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CENTER FOR ENVIRONMENTAL HEALTH

FILED
San Francisco County Superior Court
NOV 29 2022
CLERK OF THE COURT
BY: *[Signature]* Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

EASY SPIRIT LLC, *et al.*,

Defendants.

Case No. CGC-22-598022

**[PROPOSED] CONSENT
JUDGMENT AS TO HYPNOTIC
HATS, LTD.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant Hypnotic Hats, Ltd. (“Settling Defendant”). CEH
4 and Settling Defendant are referred to collectively as the “Parties.”

5 1.2 Settling Defendant manufactures, distributes, and/or sells types of products
6 identified on the Exhibit A that contain Bisphenol A (“BPA”) in the State of California or has
7 done so in the past.

8 1.3 On September 1, 2021, CEH served a 60-Day Notice of Violation under
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney
11 General, the District Attorneys of every County in the State of California, and the City Attorneys
12 for every City in the State of California with a population greater than 750,000. The Notice
13 alleges violations of Proposition 65 with respect to the presence of BPA in socks made primarily
14 of polyester with spandex.

15 1.4 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
16 CEH filed the operative First Amended Complaint naming Settling Defendant as a defendant
17 (“Complaint”).

18 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
19 Court has jurisdiction over the allegations of violations contained in the operative Complaint
20 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
21 alleged in the Complaints; (ii) venue is proper in the County of San Francisco; and (iii) this Court
22 has jurisdiction to enter this Consent Judgment.

23 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
25 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
2 this action.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means socks made primarily of polyester with spandex
5 that are manufactured, distributed, or sold by each Settling Defendant.

6 2.2 "Effective Date" means the date on which this Consent Judgment is entered by
7 the Court.

8 2.3 "Test Protocol" means a standard method for measuring total BPA content as
9 set forth in Exhibit A.

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Reformulation of Covered Products.** Within six months following the
12 Effective Date (the "Reformulation Date"), Settling Defendant shall not manufacture, distribute,
13 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes
14 of this Consent Judgment, a product "contains BPA" if BPA is an intentionally added ingredient
15 in either the Covered Product or a component of the Covered Product, or contains in excess of 1
16 part per million BPA as measured by the Test Protocol. Settling Defendant shall not replace the
17 BPA with any other phenol (such as Bisphenol S or BPS).

18 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
19 Date, Settling Defendant shall issue specifications to their suppliers of Covered Products
20 requiring that Covered Products not contain BPA or any other phenol (such as Bisphenol S or
21 BPS).

22 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
23 Section 3 shall not apply to Covered Products that Settling Defendant has purchased prior to the
24 Effective Date, including but not limited to Covered Products in distribution centers, in inventory,
25 or at retail locations.

26 **4. ENFORCEMENT**

27 4.1 Plaintiff may, by motion or application for an order to show cause before the
28 Superior Court of San Francisco County, enforce the terms and conditions contained in this

1 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
2 Section 3 above, Plaintiff shall provide Settling Defendant(s) with a Notice of Violation and a
3 copy of any test results which purportedly support the Notice of Violation. The Parties shall then
4 meet and confer regarding the basis for the anticipated motion or application in an attempt to
5 resolve it informally, including providing Settling Defendant(s) with a reasonable opportunity of
6 at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution
7 fail, Plaintiff may file an enforcement motion or application. This Consent Judgment may only
8 be enforced by the Parties. To the extent that Settling Defendant can demonstrate that it
9 purchased the Covered Product subject to the Notice of Violation prior to the Effective Date, the
10 sale of such Covered Product will not constitute a violation of the terms of this Consent
11 Judgment.

12 **5. PAYMENTS**

13 5.1 **Total Settlement Payment.** Within five (5) business days of the Effective
14 Date, Settling Defendant shall pay the total settlement amount of \$60,000 as a settlement payment
15 as further set forth in this Section.

16 5.1.1 A civil penalty in the amount of \$8,000 pursuant to Health & Safety
17 Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety
18 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
19 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
20 payment for \$6,000 shall be made payable to OEHHA and associated with taxpayer identification
21 number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B

1 Sacramento, CA 95814

2 The CEH portion of the civil penalty payment for \$2,000 shall be made
3 payable to the Center for Environmental Health and associated with taxpayer identification number
4 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
5 Francisco, CA 94117.

6 5.1.2 An Additional Settlement Payment (“ASP”) in the amount of
7 \$6,000 to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and
8 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work
9 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles
10 and other products. CEH may also use a portion of such funds to monitor compliance with this
11 Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance.
12 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
13 activities and CEH agrees to provide such documentation to the Attorney General within thirty
14 days of any request from the Attorney General. The payment pursuant to this Section shall be
15 made payable to the Center for Environmental Health and associated with taxpayer identification
16 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
17 Street, San Francisco, CA 94117.

18 5.1.3 Settling Defendant shall pay \$46,000 as a reimbursement of a
19 portion of Plaintiff’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost
20 reimbursement shall be made in two separate checks as follows: (a) \$38,900 payable to the
21 Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b)
22 \$7,100 payable to the Center for Environmental Health and associated with taxpayer
23 identification number 94-3251981. Both of these payments shall be delivered to Lexington Law
24 Group, 503 Divisadero Street, San Francisco, CA 94117.

25 5.1.4 To summarize, Settling Defendants shall deliver checks made out to the
26 payees and in the amounts set forth below:
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Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$6,000	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$2,000	LLG
Center For Environmental Health	ASP	\$6,000	LLG
Lexington Law Group	Fee and Cost	\$38,900	LLG
Center For Environmental Health	Fee and Cost	\$7,100	LLG

5.2 **Failure to Comply With Payment Obligations.** Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the event that Settling Defendant does not comply fully with its payment obligations under Section 5, in addition to any other enforcement mechanism available to CEH, CEH may obtain an order requiring Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding Settling Defendant in contempt of Court.

6. MODIFICATION

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

6.2 **Alternative Compliance Standards.** If either (i) CEH enters into a court-approved settlement or a court enters a final judgment in a Proposition 65 enforcement action over exposure to BPA from socks made primarily of polyester with spandex that includes a different reformulation level than that set forth in Section 3.1; or (ii) the State of California adopts a different definition or method for determining exposure to BPA for purposes of Proposition 65, the Parties will meet and confer in good faith on conforming modifications to this Consent Judgment. If the Parties are unable to reach agreement, either Party may move the Court to modify the Consent Judgment.

1 6.3 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
2 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
3 modify the Consent Judgment.

4 **7. CLAIMS COVERED AND RELEASED**

5 7.1 Provided that Settling Defendant complies in full with its obligations under
6 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
7 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
8 that are under common ownership, directors, officers, employees, agents, shareholders,
9 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
10 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
11 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
12 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
13 Covered Products that were sold by Settling Defendant prior to the Effective Date.

14 7.2 Provided that Settling Defendant complies in full with its obligations under
15 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
16 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
17 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
18 common law claims that have been or could have been asserted by CEH individually regarding
19 the failure to warn about exposure to BPA contained in Covered Products sold by Settling
20 Defendant prior to the Effective Date.

21 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
22 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
23 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
24 warn about BPA in Covered Products manufactured, distributed, or sold by Settling Defendant
25 after the Effective Date.

26 7.4 Nothing in this Section 7 affects Plaintiff’s right to commence or prosecute an
27 action under Proposition 65 against any person other than Settling Defendant, Defendant
28 Releasees, or Downstream Defendant Releasees.

1 **8. NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Mark N. Todzo
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 mtodzo@lexlawgroup.com

9 8.2 When any Settling Defendant is entitled to receive any notice under this
10 Consent Judgment, the notice shall be sent by first class and electronic mail to:

11 Steven Soule
12 Kirkland & Ellis LLP
13 555 South Flower Street
14 Los Angeles, CA 90071
15 steven.soule@kirkland.com

16 8.3 Any Party may modify the person and address to whom the notice is to be sent
17 by sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court.
20 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling
21 Defendant shall support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
23 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
24 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

25 **10. GOVERNING LAW AND CONSTRUCTION**

26 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
27 of California.

28 **11. ATTORNEYS' FEES**

 11.1 Should Plaintiff prevail on any motion, application for an order to show cause,
or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to
its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should

1 a Settling Defendant prevail on any motion application for an order to show cause or other
2 proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs
3 against Plaintiff as a result of such motion or application upon a finding by the Court that
4 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes
5 of this Consent Judgment, the term substantial justification shall carry the same meaning as used
6 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

7 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
8 its own attorneys' fees and costs.

9 11.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

11 **12. ENTIRE AGREEMENT**

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

1 **13. SUCCESSORS AND ASSIGNS**

2 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
3 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
4 assigns of any of them.

5 **14. RETENTION OF JURISDICTION**

6 1.1 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

9 1.2 Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
11 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

12 **16. NO EFFECT ON OTHER SETTLEMENTS**

13 1.3 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
14 against an entity other than Settling Defendant on terms that are different than those contained in
15 this Consent Judgment.

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IT IS SO ORDERED:

Dated: Nov. 29, 2022


Judge of the Superior Court

ETHAN P. SCHULMAN

IT IS SO STIPULATED:

Dated: June 27, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

Dated: _____, 2022

HYPNOTIC HATS, LTD.

Signature

Printed Name

Title

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IT IS SO ORDERED:

Dated: _____, 2022

Judge of the Superior Court

IT IS SO STIPULATED:

Dated: _____, 2022

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green
Chief Executive Officer

Dated: 8/3, 2022

HYPNOTIC HATS, LTD.



Signature

Howard Levy

Printed Name

President

Title

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EXHIBIT A

“Test Protocol” as defined in Section 2.3 of the Consent Judgment means the following test method:

- a. Obtain homogenized 1 gram sample of the sock by shredding the sock and taking a representative 1-gram sample of the shreds.
- b. Add the 1-gram sock sample to 20 ml acetonitrile
- c. Heat the solution using a hot plate for 3 hours at 40 degrees Celsius
- d. Analytical method - Isotope dilution LC-Tandem MS (LC-MS)
- e. Limit of detection 1 ppm
- f. Reporting -- BPA concentration mg of BPA per kg of sample