

1 **1.3** On April 14, 2021, CEH served a 60-Day Notice of Violation under
2 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
3 & Safety Code § 25249.5, *et seq.*) (“Notice”) on Settling Defendant, the California Attorney
4 General, the District Attorneys of every County in the State of California, and the City Attorneys
5 for every City in the State of California with a population greater than 750,000. The Notice
6 alleges violations of Proposition 65 with respect to the presence of NDEA in latex resistance
7 bands that are manufactured, distributed, and/or sold by Settling Defendant.

8 **1.4** On July 22, 2021, CEH filed the above-captioned action in the Superior Court
9 of California for Alameda County. On September 30, 2021, CEH amended the complaint naming
10 Settling Defendant as a defendant in this action.

11 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
12 Court has jurisdiction over the allegations of violations contained in the operative Complaint in
13 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to
14 the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this
15 Court has jurisdiction to enter this Consent Judgment.

16 **1.6** Nothing in this Consent Judgment is, or shall be construed as, an admission by
17 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
18 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
19 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
20 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
21 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
22 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
23 this action.

24 **2. DEFINITIONS**

25 **2.1** “Covered Products” means latex resistance bands.

26 **2.2** “Effective Date” means the date on which this Consent Judgment is entered by
27 the Court.

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1 **3. INJUNCTIVE RELIEF**

2 **3.1 Reformulation of Covered Products.** Settling Defendant has until up to six
3 (6) months from the Effective Date to reformulate the Covered Product (the “Reformulation
4 Date”). After the Reformulation Date, Settling Defendant shall not manufacture, distribute, sell,
5 or offer for sale any Covered Product that contains NDEA in excess of 20 parts per billion
6 (“ppb”) as determined using a modified version of ISO 19577-2019 (the “Test Protocol”) by an
7 independent accredited laboratory that will be sold or offered for sale to California consumers. In
8 the event that CEH enters into a consent decree or out-of-court settlement agreement with a party
9 other than Settling Defendant in this lawsuit or in a different lawsuit regarding latex resistance
10 bands that are similar to the Covered Products, and in so doing agrees to injunctive relief
11 permitting a higher maximum level of NDEA in the covered products, then CEH agrees to
12 provide Settling Defendant notice of the higher maximum within ten (10) business days of the
13 grant of the higher maximum to the other party and Settling Defendant shall have ten (10)
14 business days to notify CEH if Settling Defendant desires to be granted the higher maximum by
15 CEH. In the event that Settling Defendant makes such election, it shall prepare a modified
16 Consent Judgment and obtain court approval thereof in accordance with Section 6.1 below.

17 **3.2 Specification to and Certification from Suppliers.** Following the Effective
18 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products requiring
19 that Covered Products not contain NDEA in excess of 20 ppb. No later than the Reformulation
20 Date, for any sales thereafter of Covered Products in California, Settling Defendant shall obtain
21 and maintain written certification(s) from its suppliers of Covered Products confirming that all
22 such Covered Products received by Settling Defendant for distribution in California do not
23 contain NDEA in excess of 20 ppb as determined using the Test Protocol by an independent
24 accredited laboratory. Settling Defendant shall not be deemed in violation of the requirements of
25 Section 3.1 for any Covered Product to the extent: (a) it has relied on a written certification from
26 its vendor that supplied a Covered Product that such Covered Product does not contain NDEA in
27 excess of 20 ppb as determined using the Test Protocol by an independent accredited laboratory
28 and such certification has not previously been demonstrated to be invalid, or (b) it has obtained a

1 test result from an independent third party accredited laboratory reporting that the Covered
2 Product does not contain NDEA in excess of 20 ppb as determined using the Test Protocol.

3 **3.3 Clear and Reasonable Warnings.**

4 3.3.1 **Election to Warning.** If Settling Defendant is unable to comply with the
5 Reformulation provision set forth in Section 3.1 or otherwise elects to permanently avail itself of
6 the warning option provided by this Section 3.3, Settling Defendant shall provide written notice
7 to CEH prior to the Reformulation Date, and Settling Defendant concurrently shall make the
8 additional payment specified in Section 5.2.5 below. Settling Defendant shall then provide Clear
9 and Reasonable Warnings for each Covered Product sold in California. A Clear and Reasonable
10 Warning under this Agreement shall state:



11 **WARNING:** This product can expose you to chemicals including N-
12 Nitrosodiethylamine (NDEA), which is known to the State of California to
13 cause cancer. For more information go to www.P65Warnings.ca.gov.

14 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be
15 preceded by the yellow warning triangle symbol depicted above, provided however, the
16 symbol may be printed in black and white if the Covered Product label is produced without
17 using the color yellow. This warning statement shall be prominently displayed on the outer
18 packaging of the Covered Product and shall be displayed with such conspicuousness, as
19 compared with other words, statements or designs as to render it likely to be seen, read and
20 understood by an ordinary individual prior to sale. For internet, catalog or any other sale
21 where the consumer is not physically present, the warning statement shall be displayed in
22 such a manner that it is likely to be read and understood by an ordinary individual prior to the
23 authorization of or actual payment.

24 **4. ENFORCEMENT**

25 **4.1** CEH may, by motion or application for an order to show cause before the
26 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
27 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
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1 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth
2 the basis for the alleged violation. The Parties shall then meet and confer regarding the basis for
3 CEH's anticipated motion or application in an attempt to resolve it informally. Should such
4 attempts at meeting and conferring fail, CEH may file its enforcement motion or application. In
5 ruling on any motion to enforce the terms of this section, the Court may, in addition to ordering
6 compliance with the terms of this Consent Judgment, employ such remedies as necessary to
7 ensure compliance with Proposition 65 including, but not limited to, requiring Settling Defendant
8 to provide warnings. Should CEH prevail on any motion or application to enforce a material
9 violation of this Consent Judgment under this Section, CEH shall be entitled to its reasonable
10 attorneys' fees and costs incurred as a result of such motion or application. Should Settling
11 Defendant prevail on any motion or application under this Section, Settling Defendant may be
12 awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a
13 finding by the court that CEH's prosecution of the motion or application was not in good faith.

14 **5. PAYMENTS**

15 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the
16 Effective Date, Settling Defendant shall pay the total sum of \$20,000.00 as a settlement payment
17 as further set forth in this Section. Any payment by Settling Defendant shall be deemed to be
18 timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the
19 United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before
20 the deadline set forth in this paragraph.

21 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant
22 shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth
23 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
24 subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of
25 \$100 for each day the full payment is not received after the applicable payment due date set forth
26 in Section 5.1. The late fees required under this Section shall be recoverable, together with
27 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this
28 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below

1 between the following categories and made payable as follows:

2 5.2.1 \$2,700 as a civil penalty pursuant to Health & Safety Code §
3 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
4 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental
5 Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
6 payment for \$2,025 shall be made payable to OEHHA and associated with taxpayer identification
7 number 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The CEH portion of the civil penalty payment for \$675 shall be made payable to the Center for
21 Environmental Health and associated with taxpayer identification number 94-3251981. This
22 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
23 94117.

24 5.2.2 \$1,900 as an Additional Settlement Payment (“ASP”) to CEH
25 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
26 3204. CEH will use these funds to support CEH programs and activities that seek to educate the
27 public about toxic chemicals, including carcinogenic nitrosamines such as NDEA and NDMA,
28 work with industries interested in moving toward safer alternatives, advocate with government,
businesses, and communities for business practices that are safe for human health and the

1 environment, and thereby reduce the public health impacts and risks of exposure to NDEA,
2 NDMA, and other toxic chemicals in consumer products sold in California. CEH shall obtain and
3 maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
4 provide such documentation to the Attorney General within thirty (30) days of any request from
5 the Attorney General. The payment pursuant to this Section shall be made payable to the Center
6 for Environmental Health and associated with taxpayer identification number 94-3251981. This
7 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
8 94117.

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10 5.2.3 \$15,400 as a reimbursement of a portion of CEH's reasonable
11 attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two
12 separate checks as follows: (a) \$13,000 payable to the Lexington Law Group and associated with
13 taxpayer identification number 94-3317175; and (b) \$2,400 payable to the Center for
14 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
15 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
16 CA 94117.

17 5.2.4 To summarize, Settling Defendant shall deliver checks made out to
18 the payees and in the amounts set forth below:

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20 Payee	21 Type	22 Amount	23 Deliver To
24 OEHHA	25 Penalty	26 \$2,025	27 OEHHA per Section 28 5.2.1
Center For Environmental Health	Penalty	\$675	LLG
Center For Environmental Health	ASP	\$1,900	LLG
Lexington Law Group	Fee and Cost	\$13,000	LLG
Center For Environmental Health	Fee and Cost	\$2,400	LLG

1 5.2.5 If Settling Defendant avails itself of the permanent warning option
2 provided for by Section 3.3, Settling Defendant shall make an additional payment of \$5,000.00 to
3 be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as
4 provided in Section 3.2. Of the additional payment, \$2,860 shall be a civil penalty, apportioned
5 in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of
6 California’s Office of Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the
7 OEHHA portion of the civil penalty payment of \$2,145 shall be made payable to OEHHA,
8 associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set
9 forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$715
10 shall be made payable to the Center for Environmental Health and associated with taxpayer
11 identification number 94-3251981. The remaining \$2,140 of the additional payment shall be
12 made payable to the Center for Environmental Health and associated with taxpayer identification
13 number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH
14 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

15 **5.3** Notwithstanding the provisions of the Enforcement of Judgments Law and Code of
16 Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its
17 payment obligations under this Section 5, in addition to any other enforcement mechanism
18 available to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor’s
19 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to
20 submit to any such debtor’s examination ordered by the Court, CEH may seek an order holding
21 Settling Defendant in contempt of Court.

22 **6. MODIFICATION**

23 **6.1 Written Consent.** This Consent Judgment may be modified from time to
24 time by express written agreement of the Parties with the approval of the Court, or by an order of
25 this Court upon motion and in accordance with law.

26 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
27 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
28 modify the Consent Judgment. The Parties acknowledge and agree that a change in the no

1 significant risk level for NDEA may provide a reason for modification of Sections 3.1, 3.2 and
2 3.3 of this Consent Judgment.

3 **7. CLAIMS COVERED AND RELEASED**

4 **7.1** This Consent Judgment is a full, final and binding resolution between CEH on
5 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
6 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
7 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities
8 to which Settling Defendant directly or indirectly distribute or sell Covered Products, including
9 but not limited to Dick’s Sporting Goods, Inc., and other distributors, wholesalers, customers,
10 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
11 violation of Proposition 65 based on failure to warn about alleged exposure to NDEA contained
12 in Covered Products that were sold, distributed or offered for sale by Settling Defendant prior to
13 the Effective Date.

14 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and
15 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and
16 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
17 statutory or common law claims that have been or could have been asserted by CEH regarding a
18 violation of Proposition 65 and/or the failure to warn about exposure to NDEA arising in
19 connection with Covered Products manufactured by or for Settling Defendant prior to the
20 Effective Date .

21 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant
22 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees
23 and its Downstream Defendant Releasees with respect to any alleged failure to warn about NDEA
24 in Covered Products manufactured, distributed or sold by Settling Defendant after the Effective
25 Date for as long as Settling Defendant continue testing in accordance with Section 3.2.

26 **8. NOTICE**

27 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the
28 notice shall be sent by electronic mail to:

1 Mark Todzo
2 Lexington Law Group
3 mtodzo@lexlawgroup.com

4 **8.2** When Settling Defendant is entitled to receive any notice under this Consent
5 Judgment, the notice shall be sent by electronic mail to:

6 James Colopy
7 Farella Braun + Martel
8 jcolopy@fbm.com

9 **8.3** Any Party may modify the person and address to whom the notice is to be sent
10 by sending the other Party notice by first class and electronic mail.

11 **9. COURT APPROVAL**

12 **9.1** This Consent Judgment shall become effective upon entry by the Court. CEH
13 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
14 shall support entry of this Consent Judgment.

15 **9.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
16 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
17 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

18 **10. GOVERNING LAW AND CONSTRUCTION**

19 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State
20 of California.

21 **11. ATTORNEYS' FEES**

22 **11.1** Should CEH prevail on any motion, application for an order to show cause, or
23 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
24 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
25 Settling Defendant prevail on any motion application for an order to show cause or other
26 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
27 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
28 or application lacked substantial justification. For purposes of this Consent Judgment, the term
substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,

1 Code of Civil Procedure §§ 2016, *et seq.*

2 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear
3 its own attorneys' fees and costs.

4 **11.3** Nothing in this Section 10 shall preclude a Party from seeking an award of
5 sanctions pursuant to law.

6 **12. ENTIRE AGREEMENT**

7 **12.1** This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
9 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
10 merged herein and therein. There are no warranties, representations, or other agreements between
11 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
12 implied, other than those specifically referred to in this Consent Judgment have been made by any
13 Party hereto. No other agreements not specifically contained or referenced herein, oral or
14 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
15 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
16 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
17 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
18 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
19 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
20 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

21 **13. SUBMISSION OF REPORTS AND DATA TO CEH**

22 **13.1** For any report or information that Settling Defendant submit to CEH pursuant
23 to this Consent Judgment, Settling Defendant may make such a submission subject to the terms of
24 a protective order.

25 **14. RETENTION OF JURISDICTION**

26 **14.1** This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

16. NO EFFECT ON OTHER SETTLEMENTS

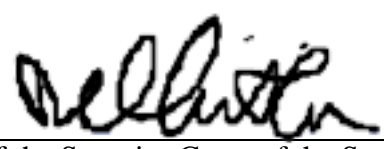
16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are different than those contained in this Consent Judgment.

17. EXECUTION IN COUNTERPARTS

17.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: R } ^ A G E , 2022



Judge of the Superior Court of the State of California

Delbert Gee / Judge

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IT IS SO STIPULATED:

Dated: March 29, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

Dated: March 24, 2022

MERRITHEW INTERNATIONAL INC.



Signature
Lindsay G Merrithew

Printed Name
CEO

Title