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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 ADVENTURE PRODUCTS, INC.,  
15 SPORTSMAN'S WAREHOUSE, INC.,

16 Defendants.

Case No.: CGC-23-604901

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: July 25, 2024

Hearing Time: 9:30 AM

Complaint Filed: March 2, 2023

1       **1.       INTRODUCTION**

2               **1.1       The Parties.** This Consent Judgment is entered into by and between Ema Bell acting  
3 on behalf of the public interest (hereinafter “Bell”) and Sportsman’s Warehouse, Inc. (“Sportsman’s  
4 Warehouse” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and  
5 each of them as a “Party.” Bell is an individual residing in California that seeks to promote  
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
7 hazardous substances contained in consumer products. Sportsman’s Warehouse is alleged to be a  
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
9 §§ 25249.6 et seq.

10              **1.2       Allegations and Representations.** Bell alleges that Defendant has exposed  
11 individuals to diisononyl phthalate (DINP) from its sales of EGO-S1 Genesis fishing net grips,  
12 UPC # 756841712601 without providing a clear and reasonable exposure warning pursuant to  
13 Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California  
14 to cause cancer.

15              **1.3       Notice of Violation/Action.** On or about March 2, 2022, Bell served Sportsman’s  
16 Warehouse and various public enforcement agencies with documents entitled “60-Day Notice of  
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant  
18 violated Proposition 65 for failing to warn consumers and customers that use of EGO-S1 Genesis  
19 fishing net grips, UPC # 756841712601 expose users in California to DINP. No public enforcer  
20 has brought and is diligently prosecuting the claims alleged in the Notice. On March 2, 2023, Bell  
21 filed a complaint (the “Complaint”).

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 Action 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 Action based on the facts alleged therein  
27 and in the Notice.

1           1.5     Defendant denies the material allegations contained in Bell’s Notice and Complaint  
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
4 shall compliance with this Consent Judgment constitute or be construed as an admission by  
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
7 responsibilities, and duties of Defendant under this Consent Judgment.

8     **2.     DEFINITIONS**

9           2.1     **Covered Products.** The term “Covered Products” means EGO-S1 Genesis fishing  
10 net grips, UPC # 756841712601 that are manufactured, distributed, shipped into California and  
11 offered for sale in California by Sportsman’s Warehouse.

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: WARNINGS**

15           3.1     **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
16 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
17 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,  
18 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant  
19 to provide a warning for Covered Products that enter the stream of commerce prior to the date this  
20 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or  
21 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

23           ⚠ **WARNING:** This product can expose you to chemicals including diisononyl  
24 phthalate (DINP), which is known to the State of California to cause cancer. For  
more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

25           (b)     **Alternative Warning:** Sportsman’s Warehouse may, but is not required to, use the  
26 alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

27           ⚠ **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

28

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 Covered Product does not use  
5     the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
6     than the height of the word “**WARNING:**”. The **Warning or Alternative Warning** shall be affixed  
7     to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or  
8     electronic device or automatic process, providing that the **Warning or Alternative Warning** is  
9     displayed with such conspicuousness, as compared with other words, statements, or designs as to  
10    render it likely to be read and understood by an ordinary individual under customary conditions of  
11    purchase or use. The **Warning or Alternative Warning** may be contained in the same section of  
12    the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning  
13    the use of the Covered Product and shall be at least the same size as those other safety warnings. If  
14    “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section  
15    25600.1(c) as it may be amended from time to time, is provided in a foreign language, Sportsman’s  
16    Warehouse shall provide the **Warning or Alternative Warning** in the foreign language in  
17    accordance with applicable warning regulations adopted by OEHHA.

18           In addition to affixing the **Warning or Alternative Warning** to the Covered Product’s  
19    packaging or labeling, the **Warning or Alternative Warning** shall be posted on websites where  
20    Sportsman’s Warehouse offers Products for sale to consumers in California. The requirements of  
21    this Section shall be satisfied if the **Warning or Alternative Warning**, or a clearly marked  
22    hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise  
23    prominently displaying the warning to the purchaser prior to completing the purchase. To comply  
24    with this Section, Sportsman’s Warehouse shall (a) post the **Warning or Alternative Warning** on  
25    its own website and, if it has the ability to do so, on the websites of its third-party internet sellers;  
26    and (b) if it does not have the ability to post the **Warning or Alternative Warning** on the websites  
27    of its third-party internet sellers, provide such sellers with written notice in accordance with Title  
28

1 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product  
2 that have been provided with written notice in accordance with Title 27, California Code of  
3 Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the  
4 warning requirements herein.

5 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
6 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent  
7 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered  
8 Product and exposures at issue after the Effective Date, or within 90 days of the Effective Date.

9 **4. MONETARY TERMS**

10 **4.1 Civil Penalty.** Sportsman's Warehouse shall pay \$2,000.00 as a Civil Penalty  
11 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with  
12 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the  
13 remaining 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety  
14 Code § 25249.12(d).

15 **4.1.1** Within ten (10) days of the Effective Date, Sportsman's Warehouse shall  
16 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of  
17 \$1,500.00; and to (b) "Ema Bell" in the amount of \$500.00. Payment owed to Bell pursuant to  
18 this Section shall be delivered to the following payment address:

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

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

25 For United States Postal Service Delivery:

26 Mike Gyurics  
27 Fiscal Operations Branch Chief  
28 Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

1 Mike Gyurics  
2 Fiscal Operations Branch Chief  
3 Office of Environmental Health Hazard Assessment  
4 1001 I Street  
5 Sacramento, CA 95814

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

8 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Sportsman's  
9 Warehouse shall pay \$20,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys'  
10 fees and costs incurred as a result of investigating, bringing this matter to the attention of  
11 Sportsman's Warehouse, litigating and negotiating and obtaining judicial approval of a settlement  
12 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

13 **5. RELEASE OF ALL CLAIMS**

14 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting  
15 on her own behalf, and on behalf of the public interest, and Sportsman's Warehouse, and its parents,  
16 shareholders, members, directors, officers, managers, employees, representatives, agents,  
17 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
18 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
19 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
20 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
21 retailers, including but not limited to, Sportsman's Warehouse, and its parents, subsidiaries, and  
22 affiliates, franchisees, and cooperative members ("Downstream Releasees"), of all claims for  
23 violations of Proposition 65 based on exposure to DINP from use of the Covered Products  
24 manufactured, distributed, or sold by Sportsman's Warehouse prior to the Effective Date, or within  
25 90 days of the Effective Date, as set forth in the Notice. It is the Parties' intention that this Consent  
26 Judgment shall have preclusive effect such that no other actions by private enforcers, whether  
27 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and  
28 take any action with respect to any violation of Proposition 65 based on exposure to DINP from  
use of the Covered Products that was alleged in the Complaint, or that could have been brought

1 pursuant to the Notice against Sportsman’s Warehouse and the Downstream Releasees  
2 (“Proposition 65 Claims”), including, but not limited to, any acts of unfair competition as defined  
3 by Business and Professions Code Sections 17200, *et seq.*, or any violation of any other statutory  
4 or common law that have been or could have been asserted in the Complaint. Sportsman’s  
5 Warehouse compliance with the terms of this Consent Judgment constitutes compliance with  
6 Proposition 65 by Sportsman’s Warehouse with regard to exposure to DINP from use of the  
7 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 Sportsman’s Warehouse, Defendant Releasees, and Downstream Releasees from any  
12 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
13 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
14 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
15 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
16 from Covered Products manufactured, distributed, or sold by Sportsman’s Warehouse, Defendant  
17 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this  
18 paragraph, Bell hereby specifically waives any and all rights and benefits which she now has, or in  
19 the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,  
20 which provides as follows:

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

25           5.3     Sportsman’s Warehouse waives any and all claims against Bell, her attorneys and  
26 other representatives, for any and all actions taken, or statements made (or those that could have  
27 been taken or made) by Bell and her attorneys and other representatives, whether in the course of  
28

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
2 and with respect to Covered Products.

3 **6. INTEGRATION**

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

8 **7. GOVERNING LAW**

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

14 7.2 If Proposition 65 or associated regulations are amended to require or allow different  
15 text, font, and/or methods of warning than specified above, Sportsman's, after providing written  
16 notice to Bell, may substitute such text, font, and/or methods of warning for product warnings  
17 required under this Consent Judgment

18 **8. NOTICES**

19 8.1 Unless specified herein, all correspondence and notices required to be provided  
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
21 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
22 by the other party at the following addresses:

23 For Defendant:

24 Bradley Boyer  
25 Kutak Rock LLP  
26 777 S. Figueroa St., Suite 4550  
Los Angeles, CA 90017

27 And

28 For Bell:

1           Evan Smith  
2           Brodsky Smith  
3           9595 Wilshire Blvd., Ste. 900  
            Beverly Hills, CA 90212

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

6           **9. COUNTERPARTS; FACSIMILE SIGNATURES**

7           9.1     This Consent Judgment may be executed in counterparts and by facsimile, each of  
8           which shall be deemed an original, and all of which, when taken together, shall constitute one and  
9           the same document.

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

12          10.1    Bell agrees to comply with the requirements set forth in California Health & Safety  
13          Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
14          Defendant agree it shall support approval of such Motion.

15          10.2    This Consent Judgment shall not be effective until it is approved and entered by the  
16          Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
17          Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
18          days, the case shall proceed on its normal course.

19          10.3    If the Court approves this Consent Judgment and is reversed or vacated by an  
20          appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
21          Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
22          its normal course on the trial court's calendar.

23          **11. MODIFICATION**

24          11.1    This Consent Judgment may be modified only by further stipulation of the Parties  
25          and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

26          **12. ATTORNEY'S FEES**

27          12.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
28          Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions in  
2 a future action arising out of this Consent Judgment pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
8 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
9 document and certify that he or she is fully authorized by the Party he or she represents to execute  
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
11 explicitly provided herein each Party is to bear its own fees and costs.

12 **AGREED TO:**

**AGREED TO:**

13  
14 Date: 6/6/24

Date: 5/16/24

15 By: [Signature]

16 EMA BELL

By: [Signature]

SPORTSMAN'S WAREHOUSE, INC.

17  
18  
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20  
21 Dated: \_\_\_\_\_

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