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

11 DONATUS MCCOY,

12 Plaintiff,

13 v.

14 SPORTSMAN'S WAREHOUSE, INC.,

15 Defendant.

Case No.: CGC-22-600785

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 11, 2023

Hearing Time: 9:30 AM

Complaint Filed: July 18, 2022

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Donatus
3 McCoy acting on behalf of the public interest (hereinafter “McCoy”) and Sportsman’s Warehouse,
4 Inc. (“Sportsman’s Warehouse” or “Defendant”) with McCoy and Defendant collectively referred
5 to as the “Parties” and each of them as a “Party.” McCoy is an individual residing in California that
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
7 or eliminating hazardous substances contained in consumer products. Sportsman’s Warehouse is
8 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.** McCoy alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of *Caribou Gear*® bags, UPC #
12 837654476468, without providing a clear and reasonable exposure warning pursuant to Proposition
13 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
14 cause cancer and birth defects or other reproductive harm.

15 McCoy alleges that Defendant has exposed individuals to bisphenol A (BPA) from its sales
16 of (a) *Predator Quest*® calls, UPC # 718122104710, (b) *Field Proven Calls*® duck calls, UPC #
17 855857003175, and (c) *Bill Saunders*® hunting calls, UPC # 689076121590, without providing a
18 clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed pursuant to
19 Proposition 65 as a chemical known to the State of California to cause birth defects or other
20 reproductive harm.

21 **1.3 Notices of Violation/Action.** On or about October 7, 2021, McCoy served Outdoor
22 Business Ventures, LLC, Sportsman’s Warehouse, and various public enforcement agencies with
23 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
24 (the “First October Notice”), alleging that Defendant violated Proposition 65 for failing to warn
25 consumers and customers that use of *Caribou Gear*® bags, UPC # 837654476468, expose users in
26 California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged
27 in the First October Notice.

1 On or about October 19, 2021, McCoy served Predator Quest, LLC, Ad-Visor, Sportsman's
2 Warehouse, and various public enforcement agencies with documents entitled "60-Day Notice of
3 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Second October Notice"), alleging
4 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
5 *Predator Quest*® calls, UPC # 718122104710, expose users in California to BPA. No public
6 enforcer has brought and is diligently prosecuting the claims alleged in the Second October Notice.

7 On or about October 19, 2021, McCoy served Field Proven Calls, Inc., Sportsman's
8 Warehouse, and various public enforcement agencies with documents entitled "60-Day Notice of
9 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Third October Notice"), alleging
10 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
11 *Field Proven Calls*® duck calls, UPC # 855857003175, expose users in California to BPA. No
12 public enforcer has brought and is diligently prosecuting the claims alleged in the Third October
13 Notice.

14 On or about October 21, 2021, McCoy served Bill Saunders Calls and Gear, LLC, Quisling
15 Media, Sportsman's Warehouse, and various public enforcement agencies with documents entitled
16 "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Fourth October
17 Notice"), alleging that Defendant violated Proposition 65 for failing to warn consumers and
18 customers that use of *Bill Saunders*® hunting calls, UPC # 689076121590, expose users in
19 California to BPA. No public enforcer has brought and is diligently prosecuting the claims alleged
20 in the Fourth October Notice.

21 The First October Notice, Second October Notice, Third October Notice, and Fourth
22 October Notice are collectively referred herein as the "Notices."

23 1.4 **Action.** On July 18, 2022, McCoy filed a complaint (the "Complaint").

24 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
26 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
27 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
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1 of all claims which were or could have been raised in the Action based on the facts alleged therein
2 and in the Notices.

3 1.6 Defendant denies the material allegations contained in McCoy's Notices and
4 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
5 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
6 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
7 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
8 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
9 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means (a) *Caribou Gear*® bags,
12 UPC # 837654476468, (b) *Predator Quest*® calls, UPC # 718122104710, (c) *Field Proven Calls*®
13 duck calls, UPC # 855857003175, and (d) *Bill Saunders*® hunting calls, UPC # 689076121590,
14 that are manufactured, distributed, shipped into California and offered for sale in California by
15 Sportsman's Warehouse.

16 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
17 entered as a Judgment of the Court.

18 **3. INJUNCTIVE RELIEF: WARNINGS**

19 3.1 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
20 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
21 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
22 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
23 to provide a warning for Covered Products that enter the stream of commerce prior to the date this
24 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or
25 **Alternative Warning** described in §§ 3.1(a), (b), (c), and (d) respectively:

26 (a) **Warning.** For *Caribou Gear*® bags, UPC # 837654476468, the "Warning" shall
27 consist of the statement:
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1 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
2 ethylhexyl) phthalate (DEHP), which is known to the State of California to
3 cause cancer and birth defects or other reproductive harm. For more information
4 go to www.P65Warnings.ca.gov.

5 (b) **Warning.** For *Predator Quest*® calls, UPC # 718122104710, *Field Proven Calls*®
6 duck calls, UPC # 855857003175, and *Bill Saunders*® hunting calls, UPC # 689076121590, the
7 “Warning” shall consist of the statement:

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

12 (c) **Alternative Warning:** Sportsman’s Warehouse may, but is not required to, use the
13 alternative short-form warning as set forth in this § 3.1(c) for *Caribou Gear*® bags, UPC #
14 837654476468, (“**Alternative Warning**”) as follows:

15 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

16 (d) **Alternative Warning:** Sportsman’s Warehouse may, but is not required to, use the
17 alternative short-form warning as set forth in this § 3.1(d) for *Predator Quest*® calls, UPC #
18 718122104710, *Field Proven Calls*® duck calls, UPC # 855857003175, and *Bill Saunders*®
19 hunting calls, UPC # 689076121590, (“**Alternative Warning**”) as follows:

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

21 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
22 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
23 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
24 triangle with a black outline, except that if the sign or label for the Covered Product does not use
25 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
26 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
27 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
28 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
displayed with such conspicuousness, as compared with other words, statements, or designs as to
render it likely to be read and understood by an ordinary individual under customary conditions of
purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of

1 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
2 the use of the Covered Product and shall be at least the same size as those other safety warnings.

3 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
4 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
5 Sportsman's Warehouse offers Products for sale to consumers in California. The requirements of
6 this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked
7 hyperlink using the word "**WARNING**," appears on the product display page, or by otherwise
8 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
9 with this Section, Sportsman's Warehouse shall (a) post the **Warning** or **Alternative Warning** on
10 its own website and, if it has the ability to do so, on the websites of its third-party internet sellers;
11 and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites
12 of its third-party internet sellers, provide such sellers with written notice in accordance with Title
13 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product
14 that have been provided with written notice in accordance with Title 27, California Code of
15 Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the
16 warning requirements herein.

17 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
18 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
19 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
20 Covered Product and exposures at issue after the Effective Date. If consumer language information
21 is provided in a foreign language, Sportsman's Warehouse shall provide the **Warning** in the foreign
22 language.

23 **4. MONETARY TERMS**

24 4.1 **Civil Penalty.** Sportsman's Warehouse shall pay \$1,000.00 as a Civil Penalty
25 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
26 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the
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1 remaining 25% of the Civil Penalty remitted to McCoy, as provided by California Health & Safety
2 Code § 25249.12(d).

3 4.1.1 Within ten (10) days of the Effective Date, Sportsman’s Warehouse shall
4 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of
5 \$750.00; and to (b) “Donatus McCoy” in the amount of \$250.00. Payment owed to McCoy
6 pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire
8 Brodsky Smith
9 Two Bala Plaza, Suite 805
10 Bala Cynwyd, PA 19004

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

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

27 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Sportsman’s
28 Warehouse shall pay \$14,000.00 to Brodsky Smith (“Brodsky Smith”) as complete reimbursement
for McCoy’s attorneys’ fees and costs incurred as a result of investigating, bringing this matter to
the attention of Sportsman’s Warehouse, litigating and negotiating and obtaining judicial approval
of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between McCoy
3 acting on his own behalf, and on behalf of the public interest, and Sportsman’s Warehouse, and its
4 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
9 retailers, including but not limited to, its parents, subsidiaries, and affiliates, franchisees, and
10 cooperative members (“Downstream Releasees”), of all claims for violations of Proposition 65
11 based on exposure to DEHP and/or BPA from use of the Covered Products manufactured,
12 distributed, or sold by Sportsman’s Warehouse prior to the Effective Date as set forth in the Notices.
13 It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that no other
14 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
15 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
16 65 based on exposure to DEHP and/or BPA from use of the Covered Products that was alleged in
17 the Complaint, or that could have been brought pursuant to the Notices against Sportsman’s
18 Warehouse and the Downstream Releasees (“Proposition 65 Claims”). Compliance with the terms
19 of this Consent Judgment constitutes compliance with Proposition 65 with regard to exposure to
20 DEHP and/or BPA from use of the Covered Products.

21 5.2 In addition to the foregoing, McCoy, on behalf of himself, his past and current
22 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
23 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
24 legal action and releases Sportsman’s Warehouse, Defendant Releasees, and Downstream
25 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
26 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
27 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed
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1 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
2 to or arising from Covered Products manufactured, distributed, or sold by Sportsman's Warehouse,
3 Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases
4 in this paragraph, McCoy hereby specifically waives any and all rights and benefits which he now
5 has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California
6 Civil Code, which provides as follows:

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

13 5.3 Sportsman's Warehouse waives any and all claims against McCoy, his attorneys and
14 other representatives, for any and all actions taken, or statements made (or those that could have
15 been taken or made) by McCoy and his attorneys and other representatives, whether in the course
16 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
17 and with respect to Covered Products.

18 **6. INTEGRATION**

19 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein exist
22 or have been made by any Party with respect to the other Party or the subject matter hereof.

23 **7. GOVERNING LAW**

24 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
27 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
28 to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Kevin J. Grochow, Esq.
8 Kutak Rock LLP
9 5 Park Plaza, Ste. 1500
 Irvine, CA 92614

10 And

11 For McCoy:

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

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

17 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and
19 the same document.

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

22 10.1 McCoy agrees to comply with the requirements set forth in California Health &
23 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
24 Defendant agrees it shall support approval of such Motion.

25 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
26 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
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1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 **14. AUTHORIZATION**

19 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this
21 document and certify that he or she is fully authorized by the Party he or she represents to execute
22 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
23 explicitly provided herein each Party is to bear its own fees and costs.

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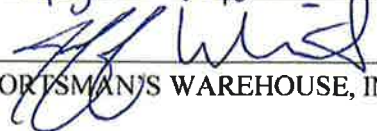
AGREED TO:

AGREED TO:

Date: _____

Date: August 16, 2023

By: _____
DONATUS MCCOY

By: 
SPORTSMAN'S WAREHOUSE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 10/26/23

Date: _____

By: Donatus Mccoy
DONATUS MCCOY

By: _____
SPORTSMAN'S WAREHOUSE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court