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Counsel for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

FILED
San Francisco County Superior Court

APR 14 2023
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

Assigned For All Purposes To The
Honorable Ethan P. Schulman, Dept. 304

[Signature]
**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANTS
INTERNATIONAL INTIMATES,
INC., DML MARKETING GROUP,
LTD., AND NEW RUE21, LLC**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendants International Intimates, Inc., DML Marketing
4 Group, Ltd., and New rue21, LLC (“Settling Defendants”). CEH and Settling Defendants are
5 referred to collectively as the “Parties.”

6 1.2 CEH alleges that each Settling Defendant manufactures, distributes, licenses,
7 and/or sells socks made primarily of polyester with spandex that contain Bisphenol A (“BPA”) in
8 the State of California (“Covered Products”) or has done so in the past.

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

16 1.4 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
17 CEH filed the operative First Amended Complaint which names Settling Defendants as
18 defendants.

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

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

1 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
2 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
3 this action.

4 **2. DEFINITIONS**

5 2.1 "Covered Products" means socks designed for females, including infant socks,
6 made primarily of polyester with spandex that are manufactured, distributed, or sold by Settling
7 Defendant.


8 2.2 "Effective Date" means the date on which this Consent Judgment is entered by
9 the Court.

10 2.3 "Test Protocol" means a method for measuring BPA content by solvent
11 extraction as set forth in Exhibit A.

12 **3. INJUNCTIVE RELIEF**

13 3.1 Within 30 days following the Effective Date (the "Compliance Date"), each
14 Settling Defendant shall not manufacture, purchase, or import any Covered Product for sale in
15 California that contains BPA, unless it provides a warning pursuant to Section 3.2. For purposes
16 of this Consent Judgment, a product "contains BPA" if either (a) BPA is an intentionally added
17 ingredient in either the Covered Product or a component of the Covered Product, or (b) the
18 Covered Product contains in excess of 1 part per million BPA as measured by the Test Protocol.

19 3.2 **Clear and Reasonable Warnings.** A Clear and Reasonable Warning under
20 this Agreement shall state:

21  **WARNING:** This product can expose you to chemicals, including Bisphenol
22 A (BPA), which are known to the State of California to cause birth defects or
23 other reproductive harm. For more information go to
24 www.P65Warnings.ca.gov.

25 The word "**WARNING**" shall be displayed in all capital letters and bold print and shall be
26 preceded by the yellow warning triangle symbol depicted above, provided however, the
27 symbol may be printed in black and white if the Covered Product label is produced without
28 using the color yellow. This warning statement shall be prominently displayed on the label

1 or hangtag, or any outer packaging, of the Covered Product and shall be displayed with such
2 conspicuousness, as compared with other words, statements or designs as to render it likely
3 to be seen, read and understood by an ordinary individual prior to sale. For internet, catalog
4 or any other sale where the consumer is not physically present, the warning statement shall
5 be displayed in a manner consistent with 27 Cal. Code Regs § 25602(b), or any successor
6 regulation. In lieu of the preceding warning content and methods set forth above, a Settling
7 Defendant may use any specific safe harbor warning content and method applicable to the
8 Covered Products set forth in Title 27, California Code of Regulations, section 25600, *et*
9 *seq.*, as amended August 30, 2018 and subsequently thereafter. In the event a Settling
10 Defendant agrees to use the specific warning language set forth in this paragraph, it will
11 make the reduced payments identified in Exhibit B for the long-form warning.

12 **4. ENFORCEMENT**

13 4.1 The Parties may, by motion or application for an order to show cause before
14 the Superior Court of San Francisco County, enforce the terms and conditions contained in this
15 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
16 Section 3 above, Plaintiff shall provide a Settling Defendant with a Notice of Violation and a
17 copy of any test results which purportedly support the Notice of Violation. The Parties shall then
18 meet and confer regarding the basis for the anticipated motion or application in an attempt to
19 resolve it informally, including providing the Settling Defendant(s) with a reasonable opportunity
20 of at least thirty (30) days to cure any alleged violation. Should such attempts at informal
21 resolution fail, Plaintiff may file an enforcement motion or application. This Consent Judgment
22 may only be enforced by the Parties.

23 **5. PAYMENTS**

24 5.1 **Payments by Settling Defendants.** On or before ten (10) business days after
25 notice of the entry of this Consent Judgment and receipt of Forms W-9 for all payees, each
26 Settling Defendant shall pay the total sum set forth on Exhibit B for that Settling Defendant as a
27 settlement payment as further set forth in this Section. Any failure by a Settling Defendant to
28 comply with the payment terms herein shall be subject to a stipulated late fee to be paid by the

1 Settling Defendant in the amount of \$100 for each day the full payment is not received after the
2 applicable payment due date set forth in this Section 5.1. The late fees required under this
3 Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement
4 proceeding brought pursuant to Section 4 of this Consent Judgment.

5 **5.2 Allocation of Payments.** The total settlement amount for each Settling
6 Defendant shall be paid in five separate checks in the amounts for each Settling Defendant on
7 Exhibit B and delivered as set forth below. The funds paid by Settling Defendant shall be allocated
8 as set forth below between the following categories and made payable as follows:

9 **5.2.1** Each Settling Defendant shall pay the civil penalty amounts set
10 forth in Exhibit B for that Settling Defendant as a civil penalty pursuant to Health & Safety Code
11 § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
12 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
13 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment set
14 forth in Exhibit B for that Settling Defendant by check made payable to OEHHA and associated
15 with taxpayer identification number 68-0284486/ This payment shall be delivered as follows:

16 For United States Postal Service Delivery:

17 Attn: Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010, MS #19B
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street, MS #19B
27 Sacramento, CA 95814

28 **5.2.2** Each Settling Defendant shall pay the CEH portion of the civil
penalty payment set forth in Exhibit B for that Settling Defendant by check made payable to the

1 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
2 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
3 CA 94117.

4 5.2.3 Each Settling Defendant shall pay the amount set forth in Exhibit B
5 for that Settling Defendant as an as an Additional Settlement Payment (“ASP”) to CEH pursuant
6 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204 and
7 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work
8 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles
9 and other products. CEH may also use a portion of such funds to monitor compliance with this
10 Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance.

11 5.2.4 Each Settling Defendant shall pay the amount set forth in Exhibit B
12 for that Settling Defendant as a reimbursement of a portion of CEH’s reasonable attorneys’ fees
13 and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks in
14 the amounts set forth on Exhibit B for that Settling Defendant as follows: (a) a check payable to
15 the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117; and (b) a check
16 payable to the Center for Environmental Health and associated with taxpayer identification
17 number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503
18 Divisadero Street, San Francisco, CA 94117.

19 5.2.5 A summary of the payments to be made by each Settling Defendant
20 is set forth on Exhibit B for each Settling Defendant including the specific payees, amounts and
21 delivery entity for each check.

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.

1 **7. CLAIMS COVERED AND RELEASED**

2 7.1 Provided that a Settling Defendant complies in full with its obligations under
3 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
4 itself and the public interest and such Settling Defendant and its parents, subsidiaries, affiliated
5 entities that are under common ownership, directors, officers, employees, agents, shareholders,
6 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which such Settling
7 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
8 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
9 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
10 Covered Products that were manufactured, purchased, imported, distributed, or sold by Settling
11 Defendant prior to the Compliance Date.

12 7.2 Provided that a Settling Defendant complies in full with its obligations under
13 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
14 discharges any and all claims against such Settling Defendant and its Defendant Releasees and
15 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
16 statutory or common law claims that have been or could have been asserted by CEH individually
17 regarding the failure to warn about exposure to BPA contained in Covered Products
18 manufactured, purchased, imported, distributed, or sold by such Settling Defendant prior to the
19 Compliance Date.

20 7.3 Compliance with the terms of this Consent Judgment by a Settling Defendant
21 and Defendant Releasees shall constitute compliance with Proposition 65 by such Settling
22 Defendant and its Defendant Releasees, and Downstream Defendant Releasees with respect to
23 any alleged failure to warn about BPA in Covered Products manufactured, distributed, or sold by
24 such Settling Defendant after the Effective Date.

25 **8. NOTICE**

26 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:

28

1 Mark N. Todzo
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 mtodzo@lexlawgroup.com

6 8.2 When Settling Defendant is entitled to receive any notice under this Consent
7 Judgment, the notice shall be sent by first class and electronic mail to the address listed on
8 Exhibit B for such Settled Defendant.

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.
13 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling
14 Defendants 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 Plaintiff prevail on any motion, application for an order to show cause,
23 or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to
24 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
25 a Settling Defendant prevail on any motion application for an order to show cause or other
26 proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs
27 against Plaintiff as a result of such motion or application upon a finding by the Court that
28 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes
of this Consent Judgment, the term substantial justification shall carry the same meaning as used

1 in the Civil Discovery Act of 1986, 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 11 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. SUCCESSORS AND ASSIGNS**

22 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
23 Defendants, and their respective divisions, subdivisions and subsidiaries, and the successors or
24 assigns of any of them.

25 **14. RETENTION OF JURISDICTION**

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

28

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

2 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

5 **16. NO EFFECT ON OTHER SETTLEMENTS/ "MOST FAVORED NATION"**
6 **CLAUSE**

7 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
8 against an entity other than Settling Defendants on terms that are different than those contained in
9 this Consent Judgment.

10 16.2 If either (a) CEH enters into any consent judgment with any other entity or (b)
11 any other judgment is entered in an action brought by CEH with respect to an alleged failure to
12 warn of alleged exposures to BPA in socks made primarily of polyester with spandex, and said
13 consent judgment or other judgment contains different injunctive terms, a Settling Defendant may
14 seek to modify this Consent Judgment to adopt those injunctive terms and comply with them instead
15 of those presently set forth in Section 3. If a Settling Defendant seeks to adopt different injunctive
16 terms, it shall provide notice to CEH consistent with Section 6 of this Consent Judgment.
17 Notwithstanding the foregoing, a Settling Defendant may, at any time, reformulate the Covered
18 Products such that it will no longer manufacture, distribute, license, sell, or offer for sale any
19 Covered Product in California that contains BPA and thereby avoid providing warnings for the
20 Covered Products in accordance with Section 3.2 above.

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22 **IT IS SO ORDERED:**

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25 Dated: Apr. 14, 2023


Judge of the Superior Court

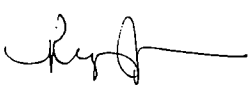
26 **ETHAN P. SCHULMAN**

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IT IS SO STIPULATED:

Dated: February 22, 2023

CENTER FOR ENVIRONMENTAL HEALTH



Regina Jackson
Interim Chief Executive Officer

Dated: February __, 2023

INTERNATIONAL INTIMATES, INC.

Signature

Printed Name

Title

Dated: February __, 2023

DML MARKETING GROUP, LTD.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: February __, 2023

CENTER FOR ENVIRONMENTAL HEALTH

Regina Jackson
Interim Chief Executive Officer

Dated: February 17, 2023

INTERNATIONAL INTIMATES, INC.

Signature

René Rofe
RENE ROFE

Printed Name

PRESIDENT + CEO

Title

Dated: February __, 2023

DML MARKETING GROUP, LTD.

Signature

Printed Name

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IT IS SO STIPULATED:

Dated: February __, 2023

CENTER FOR ENVIRONMENTAL HEALTH

Regina Jackson
Interim Chief Executive Officer

Dated: February __, 2023

INTERNATIONAL INTIMATES, INC.

Signature

Printed Name

Title

Dated: February __, 2023

DML MARKETING GROUP, LTD.

Mark S. Hierbaum

Signature

Mark S. Hierbaum

Printed Name

2/20/2023

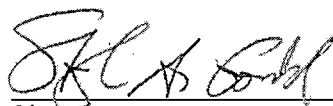
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CEO

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Dated: February __, 2023

NEW RUE21, LLC



Signature

Stephen A. Gould

Printed Name

SVP, General Counsel and CHRO

Title

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3 **EXHIBIT A**

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

- 6 1. Homogenized sample of minimum 1 gram.
- 7 2. Quantitative solvent extraction by acetonitrile. If acetonitrile not available, may
8 substitute with methanol.
- 9 3. Extraction by EPA methods 3540 (Soxhlet), 3546 (microwave), or hot plate for 3
10 hours at 40 degrees Celsius.
- 11 4. Analysis by LC/MS-MS, with isotope dilution; HPLC-DADMS, subject to
12 performance criteria below. GC/MS-MS may be used if other methods not
13 available and no derivatization of BPA is required.
- 14 5. Reporting limit of 0.5 mg/kg or lower.
- 15 6. Performance criteria – demonstration of accuracy, precision, and quality control,
16 per EPA Method 3500C sections 9, 11, and 13. Include on-going routine quality
17 control testing of method blanks, laboratory control samples/duplicates, and matrix
18 spike samples/duplicates.
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EXHIBIT B

1. Name of Settling Defendant: International Intimates, Inc.

2. Person(s) to Receive Notices (Pursuant to Section 8.2):

Jeffrey Margulies
NORTON ROSE FULBRIGHT US LLP
555 California Street Suite 3300
San Francisco, CA 94104
jeff.margulies@nortonrosefulbright.com

René Rofé
International Intimates Inc.
31 W 34th St, 9th Floor
New York, NY 10001
rener@renerofe.com

3. Will Defendant use the Long-Form Warning on its Covered Products?

Yes: No:

4. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

	Long-Form Warning	Other Warning
Total Settlement Payment	\$ 100,000	\$ _____
Civil Penalty (Total)	\$ 14,000	\$ _____
- OEHHA (75%)	\$ 10,500	\$ _____
- CEH (25%)	\$ 3,500	\$ _____
Additional Settlement Payment	\$ 10,000	\$ _____
Total Attorneys' Fees and Costs	\$ 76,000	\$ _____
- LLG Fees and Costs	\$ 64,000	\$ _____
- CEH Fees and Costs	\$ 12,000	\$ _____

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EXHIBIT B

1. **Name of Settling Defendant: DML Marketing Group, Ltd.**

2. **Person(s) to Receive Notices (Pursuant to Section 8.2):**

Jeffrey Margulies
NORTON ROSE FULBRIGHT US LLP
555 California Street Suite 3300
San Francisco, CA 94104
jeff.margulies@nortonrosefulbright.com

Mark Hierbaum
DML Marketing Group, Ltd.
7711 Hayvenhurst Ave.
Van Nuys, CA 91406
mark@dmlsocks.com

3. **Will Defendant use the Long-Form Warning on its Covered Products?**

Yes: X No:

4. **Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):**

	Long-Form Warning	Other Warning
Total Settlement Payment	\$ 100,000	\$ _____
Civil Penalty (Total)	\$ 14,000	\$ _____
- OEHHA (75%)	\$ 10,500	\$ _____
- CEH (25%)	\$ 3,500	\$ _____
Additional Settlement Payment	\$ 10,000	\$ _____
Total Attorneys' Fees and Costs	\$ 76,000	\$ _____
- LLG Fees and Costs	\$ 64,000	\$ _____
- CEH Fees and Costs	\$ 12,000	\$ _____

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EXHIBIT B

1. **Name of Settling Defendant: New rue21, LLC**

2. **Person(s) to Receive Notices (Pursuant to Section 8.2):**

Sophia B. Castillo
DOWNEY BRAND LLP
455 Market Street, Suite 1500
San Francisco, California 94105
scastillo@downeybrand.com

Stephen A. Gould
SVP, General Counsel & CHRO
rue21
800 Commonwealth Drive
Warrendale, PA 15086
sgould@rue21.com

3. **Will Defendant use the Long-Form Warning on its Covered Products?**

Yes: _____ No: X

4. **Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):**

	Long-Form Warning	Other Warning
Total Settlement Payment	\$ _____	\$ 80,000
Civil Penalty (Total)	\$ _____	\$ 10,600
- OEHHA (75%)	\$ _____	\$ 7,950
- CEH (25%)	\$ _____	\$ 2,650
Additional Settlement Payment	\$ _____	\$ 7,900
Total Attorneys' Fees and Costs	\$ _____	\$ 61,500
- LLG Fees and Costs	\$ _____	\$ 51,000
- CEH Fees and Costs	\$ _____	\$ 10,500