

FILED

San Francisco County Superior Court



SEP 15 2023

CLERK OF THE COURT

BY: *Stella Eche*
Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

14 Plaintiff,

15 v.

16 ATHLETA LLC, *et al.*,

17 Defendant.
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Case No. CGC-23-604604

Assigned for all purposes to: Judge Ethan P. Schulman, Dept. 304

**[PROPOSED] CONSENT
JUDGMENT AS TO MIZUNO USA,
INC.**

1 **1. INTRODUCTION**

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

5 1.2 Settling Defendant manufactures, distributes, and/or sells athletic shirts made
6 primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the State of California
7 or have done so in the past.

8 1.3 On October 12, 2022, 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 athletic shirts made
14 primarily of polyester with spandex.

15 1.4 On February 15, 2023 CEH filed the original complaint in this matter naming
16 Settling Defendant as a defendant.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
18 Court has jurisdiction over the allegations of violations contained in the operative Complaint
19 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
20 alleged in the Complaints; (ii) venue is proper in the County of San Francisco; and (iii) this Court
21 has jurisdiction to enter this Consent Judgment.

22 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
23 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
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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 athletic shirts made primarily of polyester with
5 spandex that are manufactured, distributed, 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 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 10
16 parts per billion BPA as measured by the Test Protocol. Settling Defendant shall not replace the
17 BPA with any other bisphenol (such as Bisphenol S or BPS).

18 3.2 **Specification to Suppliers.** If Settling Defendant chooses to begin selling
19 Covered Products again in California, it shall first issue specifications to its suppliers of Covered
20 Products requiring that Covered Products not contain BPA or any other bisphenol (such as
21 Bisphenol S or 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 have 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 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 cause birth defects or
8 other reproductive harm. 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 symbol
12 may be printed in black and white if the Covered Product label is produced without using the
13 color yellow. This warning statement shall be prominently displayed on the outer packaging of
14 the Covered Product and shall be displayed with such conspicuousness, as compared with other
15 words, statements or designs as to render it likely to be seen, read and understood by an ordinary
16 individual prior to sale. For internet, catalog or any other sale where the consumer is not
17 physically present, the warning statement shall be displayed in such a manner that it is likely to be
18 read and understood by an ordinary individual prior to the authorization of or actual payment.

19 4. ENFORCEMENT

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

1 the Parties. To the extent that Settling Defendant can demonstrate that it purchased the Covered
2 Product subject to the Notice of Violation prior to the Effective Date, the sale of such Covered
3 Product will not constitute a violation of the terms of this Consent Judgment.

4 **5. PAYMENTS**

5 5.1 **Total Settlement Payment.** Within ten (10) days of the Effective Date,
6 Settling Defendant shall pay the total settlement amount of \$24,000 and no cents as a settlement
7 payment as further set forth in this Section.

8 5.1.1 A civil penalty in the amount of \$ 6,300 pursuant to Health &
9 Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health &
10 Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
11 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
12 the civil penalty payment of \$4,725 shall be made payable to OEHHA and associated with
13 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

14 For United States Postal Service Delivery:

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

18 For Non-United States Postal Service Delivery:

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

22 The CEH portion of the civil penalty payment for \$1,575 shall be made payable to the Center for
23 Environmental Health and associated with taxpayer identification number 94-3251981. This
24 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
25 94117.

26 5.1.2 An Additional Settlement Payment (“ASP”) in the amount of
27 \$4,700 to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and
28 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work

1 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles
 2 and other products. CEH may also use a portion of such funds to monitor compliance with this
 3 Consent Judgment and to purchase and test Settling Defendant's products to confirm compliance.
 4 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
 5 activities and CEH agrees to provide such documentation to the Attorney General within thirty
 6 days of any request from the Attorney General. The payment pursuant to this Section shall be
 7 made payable to the Center for Environmental Health and associated with taxpayer identification
 8 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
 9 Street, San Francisco, CA 94117.

10 5.1.3 Settling Defendant shall pay \$13,000 as a reimbursement of a
 11 portion of Plaintiff's reasonable attorneys' fees and costs. The attorneys' fees and cost
 12 reimbursement shall be made in two separate checks as follows: (a) \$10,000 payable to the
 13 Lexington Law Group and associated with taxpayer identification number 88-4399775; and (b)
 14 \$3,000 payable to the Center for Environmental Health and associated with taxpayer
 15 identification number 94-3251981. Both of these payments shall be delivered to Lexington Law
 16 Group, 503 Divisadero Street, San Francisco, CA 94117.

17 5.1.4 To summarize, Settling Defendant shall deliver checks made out to
 18 the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$4,725	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$1,575	LLG
Center For Environmental Health	ASP	\$4,700	LLG
Lexington Law Group	Fee and Cost	\$10,000	LLG
Center For Environmental Health	Fee and Cost	\$3,000	LLG

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 27 5.2 **Additional Payment for Warning.** If Settling Defendant avails itself of the
 28 permanent warning option provided for by Section 3.3, Settling Defendant shall make an additional

1 payment of \$6,000 to be split between a civil penalty, ASP and attorneys' fees and costs as set forth
2 herein, concurrently with its written notice as provided in Section 3.2. Of the additional payment,
3 \$2,600 shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12
4 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
5 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of
6 \$1,950 shall be made payable to OEHHA, associated with taxpayer identification number 68-
7 0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the
8 additional civil penalty payment of \$650 shall be made payable to the Center for Environmental
9 Health and associated with taxpayer identification number 94-3251981. \$1,500 of the additional
10 payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco,
11 CA 94117 for fees and costs associated with the additional payment. The remaining \$1,900 of the
12 additional payment shall be made payable to the Center for Environmental Health and associated
13 with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2.2
14 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street,
15 San Francisco, CA 94117.

16 **5.3 Failure to Comply With Payment Obligations.** Notwithstanding the
17 provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the
18 event that Settling Defendant does not comply fully with its payment obligations under Section 5,
19 in addition to any other enforcement mechanism available to CEH, CEH may obtain an order
20 requiring Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant
21 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
22 Settling Defendant in contempt of Court.

23 **6. MODIFICATION**

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

27 **6.2 Alternative Compliance Standards.** If either (i) CEH enters into a court-
28 approved settlement or a court enters a final judgment in a Proposition 65 enforcement action

1 over exposure to BPA from athletic shirts made primarily of polyester with spandex that includes
2 a different reformulation level than that set forth in Section 3.1; or (ii) the State of California
3 adopts a different definition or method for determining exposure to BPA for purposes of
4 Proposition 65, the Parties will meet and confer in good faith on conforming modifications to this
5 Consent Judgment. If the Parties are unable to reach agreement, either Party may move the Court
6 to modify the Consent Judgment.

7 6.3 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
8 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASED**

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

20 7.2 Provided that Settling Defendant complies in full with its obligations under
21 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
22 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
23 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
24 common law claims that have been or could have been asserted by CEH individually regarding
25 the failure to warn about exposure to BPA contained in Covered Products sold by Settling
26 Defendant prior to the Effective Date or thereafter provided such Covered Products are subject to
27 the provisions of Section 3.3 above.

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1 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
2 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
3 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
4 warn about BPA in Covered Products manufactured, distributed, or sold by Settling Defendant
5 after the Effective Date.

6 7.4 Nothing in this Section 7 affects Plaintiff's right to commence or prosecute an
7 action under Proposition 65 against any person other than Settling Defendant, Defendant
8 Releasees, or Downstream Defendant Releasees.

9 **8. NOTICE**

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

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

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

19 Cordon T. Baesel
20 Troutman Pepper
21 11682 El Camino Real, Ste. 400
22 San Diego, CA 92130
23 Cordon.baesel@troutman.com

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

26 **9. COURT APPROVAL**

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

1 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4 **10. GOVERNING LAW AND CONSTRUCTION**

5 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
6 of California.

7 **11. ATTORNEYS' FEES**

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

17 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
18 its own attorneys' fees and costs.

19 11.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
20 sanctions pursuant to law.

21 **12. ENTIRE AGREEMENT**

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

1 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
2 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
3 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
4 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
5 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
6 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
7 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

8 **13. SUCCESSORS AND ASSIGNS**

9 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
10 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
11 assigns of any of them.

12 **14. RETENTION OF JURISDICTION**

13 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
14 Consent Judgment.

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

16 15.1 Each signatory to this Consent Judgment certifies that they are fully authorized
17 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
18 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

20 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
21 against an entity other than Settling Defendant on terms that are different than those contained in
22 this Consent Judgment.

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24 **IT IS SO ORDERED:**

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26 Dated: Sept 15, 2023

27 
Judge of the Superior Court

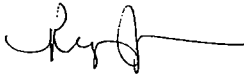
ETHAN P. SCHULMAN

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IT IS SO STIPULATED:

Dated: _____, 2023

CENTER FOR ENVIRONMENTAL HEALTH



Regina Jackson
Interim Chief Executive Officer

Dated: June 26, 2023

MIZUNO USA, INC.



Signature

Kojiro Sampei
Printed Name

CFO/CAO
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 athletic shirt by shredding the entire athletic shirt and taking a representative 1-gram sample of the shreds.
- b. Add the 1-gram athletic shirt sample to 10 ml of 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 10 ppb
- f. Reporting -- BPA concentration in mg of BPA per kg of sample

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On September 15, 2023, I electronically served CONSENT JUDGMENT AS TO DEFENDANT MIZUNO USA, INC. via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: SEP 15 2023

Brandon E. Riley, Court Executive Officer

By: 
Felicia Green, Deputy Clerk