposure to DEHP from Covered Products as set forth in the Notice. Compliance with the terms of this
7 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from
8 Covered Products as set forth in the Notice, except that any third party that sells the Covered Product on
9 a website and that has been instructed to provide an internet warning as set forth in 2.1 above and does
10 not provide the internet warning for the Covered Product, shall not be deemed to be in compliance with
11 Proposition 65 as to the sale of the Covered Product .

12 **4.2 EHA's Individual Release of Claims**

13 EHA, in its individual capacity, also provides a release to USP and/or Releasees, which shall
14 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
15 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
16 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
17 alleged or actual exposures to DEHP in Covered Products manufactured, imported, sold, or
18 distributed by USP before the Effective Date.

19 **4.3 USP's Release of EHA**

20 USP on its own behalf, and on behalf of Releasees as well as its past and current agents,
21 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
22 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
23 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
24 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

25 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

12 In the event the California Office of Health Hazard Assessment adopts a regulation or safe
13 use determination, or issues an interpretive guideline that exempts Covered Products from meeting
14 the requirements of Proposition 65; or if DEHP cases are permanently enjoined by a court of
15 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a
16 burden on First Amendment rights with respect to DEHP in Covered Products or Covered Products
17 substantially similar to Covered Products, then USP shall be relieved of its obligation to comply
18 with Section 2 herein.

19 **8. ENFORCEMENT**

20 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be
21 entitled to its reasonable attorneys’ fees and costs.

22 **9. NOTICE**

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

26 ///

27 ///

28 ///

1 If to USP:

2 Ruben Castellón
3 RAF Law Group
4 811 Wilshire Boulevard, Suite 1050
5 Los Angeles, California 90017

If to EHA:

Noam Glick
Glick Law Group, PC
225 Broadway, 19th Floor
San Diego, CA 92101

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

8 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

12 **11. POST EXECUTION ACTIVITIES**

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

22 **12. MODIFICATION**

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

26 **13. AUTHORIZATION**

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

1 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

6 **15. ENTIRE AGREEMENT**

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

13 **AGREED TO:**

AGREED TO:

14 Date: 3/4/2022

Date: 3/3/2022

15
16 By: 
17 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
UNIQUE SPORTS PRODUCTS INC.

18 **IT IS SO ORDERED.**

19 Date: _____

JUDGE OF THE SUPERIOR COURT