

MAR 15 2022

CLERK OF THE SUPERIOR COURT
By Befanie Kuschel
Deputy

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7 CENTER FOR ENVIRONMENTAL HEALTH

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11
12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 vs.)

16 GYMSHARK USA, INC.; and DOES 1 through)
17 200, inclusive,)

18 Defendants.)
19

Case No. RG21107796

~~PROPOSED~~ CONSENT
JUDGMENT AS TO VENTURE
PRODUCTS, LLC

20
21 **1. INTRODUCTION**

22 **1.1** The parties to this Consent Judgment (“Parties”) are the Center for
23 Environmental Health (“CEH”) and Venture Products, LLC (“Settling Defendant”). CEH and
24 Settling Defendant are referred to collectively as the “Parties.”

25 **1.2** Settling Defendant is a corporation that manufactures, distributes, and/or sells
26 latex resistance bands that contain n-nitrosodiethylamine (“NDEA”) in the State of California or
27 has done so in the past.
28

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 September 30, 2021, CEH filed the First Amended Complaint in the
9 above-captioned action in the Superior Court of California for Alameda County, naming Settling
10 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.** As of the Effective Date, Settling
3 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
4 contains NDEA in excess of 10 parts per billion (“ppb”) as determined using ISO Standard 19577
5 (the “Test protocol”) by an independent accredited laboratory that will be sold or offered for sale
6 to California consumers.

7 **3.2 Specification to and Certification from Suppliers.** No more than thirty (30)
8 days after the Effective Date, Settling Defendant shall issue specifications to the suppliers of
9 Covered Products requiring that Covered Products not contain NDEA in excess of 10 ppb, and
10 shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing
11 NDEA on a nationwide basis. Settling Defendant shall obtain and maintain written certification(s)
12 from the suppliers of Covered Products confirming that all such Covered Products received by
13 Settling Defendant for distribution in California do not contain NDEA in excess of 10 ppb as
14 determined using the Test Protocol by an independent accredited laboratory. Settling Defendant
15 shall not be deemed in violation of the requirements of Section 3.1 for any Covered Product to the
16 extent: (a) it has relied on a written certification from its vendor that supplied a Covered Product
17 that such Covered Product does not contain NDEA in excess of 10 ppb as determined using the
18 Test Protocol by an independent accredited laboratory and such certification has not previously
19 been demonstrated to be invalid, or (b) it has obtained a test result from an independent third
20 party accredited laboratory reporting that the Covered Product does not contain NDEA in excess
21 of 10 ppb as determined using the Test Protocol.

22 **4. ENFORCEMENT**

23 **4.1**CEH may, by motion or application for an order to show cause before the
24 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
25 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
26 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth the
27 basis for the alleged violation. The Parties shall then meet and confer regarding the basis for CEH’s
28 anticipated motion or application in an attempt to resolve it informally. Should such attempts at

1 meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any
2 motion to enforce the terms of this section, the Court may, in addition to ordering compliance with
3 the terms of this Consent Judgment, employ such remedies as necessary to ensure compliance with
4 Proposition 65 including, but not limited to, requiring Settling Defendant to provide warnings.
5 Should CEH prevail on any motion or application to enforce a material violation of this Consent
6 Judgment under this Section, CEH shall be entitled to its reasonable attorneys' fees and costs
7 incurred as a result of such motion or application. Should Settling Defendant prevail on any motion
8 or application under this Section, Settling Defendant may be awarded its reasonable attorneys' fees
9 and costs as a result of such motion or application upon a finding by the court that CEH's
10 prosecution of the motion or application was not in good faith.

11 **5. PAYMENTS**

12 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the
13 Effective Date, Settling Defendant shall jointly and severally pay the total sum of twenty-five
14 thousand dollars and no cents (\$25,000) as a settlement payment as further set forth in this Section.
15 Any payment by Settling Defendant shall be deemed to be timely and not subject to a late charge
16 and/or other penalty if (1) postmarked (if sent by the United States Postal Service) or (2) delivered
17 to an overnight carrier (e.g. Fed Ex), on or before the deadline set forth in this paragraph.

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

27 **5.2.1** \$3,300 as a civil penalty pursuant to Health & Safety Code §
28 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety

1 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
2 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
3 for \$2,475 shall be made payable to OEHHA and associated with taxpayer identification number
4 68-0284486. This payment shall be delivered as follows:

5
6 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

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

18 The CEH portion of the civil penalty payment for \$825 shall be made payable to the Center for
19 Environmental Health and associated with taxpayer identification number 94-3251981. This
20 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
21 94117.

22 5.2.2 \$2,470 as an Additional Settlement Payment ("ASP") to CEH
23 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
24 3204. CEH will use these funds to support CEH programs and activities that seek to educate the
25 public about toxic chemicals, including carcinogenic nitrosamines such as NDEA and NDMA,
26 work with industries interested in moving toward safer alternatives, advocate with government,
27 businesses, and communities for business practices that are safe for human health and the
28 environment, and thereby reduce the public health impacts and risks of exposure to NDEA, NDMA,
and other toxic chemicals in consumer products sold in California. CEH shall obtain and maintain
adequate records to document that ASPs are spent on these activities and CEH agrees to provide

1 such documentation to the Attorney General within thirty (30) days of any request from the
2 Attorney General. The payment pursuant to this Section shall be made payable to the Center for
3 Environmental Health and associated with taxpayer identification number 94-3251981. This
4 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
5 94117.

6
7 5.2.3 \$19,230 as a reimbursement of a portion of CEH's reasonable
8 attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate
9 checks as follows: (a) \$16,130 payable to the Lexington Law Group and associated with taxpayer
10 identification number 94-3317175; and (b) \$3,100 payable to the Center for Environmental Health
11 and associated with taxpayer identification number 94-3251981. Both of these payments shall be
12 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

13 5.2.4 To summarize, Settling Defendant shall deliver checks made out to
14 the payees and in the amounts set forth below:

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17 Payee	Type	Amount	Deliver To
18 OEHHA	Penalty	\$2,475	OEHHA per Section 19 5.2.1
20 Center For Environmental Health	Penalty	\$825	LLG
21 Center For Environmental Health	ASP	\$2,470	LLG
22 Lexington Law Group	Fee and Cost	\$16,130	LLG
23 Center For Environmental Health	Fee and Cost	\$3,100	LLG

24

25 5.3 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of
26 Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with the
27 payment obligations under this Section 5, in addition to any other enforcement mechanism
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1 available to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor's
2 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to
3 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding
4 Settling Defendant in contempt of Court.

5 **6. MODIFICATION**

6 **6.1 Written Consent.** This Consent Judgment may be modified from time to
7 time by express written agreement of the Parties with the approval of the Court, or by an order of
8 this Court upon motion and in accordance with law.

9 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
10 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
11 modify the Consent Judgment. The Parties acknowledge and agree that a change in the no
12 significant risk level for NDEA may provide a reason for modification of Sections 3.1 and 3.2 of
13 this Consent Judgment.

14 **7. CLAIMS COVERED AND RELEASED**

15 **7.1** This Consent Judgment is a full, final and binding resolution between CEH on
16 behalf of itself and the public interest and Settling Defendant and Settling Defendant's parents,
17 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
18 agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to
19 which Settling Defendant directly or indirectly distributed or sold Covered Products, including but
20 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, licensees, and
21 Fit For Life LLC ("Downstream Defendant Releasees"), of any violation of Proposition 65 based
22 on failure to warn about alleged exposure to NDEA contained in Covered Products that were sold,
23 distributed or offered for sale by Settling Defendant prior to the Effective Date.

24 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and forever
25 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
26 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
27 law claims that have been or could have been asserted by CEH regarding a violation of Proposition
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1 65 and/or the failure to warn about exposure to NDEA arising in connection with Covered Products
2 manufactured by or for Settling Defendant prior to the Effective Date.

3 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant
4 shall constitute compliance with Proposition 65 by Settling Defendant, the Defendant Releasees
5 and its Downstream Defendant Releasees with respect to any alleged failure to warn about NDEA
6 in Covered Products manufactured, distributed or sold by Settling Defendant after the Effective
7 Date.

8 **8. NOTICE**

9 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the
10 notice shall be sent by first class and electronic mail to:

11 Mark Todzo
12 Lexington Law Group
13 503 Divisadero Street
14 San Francisco, CA 94117
15 mtodzo@lexlawgroup.com

16 **8.2** When Settling Defendant is entitled to receive any notice under this Consent
17 Judgment, the notice shall be sent by first class and electronic mail to:

18 John Allen
19 Allen Matkins Leck Gamble Mallory & Natis LLP
20 865 South Figueroa Street, Suite 2800
21 Los Angeles, CA 90017-2543
22 jallen@allenmatkins.com

23 **8.3** Any Party may modify the person and address to whom the notice is to be sent
24 by sending the other Party notice by first class and electronic mail.

25 **9. COURT APPROVAL**

26 **9.1** This Consent Judgment shall become effective upon entry by the Court. CEH
27 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
28 shall support entry of this Consent Judgment.

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

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 **11. ATTORNEYS' FEES**

5 **11.1** Should CEH prevail on any motion, application for an order to show cause, or
6 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
7 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
8 Settling Defendant prevail on any motion application for an order to show cause or other
9 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
10 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
11 or application lacked substantial justification. For purposes of this Consent Judgment, the term
12 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
13 Code of Civil Procedure §§ 2016, *et seq.*

14 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear
15 its own attorneys' fees and costs.

16 **11.3** Nothing in this Section 10 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

19 **12.1** This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
22 merged herein and therein. There are no warranties, representations, or other agreements between
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
28 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,

1 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
2 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
3 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether
4 or not similar, nor shall such waiver constitute a continuing waiver.

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

6 **13.1** For any report or information that Settling Defendant submits to CEH pursuant
7 to this Consent Judgment, Settling Defendant may make such a submission subject to the terms of
8 a protective order.

9 **14. RETENTION OF JURISDICTION**

10 **14.1** This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

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

13 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
15 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

17 **16.1** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
18 against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are
19 different than those contained in this Consent Judgment.

20 **17. EXECUTION IN COUNTERPARTS**

21 **17.1** The stipulations to this Consent Judgment may be executed in counterparts and
22 by means of facsimile or portable document format (pdf), which taken together shall be deemed to
23 constitute one document.

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

T & F
Dated: _____, ~~2021~~



Judge of the Superior Court of the State of
California
Delbert Gee / Judge

IT IS SO STIPULATED:

Dated: November 19, 2021

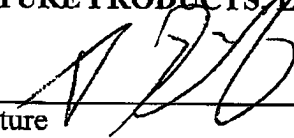
CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

Dated: 11/16, 2021

VENTURE PRODUCTS, LLC

Signature 

Printed Name **Steven Fischer**

Title **Member**