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Counsel for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

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.

FILED
San Francisco County Superior Court
MAR 23 2023
CLERK OF THE COURT
BY:  Deputy Clerk

Case No. CGC-22-598022
Assigned For All Purposes To The
Honorable Ethan P. Schulman, Dept. 304

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
FIT FOR LIFE LLC**

1 **1. INTRODUCTION**

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

5 1.2 Settling Defendant manufactures, distributes, licenses, and/or sells socks made
6 primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the State of California
7 (“Covered Products”) or has 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”) on 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 (“Complaint”) naming Settling Defendant as a
17 defendant in the action.

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 Complaint; (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, licensed or sold by 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 method for measuring total BPA content as set forth
9 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 3.4 **Clear and Reasonable Warnings.**

27 3.4.1 **Election to Warn.** If Settling Defendant is unable to comply with the
28 Reformulation provision set forth in Section 3.1 or otherwise elects to permanently avail itself of

1 the warning option provided by this Section 3.4, Settling Defendant shall provide written notice
2 to CEH prior to the Reformulation Date, and Settling Defendant concurrently shall make the
3 additional payment specified in Section 5.2.5 below. Settling Defendant shall then provide Clear
4 and Reasonable Warnings for each Covered Product sold in California. A Clear and Reasonable
5 Warning under this Agreement shall state:



6 **WARNING:** This product can expose you to chemicals including Bisphenol
7 A (BPA) which is known to the State of California to be a developmental and
8 female reproductive toxicant. For more information go to
9 www.P65Warnings.ca.gov.

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

20 **4. ENFORCEMENT**

21 / 4.1 Plaintiff may, by motion or application for an order to show cause before the
22 Superior Court of San Francisco County, enforce the terms and conditions contained in this
23 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
24 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy
25 of any test results which purportedly support the Notice of Violation. The Parties shall then meet
26 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it
27 informally, including providing Settling Defendant(s) with a reasonable opportunity of at least
28 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,

1 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be
2 enforced by the Parties.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** Within 10 business days of the Effective
5 Date, Settling Defendant shall pay the total sum of \$20,000 and no cents as a settlement payment
6 as further set forth in this Section. Any payment by Settling Defendant shall be deemed to be
7 timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the
8 United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before
9 the deadline set forth in this paragraph.

10 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant
11 shall be paid in five separate checks in the amounts specified below and delivered as set forth below.
12 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a
13 joint and several stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
14 day the full payment is not received after the applicable payment due date set forth in Section 5.1.
15 The late fees required under this Section shall be recoverable, together with reasonable attorneys'
16 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The
17 funds paid by Settling Defendant shall be allocated as set forth below between the following
18 categories and made payable as follows:

19 5.2.1 \$2,700 as a civil penalty pursuant to Health & Safety Code §
20 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
21 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
22 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
23 \$2,025 shall be made payable to OEHAA and associated with taxpayer identification number 68-
24 0284486/ This payment shall be delivered as follows:

25 For United States Postal Service Delivery:

26 Attn: Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B

1 Sacramento, CA 95812-4010

2 For Non-United States Postal Service Delivery:

3 Attn: Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 1001 I Street, MS #19B
7 Sacramento, CA 95814

8 The CEH portion of the civil penalty payment for \$675 shall be made payable to the Center for
9 Environmental Health and associated with taxpayer identification number 94-3251981. This
10 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
11 94117.

12 5.2.2 \$1,900 as an Additional Settlement Payment (“ASP”) to CEH
13 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
14 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
15 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
16 textiles and other products. CEH may also use a portion of such funds to monitor compliance
17 with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm
18 compliance.

19 5.2.3 \$15,400 as a reimbursement of a portion of CEH’s reasonable
20 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two
21 separate checks as follows: (a) \$13,000 payable to the Lexington Law Group and associated with
22 taxpayer identification number 94-3317175; and (b) \$2,400 payable to the Center for
23 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
24 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
25 CA 94117.

26 5.2.1 To summarize, Settling Defendant shall deliver checks made out to the
27 payees and in the amounts set forth below:
28

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$2,025	OEHHA per Section 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

5.3 If Settling Defendant avails itself of the permanent warning option provided for by Section 3.3, Settling Defendant shall make an additional payment of \$5,000 and no cents to be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as provided in Section 3.2. Of the additional payment, \$2,000 shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of \$1,500 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$500 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The remaining \$1,500 of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.4 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its payment obligations under this Section 5, in addition to any other enforcement mechanism available

1 to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor's examination in
2 the Alameda County Superior Court. In the event that Settling Defendant fails to submit to any
3 such debtor's examination ordered by the Court, CEH may seek an order holding Settling
4 Defendant in contempt of Court.

5 **5.5 Failure to Comply With Payment Obligations.** Notwithstanding the
6 provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the
7 event that Settling Defendant does not comply fully with its payment obligations under Section 5,
8 in addition to any other enforcement mechanism available to CEH, CEH may obtain an order
9 requiring Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant
10 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
11 Settling Defendant in contempt of Court.

12 **6. MODIFICATION**

13 **6.1 Written Consent.** This Consent Judgment may be modified from time to
14 time by express written agreement of the Parties with the approval of the Court, or by an order of
15 this Court upon motion and in accordance with law.

16 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Consent Judgment.

19 **7. CLAIMS COVERED AND RELEASED**

20 **7.1** Provided that Settling Defendant complies in full with its obligations under
21 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
22 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
23 that are under common ownership, directors, officers, employees, agents, shareholders,
24 successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling
25 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
26 retailers, franchisees, licensors and licensees ("Downstream Defendant Releasees"), of any
27 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
28 Covered Products that were purchased by Settling Defendant prior to the Effective Date.

1 7.2 Provided that Settling Defendant complies in full with its obligations under
2 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
3 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
4 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
5 common law claims that have been or could have been asserted by CEH individually regarding
6 the failure to warn about exposure to BPA contained in Covered Products purchased by Settling
7 Defendant prior to the Effective Date.

8 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
9 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
10 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
11 warn about BPA in Covered Products manufactured, distributed, or sold by Settling Defendant
12 after the Effective Date.

13 7.4 Nothing in this Section 7 affects Plaintiff's right to commence or prosecute an
14 action under Proposition 65 against any person other than Settling Defendant, Defendant
15 Releasees, or Downstream Defendant Releasees.

16 **8. NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Mark N. Todzo
20 Lexington Law Group
21 503 Divisadero Street
22 San Francisco, CA 94117
23 mtodzo@lexlawgroup.com

24 8.2 When Settling Defendant is entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by first class and electronic mail to:

26 James Robert Maxwell
27 Robert Joseph O'Donnell
28 311 California Street, 10th Floor
 San Francisco, CA 94104
 JMaxwell@rjo.com

 8.3 Any Party may modify the person and address to whom the notice is to be sent

1 by sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective upon entry by the Court.
4 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling
5 Defendant shall support entry of this Consent Judgment.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
11 of California.

12 **11. ATTORNEYS' FEES**

13 11.1 Should Plaintiff prevail on any motion, application for an order to show cause,
14 or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to
15 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
16 a Settling Defendant prevail on any motion application for an order to show cause or other
17 proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs
18 against Plaintiff as a result of such motion or application upon a finding by the Court that
19 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes
20 of this Consent Judgment, the term substantial justification shall carry the same meaning as used
21 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

22 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
23 its own attorneys' fees and costs.

24 11.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
25 sanctions pursuant to law.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior

1 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
2 merged herein and therein. There are no warranties, representations or other agreements between
3 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
4 implied, other than those specifically referred to in this Consent Judgment have been made by any
5 Party hereto. No other agreements not specifically contained or referenced herein, oral or
6 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
7 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
8 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
9 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
10 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
11 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
12 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13 **13. SUCCESSORS AND ASSIGNS**

14 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
15 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
16 assigns of any of them.

17 **14. RETENTION OF JURISDICTION**

18 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

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

21 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
23 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

24 **16. NO EFFECT ON OTHER SETTLEMENTS/ "MOST FAVORED NATION"**
25 **CLAUSE**

26 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
27 against an entity other than Settling Defendant on terms that are different than those contained in
28 this Consent Judgment.

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16.2 If CEH enters into any consent judgment (“Settlement Document”) with any other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in socks made primarily of polyester with spandex in which it agrees to different injunctive terms, Settling Defendant may seek to modify this Consent Judgment to adopt those injunctive terms and comply with them instead of those presently set forth in Section 3. If Settling Defendant seeks to adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this Consent Judgment. If CEH enters into any Settlement Document with any other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in socks made primarily of polyester with spandex that contains a different test protocol for determining the total content of BPA in socks, Settling Defendant may use that test protocol in addition to the one set forth in Exhibit A.

IT IS SO ORDERED:

Dated: Mar 23, 2023

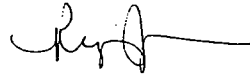

Judge of the Superior Court
ETHAN P. SCHULMAN

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IT IS SO STIPULATED:

Dated: January 26, 2023

CENTER FOR ENVIRONMENTAL HEALTH



Regina Jackson
Interim Chief Executive Officer

Dated: January __, 2023

FIT FOR LIFE, LLC

see next page

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: January __, 2023

CENTER FOR ENVIRONMENTAL HEALTH

see previous page

Michael Green
Chief Executive Officer

Dated: January 26, 2023

FIT FOR LIFE, LLC



Signature

Joseph Maleh
Printed Name

MEMBER
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 10 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