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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 ANTHEM SPORTS, LLC,

15 Defendant.

Case No.: CGC-23-603844

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 31, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 6, 2023

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting on behalf of the public interest (hereinafter “Bell”) and Anthem Sports, LLC (“Anthem” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Bell 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. Anthem 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.** Bell alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) and/or bisphenol (A) (BPA) from its sales of (a) Tandem Sport volleyball blocking pads and/or (b) Mueller Sports Medicine face guards, UPC # 074676814575 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. BPA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm

1.3 Notices of Violation/Action.

1.3.1 On January 6, 2022, Bell served Anthem and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “First January Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Tandem Sport volleyball blocking pads exposes users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the First January Notice.

1.3.2 On January 10, 2022, Bell served Anthem and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Second January Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Mueller Sports Medicine face guards exposes

1 users in California to BPA. No public enforcer has brought and is diligently prosecuting the claims
2 alleged in the Second January Notice.

3 1.3.3 The First January Notice and Second January Notice are collectively referred
4 to herein as, the “Notices.”

5 1.4 On January 6, 2023, Bell filed a complaint (the “Complaint”).

6 1.5 On October 18, 2024, Bell filed a first amended complaint (the “First Amended
7 Complaint”).¹

8 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
9 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
10 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
11 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
12 of all claims which were or could have been raised in the Action based on the facts alleged therein
13 and in the Notices.

14 1.7 Defendant denies the material allegations contained in Bell’s Notices and Action
15 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
16 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
17 shall compliance with this Consent Judgment constitute or be construed as an admission by
18 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
19 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
20 responsibilities, and duties of Defendant under this Consent Judgment.

21 **2. DEFINITIONS**

22 2.1 **Covered Products.** The term “Covered Products” means (a) Tandem Sport
23 volleyball blocking pads and/or (b) Mueller Sports Medicine face guards, UPC # 074676814575
24 that are manufactured, distributed, shipped into California and offered for sale in California by
25 Anthem.

26
27 ¹The Complaint and First Amended Complaint are collectively referred to herein as, the
28 “Action.”

1 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
2 entered as a Judgment of the Court.

3 3. **INJUNCTIVE RELIEF: WARNINGS**

4 3.1 **Clear and Reasonable Warning.** Commencing within sixty (60) days after the
5 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
6 this §§ 3.1 and 3.2 must be provided for all Products that Anthem manufacturers, imports,
7 distributes, sells, or offers for sale in California. There shall be no obligation for Anthem to provide
8 an exposure warning for Products that entered the stream of commerce within 60 days after the
9 Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described
10 in §§ 3.1(a) - (d):

11 (a) **Warning.** For the Tandem Sport volleyball blocking pads, the “Warning”
12 shall consist of the statement:

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

16 (b) **Alternative Warning:** For the Tandem Sport volleyball blocking pads,
17 Anthem may, but is not required to, use the alternative short-form warning as set forth in this §
18 3.1(b) (“**Alternative Warning**”) as follows:

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

20 (c) **Warning.** For the Mueller Sports Medicine face guards, the “Warning” shall
21 consist of the statement:

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

25 (d) **Alternative Warning:** For the Mueller Sports Medicine face guards,
26 Anthem may, but is not required to, use the alternative short-form warning as set forth in this §
27 3.1(d) (“**Alternative Warning**”) as follows:

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

1 **3.2** A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Products does not use the color
5 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the
6 height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or
7 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device
8 or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such
9 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
10 read and understood by an ordinary individual under customary conditions of purchase or use. The
11 **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling,
12 or instruction booklet that states other safety warnings, if any, concerning the use of the Product
13 and shall be at least the same size as those other safety warnings. If “consumer information,” as
14 that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
15 amended from time to time, is provided in a foreign language, Anthem shall provide the **Warning**
16 or **Alternative Warning** in the foreign language in accordance with applicable warning regulations
17 adopted by the State of California’s Office of Environmental Health Hazard Assessment
18 (“**OEHHA**”).

19 In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or
20 labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Anthem offers
21 Products for sale to consumers in California. The requirements of this Section shall be satisfied if
22 the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
23 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the
24 warning to the purchaser prior to completing the purchase. To comply with this Section, Anthem
25 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
26 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
27 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
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1 such sellers with written notice in accordance with Title 27, California Code of Regulations, Section
2 25600.2. Third-party internet sellers of the Product that have been provided with written notice in
3 accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in
4 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

5 **3.3 Compliance with Warning Regulations.** The Parties agree that Anthem shall be
6 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
7 Settlement Agreement or by complying with warning regulations adopted by the State of
8 California's OEHHA applicable to the Product and the exposure at issue.

9 **4. MONETARY TERMS**

10 **4.1 Civil Penalty.** Anthem shall pay \$1,000.00 as a Civil Penalty pursuant to Health
11 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
12 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
13 Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

14 **4.1.1** Within ten (10) days of the Effective Date, Anthem shall issue two separate
15 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b) "Ema
16 Bell" in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be delivered
17 to the following payment address:

18 Evan J. Smith, Esquire
19 Brodsky Smith
20 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

23 For United States Postal Service Delivery:
24 Mike Gyurics
25 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:
27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 1001 I Street
2 Sacramento, CA 95814

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

5 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Anthem shall pay
6 \$16,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
7 incurred as a result of investigating, bringing this matter to the attention of Anthem, litigating and
8 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
9 of Civil Procedure § 1021.5.

10 **5. RELEASE OF ALL CLAIMS**

11 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
12 on her own behalf, and on behalf of the public interest, and Anthem, and its parents, shareholders,
13 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
14 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
15 successors and assigns ("Defendant Releasees"), of all claims for violations of Proposition 65 based
16 on exposure to DEHP and/or BPA from use of the Covered Products manufactured, distributed, or
17 sold by Anthem within 60 days after the Effective Date, as set forth in the Notices. It is the Parties'
18 intention that this Consent Judgment shall have preclusive effect such that no other actions by
19 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
20 permitted to pursue and take any action with respect to any violation of Proposition 65 based on
21 exposure to DEHP and/or BPA from use of the Covered Products that was alleged in the Action,
22 or that could have been brought pursuant to the Notices against Anthem and the Defendant
23 Releasees ("Proposition 65 Claims"). Anthem's compliance with the terms of this Consent
24 Judgment constitutes compliance with Proposition 65 by Anthem with regard to exposure to DEHP
25 and/or BPA from use of the Covered Products.

26 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
27 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
28 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action

1 and releases Anthem and Defendant Releasees from any and all manner of actions, causes of action,
2 claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities,
3 damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or
4 unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged
5 violations of Proposition 65 related to or arising from Covered Products manufactured, distributed,
6 or sold by Anthem or Defendant Releasees. With respect to the foregoing waivers and releases in
7 this paragraph, Bell hereby specifically waives any and all rights and benefits which she now has,
8 or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil
9 Code, which provides as follows:

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

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

19 **6. INTEGRATION**

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

24 **7. NOTICES**

25 7.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
27 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
28 by the other party at the following addresses:

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For Defendant:

Keith Casto
Womble Bond Dickinson (US) LLP
1279 Oakmead Pkwy.,
Sunnyvale, CA 94085

For Bell:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

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.

8. COUNTERPARTS; FACSIMILE SIGNATURES

8.1 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.

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

9.1 Bell 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.

9.2 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.

9.3 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.

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10. MODIFICATION

10.1 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.

11. ATTORNEY'S FEES

11.1 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.

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

12. RETENTION OF JURISDICTION

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

13. AUTHORIZATION

13.1 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: _____

Date: 11/1/24

By: _____

By: 

EMA BELL

ANTHEM SPORTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 11/13/24
By: [Signature]
EMABELL

Date: _____
By: _____
ANTHEM SPORTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court