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FILED
San Francisco County Superior Court

FEB 10 2026
CLERK OF THE COURT
BY:  Deputy Clerk

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

AMENDED
**[PROPOSED] CONSENT
JUDGMENT AS TO DAVID PEYSER
SPORTSWEAR, INC.**

1 **1. INTRODUCTION**

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

5 1.2 Settling Defendant manufactures, distributes, and/or sells leggings 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 September 18, 2024, 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 leggings made
14 primarily of polyester with some spandex.

15 1.4 On February 9, 2023, CEH filed the original complaint in this matter. On
16 October 13, 2023, CEH filed the first amended complaint (the “Complaint”). On February 14,
17 2025, CEH filed a Doe Amendment naming Settling Defendant as a defendant in this action.

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

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

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

3 **2. DEFINITIONS**

4 2.1 “Covered Products” means Outdoor Voices mid-rise leggings made primarily
5 of polyester with some spandex that are 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 “Other Bisphenols” means Bisphenol AF (BPAF), Bisphenol AP (BPAP),
9 Bisphenol B (BPB), Bisphenol E (BPE), Bisphenol F (BPF), Bisphenol P (BPP), Bisphenol S
10 (BPS), and Bisphenol Z (BPZ).

11 2.4 “Test Protocol” means a standard method for measuring total BPA content as
12 set forth in Exhibit A.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** Within six months following the
15 Effective Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute,
16 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes
17 of this Consent Judgment, a product “contains BPA” if BPA is an intentionally added ingredient
18 in either the Covered Product or a component of the Covered Product, or contains in excess of 50
19 parts per billion BPA as measured by the Test Protocol (the “Reformulation Level”).

20 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
21 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products that
22 Covered Products shall not contain BPA in excess of the Reformulation Level.

23 3.3 **Sell-Through for Existing Inventory.** Notwithstanding anything else in this
24 Consent Judgment, Covered Products that Settling Defendant has purchased prior to the Effective
25 Date, including but not limited to Covered Products in distribution centers, in inventory, or at
26 retail locations shall be subject to the release of liability pursuant to Section 7 of this Consent
27 Judgment, without regard to when such Covered Products were, or are in the future, distributed or
28 sold to California customers. Furthermore, notwithstanding anything else in this Consent

1 Judgment, Covered Products that Settling Defendant has purchased after the Effective Date but
2 prior to the Reformulation Date, including but not limited to Covered Products in distribution
3 centers, in inventory, or at retail locations shall be subject to the release of liability pursuant to
4 Section 7 of this Consent Judgment, without regard to when such Covered Products were, or are
5 in the future, distributed or sold to California customers, provided that Settling Defendant's
6 purchases of Covered Products between the Effective Date and the Reformulation Date remain
7 consistent with Settling Defendant's purchases of Covered Products prior to the Effective Date.

8 3.4 **Notification to Suppliers Regarding Other Bisphenols.** No more than
9 ninety (90) days after the Effective Date, Settling Defendant shall request that its suppliers of
10 Covered Products, to the extent possible, not replace any intentionally added BPA with Other
11 Bisphenols in manufacturing the Covered Products. Nothing in this Section 3.4 shall be construed
12 to require Settling Defendant, or its suppliers or customers, to test for the presence of Other
13 Bisphenols.

14 3.5 **Alternative Compliance – Warnings.** To the extent Settling Defendant is
15 unable to comply with the Reformulation Level by the Reformulation Date, or otherwise elects to
16 warn, Settling Defendant must alternatively comply with the provisions of this section. Settling
17 Defendant shall not manufacture, purchase, or import any Covered Product for sale in California
18 that contains BPA, unless it provides a warning pursuant to Section 3.5.1. For purposes of this
19 Consent Judgment, a product "contains BPA" if either (a) BPA is an intentionally added
20 ingredient in either the Covered Product or a component of the Covered Product, or (b) the
21 Covered Product contains in excess of 50 parts per billion BPA as measured by the Test Protocol.

22 3.5.1 **Clear and Reasonable Warnings.** A Clear and Reasonable
23 Warning under this Agreement shall state:



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

27 The word "**WARNING**" shall be displayed in all capital letters and bold print and shall be
28 preceded by the yellow warning triangle symbol depicted above, provided however, the symbol

1 may be printed in black and white if the Covered Product label is produced without using the
2 color yellow. This warning statement shall be prominently displayed on the label or hangtag, or
3 any outer packaging, of the Covered Product and shall be displayed with such conspicuousness,
4 as compared with other words, statements or designs as to render it likely to be seen, read and
5 understood by an ordinary individual prior to sale. For internet, catalog or any other sale where
6 the consumer is not physically present, the warning statement shall be displayed in such a manner
7 that it is likely to be read and understood by an ordinary individual prior to the authorization of or
8 actual payment. If consumer information on the product is in a foreign language, the warning will
9 also be given in the foreign language.

10 **4. ENFORCEMENT**

11 4.1 Plaintiff may, by motion or application for an order to show cause before the
12 Superior Court of San Francisco County, enforce the terms and conditions contained in this
13 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
14 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy
15 of any test results which purportedly support the Notice of Violation. The Parties shall then meet
16 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it
17 informally, including providing Settling Defendant with a reasonable opportunity of at least thirty
18 (30) days to cure any alleged violation. Should such attempts at informal resolution fail, Plaintiff
19 may file an enforcement motion or application. This Consent Judgment may only be enforced by
20 the Parties. To the extent that Settling Defendant can demonstrate that it purchased the Covered
21 Product subject to the Notice of Violation prior to the Effective Date, the sale of such Covered
22 Product will not constitute a violation of the terms of this Consent Judgment.

23 **5. PAYMENTS**

24 5.1 **Total Settlement Payment.** Within ten (10) days of the Effective Date,
25 Settling Defendant shall pay the total settlement amount of \$17,500 and no cents as a settlement
26 payment as further set forth in this Section. The payment obligations herein are joint and several
27 between the Settling Defendant. Any payment by Settling Defendant shall be deemed to be timely
28 and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States

1 Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set
2 forth in this paragraph.

3 5.2 **Allocation of Payments.** The total settlement amount shall be paid in five
4 separate checks in the amounts specified below and delivered as set forth below. Any failure by
5 Settling Defendant to comply with the payment terms herein shall be subject to a joint and several
6 stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full
7 payment is not received after the applicable payment due date set forth in Section 5.1. The late fees
8 required under this Section shall be recoverable, together with reasonable attorneys' fees, in an
9 enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid
10 by Settling Defendant shall be allocated as set forth below between the following categories and
11 made payable as follows:

12 5.2.1 \$2,600 as a civil penalty pursuant to Health & Safety Code §
13 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
14 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
15 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
16 \$1,950 shall be made payable to OEHAA and associated with taxpayer identification number 68-
17 0284486/ This payment shall be delivered as follows:

18 For United States Postal Service Delivery:

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

24 For Non-United States Postal Service Delivery:

25 Attn: Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street, MS #19B
 Sacramento, CA 95814

The CEH portion of the civil penalty payment of \$650 shall be made payable to the Center for

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

4 5.2.2 \$1,800 as an Additional Settlement Payment (“ASP”) to CEH
5 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
6 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
7 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
8 textiles and other products. CEH may also use a portion of such funds to monitor compliance with
9 this Consent Judgment and to purchase and test Settling Defendant’s products to confirm
10 compliance. CEH shall obtain and maintain adequate records to document that ASPs are spent on
11 these activities and CEH agrees to provide such documentation to the Attorney General within
12 thirty days of any request from the Attorney General. The payment pursuant to this Section shall
13 be made payable to the Center for Environmental Health and associated with taxpayer identification
14 number 94-3251981. This payment shall be delivered to Lexington Law Group, LLP 503
15 Divisadero Street, San Francisco, CA 94117.

16 5.2.3 \$13,100 as a reimbursement of a portion of CEH’s reasonable
17 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two
18 separate checks as follows: (a) \$11,200 payable to the Lexington Law Group, LLP and associated
19 with taxpayer identification number 88-4399775; and (b) \$1,900 payable to the Center for
20 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
21 these payments shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street, San
22 Francisco, CA 94117.

23 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the
24 payees and in the amounts set forth below:

25 Payee	26 Type	27 Amount	28 Deliver To
OEHHA	Penalty	\$ 1,950	OEHHA per Section 5.2.1

Center For Environmental Health	Penalty	\$ 650	LLG
Center For Environmental Health	ASP	\$ 1,800	LLG
Lexington Law Group, LLP	Fee and Cost	\$ 11,200	LLG
Center For Environmental Health	Fee and Cost	\$1,900	LLG

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

5.4 **Additional Payment for Warning.** If Settling Defendant avails itself of the permanent warning option provided for by Section 3.5, Settling Defendant shall make an additional payment of \$4,375 to be split between a civil penalty, ASP and attorneys' fees and costs as set forth herein, concurrently with its written notice as provided in Section 3.4. Of the additional payment, \$2,600 shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of \$1,950 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.1.1 above. The CEH portion of the additional civil penalty payment of \$650 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. \$1,275 of the additional payment shall be made payable to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The remaining \$500 of the additional payment shall be made payable to the Center for Environmental Health and

1 associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section
2 5.1.2. Both payments to CEH shall be delivered to Lexington Law Group, LLP, 503 Divisadero
3 Street, San Francisco, CA 94117.

4 **6. MODIFICATION**

5 6.1 **Written Consent.** This Consent Judgment may be modified from time to
6 time by express written agreement of the Parties with the approval of the Court, or by an order of
7 this Court upon motion and in accordance with law.

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

16 6.3 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Consent Judgment.

19 **7. CLAIMS COVERED AND RELEASED**

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

1 James Gross
2 Foley Hoag LLP
3 1301 Avenue of the Americas, 25th Floor
4 New York, NY 10019
5 jgross@foleyhoag.com

6 8.3 Any Party may modify the person and address to whom the notice is to be sent
7 by sending the other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon entry by the Court.
10 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling
11 Defendant shall support entry of this Consent Judgment.

12 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
13 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
14 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

15 **10. GOVERNING LAW AND CONSTRUCTION**

16 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
17 of California.

18 **11. ATTORNEYS' FEES**

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

28 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
its own attorneys' fees and costs.

1 11.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
2 sanctions pursuant to law.

3 **12. ENTIRE AGREEMENT**

4 12.1 This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
6 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
7 merged herein and therein. There are no warranties, representations or other agreements between
8 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
9 implied, other than those specifically referred to in this Consent Judgment have been made by any
10 Party hereto. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
13 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
14 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
15 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
16 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
17 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

18 **13. SUCCESSORS AND ASSIGNS**

19 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
20 Defendant, and its respective divisions, subdivisions and subsidiaries, and the successors or assigns
21 of any of them.

22 **14. RETENTION OF JURISDICTION**

23 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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

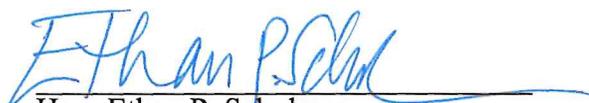
2 15.1 Each signatory to this Consent Judgment certifies that they are fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
4 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

6 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against an entity other than Settling Defendant on terms that are different than those contained in
8 this Consent Judgment.

9 **IT IS SO ORDERED:**

10
11 Dated: Feb. 10, 2025⁶


12 Hon. Ethan P. Schulman

13 **IT IS SO STIPULATED:**

14
15 Dated: March 7, 2025

CENTER FOR ENVIRONMENTAL HEALTH



16
17
18 Kizzy Charles-Guzman
Chief Executive Officer

19
20 Dated: March 25, 2025

DAVID PEYSER SPORTSWEAR, INC.



21
22
23 Signature

24
25 David Peyser
Printed Name

26
27 VP Finance
Title

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EXHIBIT A

“Test Protocol” as defined in Section 2.4 of the Consent Judgment means the following test method:

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

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6 & CRC 2.251)

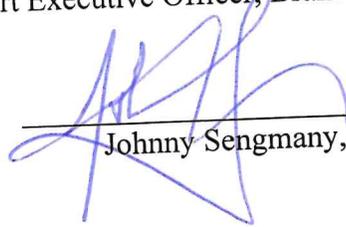
I, Johnny Sengmany, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 10, 2026, I electronically served the AMENDED CONSENT JUDGMENT AS TO DAVID PEYSER SPORTSWEAR, INC., via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: February 10, 2026,

Court Executive Officer, Brandon E. Riley

By: _____



Johnny Sengmany, Deputy Clerk