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

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 RAWLINGS SPORTING GOODS COMPANY,
15 INC., WALMART, INC.,

16 Defendants.

Case No.: CGC-23-607496

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: August 30, 2024

Hearing Time: 9:30 AM

Complaint Filed: July 7, 2023

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Rawlings Sporting Goods
4 Company, Inc. (“Rawlings” or “Defendant”) with Balabbo and Defendant collectively referred to
5 as the “Parties” and each of them as a “Party.” Balabbo 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. Rawlings 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.** Balabbo alleges that Defendant has exposed
11 individuals to bisphenol A (BPA) from its sales of softball fielder’s masks, UPC # 083321226557,
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. BPA is
13 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth
14 defects or other reproductive harm.

15 **1.3 Notice of Violation/Action.** On or about July 11, 2022, Balabbo served Rawlings,
16 Walmart, Inc., and various public enforcement agencies with documents entitled “60-Day Notice
17 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of softball
19 fielder’s masks, UPC # 083321226557, expose users in California to BPA. No public enforcer has
20 brought and is diligently prosecuting the claims alleged in the Notice. On July 7, 2023, Balabbo
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 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 softball fielder’s masks,
10 including but not limited to UPC # 083321226557, that are manufactured, distributed, shipped into
11 California and offered for sale in California by Rawlings.

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: REFORMULATION AND/OR WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Rawlings directly
17 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
18 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
19 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
20 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
21 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean any Covered
23 Products subject to this Settlement Agreement that achieve a wipe test result equal to, or less than,
24 3 micrograms of BPA.

25 3.2.1 **Wipe Test Protocol.** The “Wipe Test Protocol” for determining if a Covered
26 Product is a Reformulated Product is as follows:

1 **3.2.1(a)** Accessible sample surface of Covered Product is rubbed by
2 wipe sample swabs/paper wetted with HPLC grade water heated to 98 °F sixty (60) times
3 along longitudinal, latitudinal and diagonal orientation.

4 **3.2.1(b)** Wipe sample swabs/paper is extracted with methanol on wrist
5 shaker for one (1) hour and analyzed by LC/MS/MS.

6 **3.3 Clear and Reasonable Warning.** As of ninety (90) days after the Effective Date,
7 and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and
8 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes,
9 sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation
10 for Defendant to provide a warning for Covered Products that are manufactured or produced prior
11 to ninety (90) days after the Effective Date. The warning shall consist of either the **Warning** or
12 **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

20 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
21 “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word
22 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
23 outline, except that if the sign or label for the Covered Product is not printed using the color yellow,
24 the symbol may be printed in black and white. The symbol must be in a size no smaller than the
25 height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or
26 printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic
27 device or automatic process, providing that the **Warning** or **Alternative Warning** is displayed
28 with such conspicuousness, as compared with other words, statements, designs or devices on the
 label, labeling, or sign as to render it likely to be read and understood by an ordinary individual

1 under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be
2 contained in the same section of the packaging, labeling, or instruction booklet that states other
3 safety warnings, if any, concerning the use of the Covered Product and shall be at least the same
4 size as those other safety warnings. If “consumer information,” as that term is defined in Title 27,
5 California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is
6 provided in a foreign language, Rawlings shall provide the **Warning** or **Alternative Warning** in
7 the foreign language in accordance with applicable warning regulations adopted by OEHHA.

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

19 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
20 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
21 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
22 Covered Product and exposures at issue after the Effective Date.

23 **4. MONETARY TERMS**

24 4.1 **Settlement Payment.** “Settlement Payment” shall mean all monies paid pursuant to
25 this Agreement, including the Civil Penalty and Reimbursement of Fees and Costs payments, to
26 resolve claims alleged in the Notice.
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1 4.2 **ACH/WIRE Instructions.** Rawlings shall remit the Settlement Payment by Wire
2 or ACH transfer. At the time of transfer, Rawlings shall email Evan Smith at
3 esmith@brodskysmith.com to inform him of the wire transfer and the method of transfer, (i.e. Wire
4 of ACH transfer). Brodsky Smith shall provide Rawlings with wire/ACH transfer instructions and
5 account information by the Effective Date.

6 4.3 **Civil Penalty.** Within ten (10) days of the Effective Date, Rawlings shall pay
7 \$2,000.00 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be
8 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
9 remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Balabbo, as provided
10 by California Health & Safety Code § 25249.12(d).

11 4.4 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Rawlings shall pay
12 \$23,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs
13 incurred as a result of investigating, bringing this matter to the attention of Rawlings, litigating and
14 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
15 of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

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

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

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

28 5.3 Rawlings waives any and all claims against Balabbo, her attorneys and other
representatives, for any and all actions taken, or statements made (or those that could have been
taken or made) by Balabbo and her attorneys and other representatives, whether in the course of

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 **8. NOTICES**

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

19 For Defendant:

20 Megan Caldwell
21 Husch Blackwell
22 1801 Wewatta St., Ste. 1000
Denver, CO 80202

23 And

24 For Balabbo:

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

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

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

19 **11. MODIFICATION**

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

22 **12. ATTORNEY'S FEES**

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

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

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1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood, and agree to all of the terms and conditions of this
7 document and certify that he or she is fully authorized by the Party he or she represents to execute
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
9 explicitly provided herein each Party is to bear its own fees and costs.

10 **AGREED TO:**

AGREED TO:

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12 Date: _____

Date: 07/11/2024

Larry Beilenson

13 By: _____

By: 6E0C8F294D02DEF616BC5069175C9EF4 contractworks

14 **PRECILA BALABBO**

**RAWLINGS SPORTING GOODS
COMPANY, INC.**

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

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18 Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 7 / 12 / 24

Date: _____

By: *Precila Balabbo*
PRECILA BALABBO

By: _____
RAWLINGS SPORTING GOODS
COMPANY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court