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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,
12 Plaintiff,

13 v.

14 RAWLINGS SPORTING GOODS
15 COMPANY, INC.,
16 Defendant.

Case No.: CGC-22-597627

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: August 1, 2022
Hearing Time: 9:30 AM
Reservation #:

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 Rawlings Sporting
4 Goods Company, Inc., (“Rawlings” or “Defendant”) with Ferreiro and Defendant collectively
5 referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in
6 California that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Rawlings
8 is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Bisphenol A (BPA) from its sales of Rawlings Game On! hoop sets without providing
12 a clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed under
13 Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

14 **1.3 Notice of Violation/Complaint.** On or about January 27, 2021, Ferreiro served
15 Rawlings, American Sports Licensing, Inc., American Sports Licensing, LLC, K2 Licensed
16 Products, Inc., Dick’s Sporting Goods, Inc, and various public enforcement agencies with
17 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
18 (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of the Covered Products (as hereinafter defined) expose users in California to
20 BPA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice.
21 January 13, 2022, Ferreiro filed a 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 San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Complaint based on the facts alleged
27 therein 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 Rawlings Game On! hoop
10 sets, that are manufactured by or for, or distributed by, Rawlings Sporting Goods Company, Inc.
11 and sold and/or offered for sale in California by Rawlings, that allegedly expose users to BPA.

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

14 **3. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

15 3.1 **Reformulation of Products.** As of one-hundred eighty (180) days after the
16 Effective Date, and continuing thereafter, except for Covered Products that were manufactured
17 prior to the Effective Date, Covered Products that Rawlings manufactures, imports, distributes,
18 sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2,
19 below; or (b) Labeled Products pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent
20 Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the standard
21 set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
22 Reformulated Product. For purposes of this Consent Judgment, a “Labeled Product” is a Covered
23 Product that is in compliance with the standard set forth in §§ 3.3 and 3.4, below.

24 3.2 **Reformulation Standard.** “Reformulated Products” shall mean any Covered
25 Products intended for retail sale in California that are demonstrated via an exposure calculation to
26 create a dermal exposure to BPA on any accessible component that will not exceed the Maximum
27 Allowable Dose Level for BPA of 3 micrograms per day from solid materials. For purposes of this
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1 analysis, BPA migration testing shall be performed by an accredited laboratory utilizing NIOSH
2 approved sampling and analytical methods to quantify BPA migration.

3 **3.3 Clear and Reasonable Warning.** “Labeled Products” shall mean any Covered
4 Products intended for retail sale in California that are accompanied by either of the following
5 warnings:

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

7 ⚠ **WARNING:** This product can expose you to chemicals including Bisphenol A
8 (BPA), which is known to the State of California to cause [cancer and] birth defects
9 or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

12 ⚠ **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

13 The bracketed text may, but is not required to be used. Rawlings and its downstream
14 retailers shall have no obligation to label Covered Products that were manufactured prior to the
15 Effective Date.

16 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
17 “**WARNING:**” in all capital letters and in bold print. The symbol must consist of a black
18 exclamation point in a yellow equilateral triangle with a bold black outline, except that if the sign,
19 label, or shelf tag for the Covered Product is not printed using the color yellow, the symbol may be
20 printed in black and white. The symbol shall be placed to the left of the text of the warning and
21 must be in a size no smaller than the height of the word “**WARNING**”. The warning shall be in the
22 form of a label; an on-product warning; on a posted sign, shelf tag, or shelf sign at each point of
23 display of the Covered Products; or a product-specific warning provided via any electronic device
24 or process that automatically provides the warning to the purchaser prior to or during the purchase
25 of the Covered Product, without requiring the purchaser to seek out the warning. The warning must
26 be displayed with such conspicuousness, as compared with other words, statements, or designs on
27 the label, labeling, or sign, as to render the warning likely to be read and understood by an ordinary
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1 individual under customary conditions of purchase or use. The entire warning shall be in a type size
2 no smaller than the largest type size used for other consumer information on the Covered Product.

3 If Rawlings sells Covered Products via a Rawlings internet website to customers located in
4 California, the warning requirements of this section shall be satisfied if the foregoing warning or a
5 clearly marked hyperlink to the warning is included on the product display page, or by otherwise
6 prominently displaying the warning to the purchaser prior to completing the purchase.

7 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
8 compliance with this Consent Judgment by (1) adhering to §§ 3.3 and 3.4 of this Consent Judgment;
9 or (2) complying with warning requirements adopted by the State of California’s Office of
10 Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

11 **4. MONETARY TERMS**

12 **4.1 Civil Penalty.** Rawlings shall pay \$2,000.00 as a Civil Penalty pursuant to Health
13 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
14 Safety Code § § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
15 remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety
16 Code § 25249.12(d).

17 **4.1.1** Within ten (10) days of the Effective Date, Rawlings shall issue two separate
18 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b)
19 “Brodsky & Smith in Trust for Ferreiro” in the amount of \$500.00. Payment owed to Ferreiro
20 pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky & Smith
23 Two Bala Plaza, Suite 805
24 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
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

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

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

11 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Rawlings shall pay
12 \$19,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Ferreiro's
13 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Rawlings
14 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
15 interest, pursuant to Code of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
18 acting on his own behalf, and on behalf of the public interest, and Rawlings, and its parents,
19 shareholders, members, directors, officers, managers, employees, representatives, agents,
20 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
21 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
22 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
23 not limited to manufacturers, suppliers, distributors, wholesalers, customers, accounts, licensors,
24 licensees retailers, resellers, franchisees, and cooperative members ("Downstream Releasees"), of
25 all claims for violations of Proposition 65 based on exposure to BPA from Covered Products as set
26 forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by or
27 for Rawlings prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall
28 have preclusive effect such that no other actions by private enforcers, whether purporting to act in
his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have

1 been brought pursuant to the Notice against Rawlings and/or the Downstream Releasees of the
2 Covered Products (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment
3 constitutes compliance with Proposition 65 regarding exposure to BPA from the Covered Products.

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

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

23 5.3 Rawlings waives any and all claims against Ferreiro, his attorneys and other
24 representatives, for any and all actions taken or statements made (or those that could have been
25 taken or made) as of the Effective Date by Ferreiro and his attorneys and other representatives,
26 whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65
27 against it in this matter, and/or with respect to Covered Products.

28 **6. INTEGRATION**

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
13 by the other party at the following addresses:

14 For Defendant:

15 Megan Caldwell
16 Husch Blackwell LLP
17 1801 Wewatta Street, Suite 1000
18 Denver, CO 80202

18 And

19 For Ferreiro:

20 Evan J. Smith, Esquire
21 Brodsky & Smith
22 Two Bala Plaza, Suite 805
23 Bala Cynwyd, PA 19004

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and
the same document.

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

3 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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1 document and certify that he or she is fully authorized by the Party he or she represents to execute
2 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
3 explicitly provided herein each Party is to bear its own fees and costs.

4 **AGREED TO:**

AGREED TO:

5
6 Date: 6/13/22

Date: 10 May 2022

7
8 By: *Anthony Ferreiro*
ANTHONY FERREIRO

By: *Sam Gasowski*
RAWLINGS SPORTING GOODS
COMPANY, INC.,
Sam Gasowski - VP & General Counsel

9
10 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

11
12 Dated: _____

Judge of Superior Court