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

11 PRECILA BALABBO,  
12 Plaintiff,  
13 v.  
14 SUNNY DAYS ENTERTAINMENT, LLC,  
15 Defendant.

Case No.: 21CV002543  
**CONSENT JUDGMENT**  
Judge: Hon. James Reilly  
Dept.: 25  
Hearing Date: April 20, 2022  
Hearing Time: 3:00 PM  
Reservation #: 934798176245

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**1. INTRODUCTION**

1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo acting on behalf of the public interest (hereinafter “Balabbo”) and Sunny Days Entertainment, LLC (“Sunny Days” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Sunny Days is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of 9Round boxing gloves without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about July 7, 2021, Balabbo served Sunny Days, 9Round Franchising, LLC (“9Round”), Walmart Inc. and Walmart Apollo, LLC, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code § 25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of 9Round boxing gloves expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On November 15, 2021, Balabbo filed a complaint (the “Complaint”) in the matter.

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

1           1.5 Defendant denies the material allegations contained in Balabbo'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 9Round boxing gloves  
10 that are manufactured, distributed and/or offered for sale in California.

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 date this Consent Judgment is  
15 signed by both Parties, and continuing thereafter, Covered Products that Sunny Days directly  
16 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
17 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
18 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
19 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §  
20 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
21 Product.

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

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

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

9           **⚠ WARNING:** This product can expose you to chemicals including di(2-  
10 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
11 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

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

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

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

10 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
11 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
12 Judgment or by complying with warning requirements adopted by the State of California's Office  
13 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

14 **4. MONETARY TERMS**

15 4.1 **Civil Penalty.** Sunny Days shall pay \$3,500.00 as a Civil Penalty pursuant to Health  
16 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
17 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
18 Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

19 4.1.1 Within ten (10) days of the Effective Date, Sunny Days shall issue two  
20 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,625.00; and  
21 to (b) "Brodsky & Smith in Trust for Balabbo" in the amount of \$875.00. Payment owed to  
22 Balabbo pursuant to this Section shall be delivered to the following payment address:

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

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

28 For United States Postal Service Delivery:

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

6 For Non-United States Postal Service Delivery:

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

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

14 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Sunny Days shall pay  
15 \$31,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Balabbo's  
16 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Sunny Days  
17 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
18 interest, pursuant to Code of Civil Procedure § 1021.5.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo  
21 acting on her own behalf, and on behalf of the public interest, and Sunny Days, and its parents,  
22 shareholders, members, directors, officers, managers, employees, representatives, agents,  
23 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
24 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
25 obtain or license and to whom they directly or indirectly distribute or sell Covered Products,  
26 including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,  
27 licensors, licensees retailers, including but not limited to 9Round, Walmart Inc., Walmart Apollo,  
28 LLC, Wal-Mart Stores East L.P., Wal-Mart Stores, Inc., each of their respective parents,  
subsidaries, affiliates, past and current agents, directors, officers, employees, representatives,  
attorneys, successors, assignees, franchisees, cooperative members, and/or anyone else acting on  
their behalf ("Downstream Releasees"), of all claims for violations of Proposition 65 based on

1 exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered  
2 Products manufactured, distributed, or sold prior to the Effective Date. It is the Parties' intention  
3 that this Consent Judgment shall have preclusive effect such that no other actions by private  
4 enforcers, whether purporting to act in his, her, or its interests or the public interest shall be  
5 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was  
6 alleged in the Complaint, or that could have been brought pursuant to the Notice against Sunny  
7 Days and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").  
8 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
9 with regard to the Covered Products.

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

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

27           5.3 Sunny Days waives any and all claims against Balabbo, her attorneys and other  
28 representatives, for any and all actions taken or statements made (or those that could have been

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taken or made) by Balabbo and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

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

**7. GOVERNING LAW**

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

**8. NOTICES**

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

For Defendant:

Ladd Cahoon  
Edgcomb Law Group, LLP  
601 Montgomery St., Suite 1200  
San Francisco, CA 94111

And

For Balabbo:

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



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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

**11. MODIFICATION**

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

**12. ATTORNEY'S FEES**

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

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions 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: 12/06/2021

Date: 11/16/2021

By: *Precila Balabbo*

By: *[Signature]*

PRECILA BALABBO

SUNNY DAYS ENTERTAINMENT, LLC

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

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

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