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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.

ATHLETA LLC, *et al.*,

Defendant.

Case No. CGC-23-604604

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

~~[PROPOSED]~~ CORRECTED
CONSENT JUDGMENT AS TO 99
CENTS ONLY STORES LLC

FILED
San Francisco County Superior Court



MAR 20 2024

CLERK OF THE COURT
BY: Attalia Sheeh
Deputy Clerk

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant 99 Cents Only Stores LLC (“Settling Defendant”).
4 CEH and Settling Defendant are referred to collectively as the “Parties.”

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

8 1.3 On June 28, 2023, CEH served two 60-Day Notices 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 Notices
13 allege violations of Proposition 65 with respect to the presence of BPA in athletic shirts and
14 leggings made primarily of polyester with spandex.

15 1.4 On February 9, 2023 CEH filed the original complaint in this matter. On
16 September 29, 2023, CEH filed the First Amended Complaint (“Complaint”) naming Settling
17 Defendant as a defendant.

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

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

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

3 **2. DEFINITIONS**

4 2.1 “Covered Products” means Active Pro brand athletic shirts and leggings made
5 primarily of polyester with spandex that are supplied by Basic Concept and sold by Settling
6 Defendant.

7 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
8 the Court.

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

11 **3. INJUNCTIVE RELIEF**

12 3.1 **Reformulation of Covered Products.** Within six months following the
13 Effective Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute,
14 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes
15 of this Consent Judgment, a product “contains BPA” if BPA is an intentionally added ingredient
16 in either the Covered Product or a component of the Covered Product, or contains in excess of 10
17 parts per billion BPA as measured by the Test Protocol. Settling Defendant shall not replace the
18 BPA with any other bisphenol (such as Bisphenol S or BPS).

19 3.2 **Specification to Suppliers.** If Settling Defendant chooses to begin selling
20 Covered Products again in California, it shall first issue specifications to its suppliers of Covered
21 Products requiring that Covered Products not contain BPA or any other bisphenol (such as
22 Bisphenol S or BPS).

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

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1 3.4 **Clear and Reasonable Warnings.**

2 3.4.1 **Election to Warn.** If Settling Defendant is unable to comply with the
3 Reformulation provision set forth in Section 3.1 or otherwise elects to permanently avail itself of
4 the warning option provided by this Section 3.4, Settling Defendant shall provide written notice
5 to CEH prior to the Reformulation Date, and Settling Defendant concurrently shall make the
6 additional payment specified in Section 5.2 below. Settling Defendant shall then provide Clear
7 and Reasonable Warnings for each Covered Product sold in California. A Clear and Reasonable
8 Warning under this Agreement shall state:



10 **WARNING:** This product can expose you to chemicals including Bisphenol
11 A (“BPA”) which is known to the State of California to cause birth defects or
12 other reproductive harm. For more information go to
 www.P65Warnings.ca.gov.

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

24 **4. ENFORCEMENT**

25 4.1 Plaintiff may, by motion or application for an order to show cause before the
26 Superior Court of San Francisco County, enforce the terms and conditions contained in this
27 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
28 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy

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

9 **5. PAYMENTS**

10 5.1 **Total Settlement Payment.** Within ten (10) days of the Effective Date,
11 Settling Defendant shall pay the total settlement amount of \$29,000 and no cents as a settlement
12 payment as further set forth in this Section.

13 5.1.1 A civil penalty in the amount of \$3,700 pursuant to Health & Safety
14 Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety
15 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
16 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
17 payment of \$2,775 shall be made payable to OEHHA and associated with taxpayer identification
18 number 68-0284486. This payment shall be delivered as follows:

19 For United States Postal Service Delivery:

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

23 For Non-United States Postal Service Delivery:

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

27 The CEH portion of the civil penalty payment for \$925 shall be made payable to the Center for
28 Environmental Health and associated with taxpayer identification number 94-3251981. This

1 payment shall be delivered to Lexington Law Group (“LLG”), 503 Divisadero Street, San
2 Francisco, CA 94117.

3 5.1.2 An Additional Settlement Payment (“ASP”) in the amount of
4 \$2,700 to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and
5 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work
6 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles
7 and other products. CEH may also use a portion of such funds to monitor compliance with this
8 Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance.
9 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
10 activities and CEH agrees to provide such documentation to the Attorney General within thirty
11 days of any request from the Attorney General. The payment pursuant to this Section shall be
12 made payable to the Center for Environmental Health and associated with taxpayer identification
13 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
14 Street, San Francisco, CA 94117.

15 5.1.3 Settling Defendant shall pay \$22,600 as a reimbursement of a
16 portion of Plaintiff’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost
17 reimbursement shall be made in two separate checks as follows: (a) \$19,000 payable to the
18 Lexington Law Group and associated with taxpayer identification number 88-4399775; and (b)
19 \$3,600 payable to the Center for Environmental Health and associated with taxpayer
20 identification number 94-3251981. Both of these payments shall be delivered to Lexington Law
21 Group, 503 Divisadero Street, San Francisco, CA 94117.

22 5.1.4 To summarize, Settling Defendant shall deliver checks made out to
23 the payees and in the amounts set forth below:

24 Payee	Type	Amount	Deliver To
25 OEHHA	Penalty	\$2,775	OEHHA per Section 5.1.1
26 Center For Environmental Health	Penalty	\$925	LLG
27 Center For Environmental Health	ASP	\$2,700	LLG

1	Lexington Law Group	Fee and Cost	\$19,000	LLG
2	Center For Environmental Health	Fee and Cost	\$3,600	LLG

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4 **5.2 Additional Payment for Warning.** If Settling Defendant avails itself of the
5 permanent warning option provided for by Section 3.4, Settling Defendant shall make an additional
6 payment of \$10,000 to be split between a civil penalty, ASP and attorneys' fees and costs as set
7 forth herein, concurrently with its written notice as provided in Section 3.4. Of the additional
8 payment, \$5,000 shall be a civil penalty, apportioned in accordance with Health & Safety Code §
9 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
10 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of
11 \$3,700 shall be made payable to OEHHA, associated with taxpayer identification number 68-
12 0284486, and sent to the OEHHA address set forth in section 5.1.1 above. The CEH portion of the
13 additional civil penalty payment of \$1,250 shall be made payable to the Center for Environmental
14 Health and associated with taxpayer identification number 94-3251981. \$1,500 of the additional
15 payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco,
16 CA 94117 for fees and costs associated with the additional payment. The remaining \$3,500 of the
17 additional payment shall be made payable to the Center for Environmental Health and associated
18 with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.1.2.
19 Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San
20 Francisco, CA 94117.

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

1 **6. MODIFICATION**

2 6.1 **Written Consent.** This Consent Judgment may be modified from time to
3 time by express written agreement of the Parties with the approval of the Court, or by an order of
4 this Court upon motion and in accordance with law.

5 6.2 **Alternative Compliance Standards.** If either (i) CEH enters into a court-
6 approved settlement or a court enters a final judgment in a Proposition 65 enforcement action
7 over exposure to BPA from athletic shirts and leggings made primarily of polyester with spandex
8 that includes a different reformulation level than that set forth in Section 3.1; or (ii) the State of
9 California adopts a different definition or method for determining exposure to BPA for purposes
10 of Proposition 65, the Parties will meet and confer in good faith on conforming modifications to
11 this Consent Judgment. If the Parties are unable to reach agreement, either Party may move the
12 Court to modify the Consent Judgment.

13 6.3 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
14 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 Provided that Settling Defendant complies in full with its obligations under
18 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
19 itself and the public interest and Settling Defendant, its parents, subsidiaries, affiliated entities
20 that are under common ownership, directors, officers, employees, agents, shareholders,
21 successors, assigns, and attorneys (“Defendant Releasees”), all entities to which Settling
22 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
23 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), and the
24 supplier and importer of Covered Products to Settling Defendant, Basic Concept and Chase
25 (USA) International, Inc., respectively (“Upstream Defendant Releasees”) of any violation of
26 Proposition 65 based on failure to warn about alleged exposure to BPA contained in Covered
27 Products that were sold by Settling Defendant prior to the Effective Date.

28 7.2 Provided that Settling Defendant complies in full with its obligations under

1 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
2 discharges any and all claims against Settling Defendant, Defendant Releasees, Downstream
3 Defendant Releasees, and Upstream Defendant Releasees arising from any violation of
4 Proposition 65 or any other statutory or common law claims that have been or could have been
5 asserted by CEH regarding the failure to warn about exposure to BPA contained in Covered
6 Products sold by Settling Defendant prior to the Effective Date or thereafter provided such
7 Covered Products are subject to the provisions of Section 3.3 above.

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, Downstream Defendant Releasees and Upstream Defendant Releasees with
11 respect to any alleged failure to warn about BPA in Covered Products manufactured, distributed,
12 or sold by Settling Defendant 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, Downstream Defendant Releasees, or Upstream 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 Joseph D. Lee
27 Munger, Tolles & Olson LLP
28 350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071-3426
Joseph.Lee@mto.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 they are fully authorized
22 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
23 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

25 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
26 against an entity other than Settling Defendant on terms that are different than those contained in
27 this Consent Judgment.

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IT IS SO ORDERED:

Dated: Mar. 20, 2024




Hon. Ethan P. Schulman

IT IS SO STIPULATED:

Dated: January 9, 2024

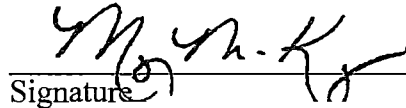
CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: Jan. 3, 2024

99 CENTS ONLY STORES LLC



Signature

Mary M. Kasper
Printed Name

Chief Legal Officer, General Counsel & Secretary
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 or legging by shredding the entire athletic shirt or legging and taking a representative 1-gram sample of the shreds.
- b. Add the 1-gram athletic shirt or legging 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 March 20, 2024, I electronically served ORDER CORRECTED CONSENT JUDGMENT AS TO 99 CENTS ONLY STORES LLC via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **MAR 20 2024**

Brandon E. Riley, Court Executive Officer

By: 
Felicia Green, Deputy Clerk