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

11 EMA BELL,

12 Plaintiff,

13 v.

14 WARRIOR SPORTS, INC., ROSS STORES,
15 INC.,

16 Defendants.

Case No.: CGC-22-601072

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: February 27, 2024

Hearing Time: 9:30 AM

Complaint Filed: August 3, 2022

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell,
3 alleged to be acting on behalf of the public interest (hereinafter “Bell”) and Warrior Sports, Inc.
4 (“Warrior Sports” or “Defendant”) (Bell and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party”), for the purpose of avoiding prolonged and costly litigation concerning
6 the claims and defenses in this Action and in order to fully and finally resolve any and all claims,
7 demands, and allegations of Bell regarding any alleged noncompliance with the California Safe
8 Drinking Water and Toxic Enforcement Act (Cal. Health & Safety Code § 25249.5, *et seq.*)
9 (“Proposition 65”).

10 **1.2 Bell is an individual residing in California that purportedly seeks to promote**
11 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
12 hazardous substances contained in consumer products. Warrior Sports is alleged to be a person in
13 the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6
14 et seq.

15 **1.3 Allegations and Representations.** Bell alleges that Defendant exposed individuals
16 to di(2-ethylhexyl) phthalate (DEHP) from the sale of Brine Youth shin guards without providing
17 a clear and reasonable exposure warning that they allege is required pursuant to Proposition 65.
18 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 cancer and reproductive toxicity.

20 **1.4 Notice of Violation/Action.**, Bell served Warrior Sports, Brine, Inc., Ross Stores,
21 Inc., and various public enforcement agencies with documents entitled “60-Day Notice of
22 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), dated August 9, 2021,
23 alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that
24 use of Brine Youth shin guards allegedly expose users in California to DEHP. To the Parties’
25 knowledge, no public enforcer has brought and is diligently prosecuting the claims alleged in the
26 Notice. On August 3, 2022, Bell filed a complaint (the “Complaint”).

27 **1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has**
28

1 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
2 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
3 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
4 of all claims which were or could have been raised in the Action based on the facts alleged therein
5 and in the Notice.

6 1.6 Defendant denies the allegations contained in Bell’s Notice and Complaint and
7 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall constitute
8 nor be construed as an admission by any Defendant of any fact, finding, issue of law, or violation
9 of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
10 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
11 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
12 obligations, responsibilities, and duties of Defendant under this Consent Judgment. Nothing in this
13 Consent Judgment, nor compliance with this Judgment, shall constitute or be construed as giving
14 rise to any presumption or inference of admission or concession by any Defendant as to any fault,
15 wrongdoing, or liability, nor shall it be considered, offered, or admitted as evidence of an admission
16 or evidence of fault, wrongdoing, or liability by any Defendant, including without limitation in any
17 administrative or judicial proceeding or litigation in any court, agency, or forum. For the avoidance
18 of doubt, nothing in this Agreement shall be interpreted or construed as imposing any duty or
19 obligations on any Defendant beyond what is required by then-applicable law, regulations, or case
20 law, including any duty that is removed or reduced by a change in the law.

21 **2. DEFINITIONS**

22 2.1 **Covered Products.** The term “Covered Products” means the Brine Youth shin
23 guards that identified in Bell’s Notice that were allegedly manufactured, distributed, shipped into
24 California, and/or offered for sale in California by Warrior Sports.

25 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
26 entered as a Judgment of the Court.

1 **3. INJUNCTIVE RELIEF: COMMITMENT NOT TO SELL**

2 3.1 **Commitment Not to Sell.** Commencing within sixty (60) days of the Effective
3 Date, and continuing thereafter, Defendant agrees that it shall not manufacture, distribute, sell, or
4 offer Covered Products for sale in California. Covered Products that have been manufactured,
5 packaged, or put into commerce prior to the Effective Date shall be subject to the release of liability
6 pursuant to this Consent Judgment without regard as to when such Covered Products were
7 distributed or sold to customers.

8 **4. MONETARY TERMS**

9 4.1 Warrior Sports shall make a total payment of \$17,500.00 (“**Total Settlement**
10 **Amount**”), consisting of three separate payments constituting the Civil Penalty and Attorneys’ Fees
11 set forth below:

12 4.2 **Civil Penalty.** Warrior Sports shall pay \$1,000.00 as a Civil Penalty pursuant to
13 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
14 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
15 the Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

16 4.2.1 Within thirty (30) days of the Effective Date, Warrior Sports shall issue two
17 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to
18 (b) “Ema Bell” in the amount of \$250.00, provided it has received all necessary information from
19 Bell in order to make payment.

20 (a) Payment owed to Bell pursuant to this Section shall be delivered to
21 the following payment address:

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

26 For the avoidance of doubt, Brodsky Smith shall be responsible for the actual provision of the Civil
27 Penalty payment to Bell once received from Warrior Sports.
28

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

4 For United States Postal Service Delivery:

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

8 For Non-United States Postal Service Delivery:

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

12 4.2.2 By the Effective Date, Bell shall provide Warrior Sports with any
13 information necessary for Warrior Sports to make payment. A copy of the check payable to
14 OEHHA shall be provided to Brodsky Smith by mail at the address set forth above or by email to
15 esmith@brodskysmith.com as proof of payment to OEHHA.

16 4.2.3 Warrior Sports shall be deemed to have timely met its monetary payment
17 obligation to Bell and OEHHA upon placing these two checks in the mail via U.S.P.S. first class
18 mail, return receipt requested, or with a recognized overnight or express carrier.

19 4.3 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, or thirty (30) days
20 following receipt from Brodsky Smith of all necessary information in order to make payment,
21 whichever is later, Warrior Sports shall separately pay \$16,500.00 to Brodsky Smith as complete
22 reimbursement for Bell's attorneys' fees and costs incurred as a result of investigating, bringing
23 this matter to the attention of Warrior Sports, litigating and negotiating and obtaining judicial
24 approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

25 4.4 Warrior Sports may make payment by wire or check to the address for Brodsky
26 Smith set forth in § 4.1.1(a). For wire transfer, the details and instructions to make payment to
27 Brodsky Smith's are below.
28

1 **(a) ACH Transfer Instructions:**

2 **BANK OF AMERICA**

3 Brodsky Smith, LLP Trust Account
4 Account Number: 325179952900
 Routing Number: 121000358

5 **(b) Wire Transfer Instructions:**

6 **BANK OF AMERICA**

7 Brodsky Smith, LLP Trust Account
8 Account Number: 325179952900
 Routing Number: 026009593

9 4.4.1 Warrior Sports shall be deemed to have timely met its monetary payment
10 obligation to Brodsky Smith upon placing the check in the mail via U.S.P.S. first class mail, return
11 receipt requested, or with a recognized overnight or express carrier.

12 4.5 By the Effective Date, Brodsky Smith shall provide Warrior Sports with its
13 Employer Identification Number, a W-9 and any other information necessary for Warrior Sports to
14 make payment.

15 **5. RELEASE OF ALL CLAIMS**

16 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
17 on her own behalf, and on behalf of the public interest, and Warrior Sports, and its parents,
18 shareholders, members, directors, officers, managers, employees, representatives, agents,
19 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
20 predecessors, successors and assigns (collectively, "Warrior Sports Releasees"), and all entities
21 from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products,
22 including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,
23 licensors, licensees, retailers, including but not limited to, Ross Stores, Inc., and their respective
24 parents, subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream
25 Releasees," together with Warrior Sports Releasees, the "Released Parties"), of all claims for
26 violations of Proposition 65 based on exposure to DEHP from use of the Covered Products
27 manufactured, distributed, or sold by or on behalf of Warrior Sports prior to the Effective Date, or
28 within 60 days after 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 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 the Released Parties (“Proposition 65 Claims”). Warrior
6 Sports’ compliance with the terms of this Consent Judgment constitutes compliance by Warrior
7 Sports with Proposition 65 with regard to exposure to DEHP from use of the Covered Products.

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

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

26 5.3 Warrior Sports waives any and all claims against Bell, her attorneys and other
27 representatives, for any and all actions taken, or statements made (or those that could have been
28 taken or made) by Bell 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 with respect to Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

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

12 **8. NOTICES**

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

17 For Defendant Warrior Sports:

18 Amanda H. Russo
19 Goodwin Procter LLP
20 601 South Figueroa St., Ste. 4100
21 Los Angeles, CA 90017

22 And

23 For Bell:

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

28 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.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
8 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

26 **13. RETENTION OF JURISDICTION**

27 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.


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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: 11/9/24
By: 
EMA BELL

Date: November 30, 2023
By: C Abbott
Name: Cindy Abbott
Title: CEO
FOR WARRIOR SPORTS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court