

1 LEXINGTON LAW GROUP
2 Mark N. Todzo, State Bar No. 168389
3 Meredyth L. Merrow, State Bar No. 328337
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 mmerrow@lexlawgroup.com

6 Counsel for Plaintiff
7 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11

12 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG21107796
13 a non-profit corporation,)
14) **[PROPOSED] CONSENT**
15 Plaintiff,) **JUDGMENT AS TO GYMSHARK**
16) **USA, INC.**
17 vs.)
18)
19 GYMSHARK USA, INC. and DOES 1 through)
20 200, inclusive,)
21)
22 Defendants.)
23 _____)

21 **1. INTRODUCTION**

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

25 **1.2** Settling Defendant is a corporation that employs ten (10) or more persons.

26 **1.3** On April 14, 2021, CEH served a 60-Day Notice of Violation under
27 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
28 & Safety Code § 25249.5, *et seq.*) (“Notice”) on Settling Defendant, the California Attorney

1 General, the District Attorneys of every County in the State of California, and the City Attorneys
2 for every City in the State of California with a population greater than 750,000. The Notice
3 alleges violations of Proposition 65 with respect to the presence of NDEA in latex resistance
4 bands that are manufactured, distributed, and/or sold by Settling Defendant.

5 **1.4** On July 22, 2021, CEH filed the above-captioned action in the Superior Court
6 of California for Alameda County naming Settling Defendant as a defendant in this action. On
7 September 30, 2021, CEH filed the operative First Amended Complaint in the above-captioned
8 action (“Complaint”).

9 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
10 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
11 jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in
12 the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

13 **1.6** Nothing in this Consent Judgment is, or shall be construed as, an admission by
14 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
15 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
16 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
17 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
18 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
19 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
20 this action.

21 **2. DEFINITIONS**

22 **2.1** “Covered Products” means latex resistance bands.

23 **2.2** “Effective Date” means the date on which this Consent Judgment is entered by
24 the Court.

25 **3. INJUNCTIVE RELIEF**

26 **3.1 Reformulation of Covered Products.** As of the Effective Date, Settling
27 Defendant shall continue to manufacture, distribute, sell, or offer for sale only those Covered
28 Products that contain less than 20 parts per billion (“ppb”) NDEA as determined using ASTM

1 F1313-90 by an independent accredited laboratory that will be sold or offered for sale to
2 California consumers.

3 **3.2 Specification to and Certification from Suppliers.** Unless previously done
4 so, no more than thirty (30) days after the Effective Date, Settling Defendant shall issue
5 specifications to the suppliers of Covered Products requiring that Covered Products not contain
6 NDEA in excess of 20 ppb. Settling Defendant shall obtain and maintain written certification(s)
7 and/or test results from the suppliers of Covered Products confirming that all such Covered
8 Products received by Settling Defendant for distribution in California do not contain NDEA in
9 excess of 20 ppb as determined using ASTM F1313-90 by an independent accredited laboratory.
10 Settling Defendant shall not be deemed in violation of the requirements of Section 3.1 for any
11 Covered Product to the extent: (a) it has relied on a written certification and/or test results from
12 its vendor that supplied a Covered Product that such Covered Product does not contain NDEA in
13 excess of 20 ppb as determined using ASTM F1313-90 by an independent accredited laboratory
14 and such certification has not previously been demonstrated to be invalid, or (b) it has obtained a
15 test result from an independent third party accredited laboratory reporting that the Covered
16 Product does not contain NDEA in excess of 20 ppb as determined using ASTM F1313-90.

17 **4. ENFORCEMENT**

18 **4.1** CEH may, by motion or application for an order to show cause before the
19 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
20 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
21 Section 3 above, CEH shall provide Settling Defendant with notice, in writing, setting forth the
22 basis for the alleged violation. The Parties shall then meet and confer regarding the basis for CEH's
23 anticipated motion or application in an attempt to resolve it informally. Should such attempts at
24 meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any
25 motion to enforce the terms of this section, the Court may, in addition to ordering compliance with
26 the terms of this Consent Judgment, employ such remedies as necessary to ensure compliance with
27 Proposition 65 including, but not limited to, requiring Settling Defendant to provide warnings. The
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1 prevailing party on any motion under this section shall be entitled to its reasonable attorneys' fees
2 and costs associated with such motion.

3 **5. PAYMENTS**

4 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the
5 Effective Date, Settling Defendant shall pay the total sum of \$14,950 and no cents as a settlement
6 payment as further set forth in this Section. Any payment by Settling Defendant shall be deemed
7 to be timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the
8 United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the
9 deadline set forth in this paragraph.

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

19 5.2.1 \$2,000 as a civil penalty pursuant to Health & Safety Code §
20 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
21 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
22 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
23 for \$1,500 shall be made payable to OEHHA and associated with taxpayer identification number
24 68-0284486. This payment shall be delivered as follows:

25 For United States Postal Service Delivery:

26 Attn: Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment

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P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

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

The CEH portion of the civil penalty payment for \$500 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$1,400 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH will use these funds to support CEH programs and activities that seek to educate the public about toxic chemicals, including carcinogenic nitrosamines such as NDEA and NDMA, work with industries interested in moving toward safer alternatives, advocate with government, businesses, and communities for business practices that are safe for human health and the 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 such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$11,550 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate

1 checks as follows: (a) \$9,600 payable to the Lexington Law Group and associated with taxpayer
2 identification number 94-3317175; and (b) \$1,950 payable to the Center for Environmental Health
3 and associated with taxpayer identification number 94-3251981. Both of these payments shall be
4 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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6 5.2.4 To summarize, Settling Defendant shall deliver checks made out to
7 the payees and in the amounts set forth below:

8 Payee	9 Type	10 Amount	11 Deliver To
12 OEHHA	13 Penalty	14 \$1,500	15 OEHHA per Section 5.2.1
16 Center For Environmental Health	17 Penalty	18 \$500	19 LLG
20 Center For Environmental Health	21 ASP	22 \$1,400	23 LLG
24 Lexington Law Group	25 Fee and Cost	26 \$9,600	27 LLG
28 Center For Environmental Health	Fee and Cost	\$1,950	LLG

17 **5.3** Notwithstanding the provisions of the Enforcement of Judgments Law and Code of
18 Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with the
19 payment obligations under this Section 5, in addition to any other enforcement mechanism
20 available to CEH, CEH may, solely after trying to resolve the issues via the meet and confer
21 process, seek an order requiring Settling Defendant to submit a debtor's examination in the
22 Alameda County Superior Court. In the event that Settling Defendant fails to submit to any such
23 debtor's examination ordered by the Court, CEH may seek an order holding Settling Defendant in
24 contempt of Court.

25 **6. MODIFICATION**

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

2 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
3 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
4 modify the Consent Judgment. The Parties acknowledge and agree that a change in the no
5 significant risk level for NDEA may provide a reason for modification of Sections 3.1 and 3.2 of
6 this Consent Judgment.

7 **7. CLAIMS COVERED AND RELEASED**

8 **7.1** This Consent Judgment is a full, final and binding resolution between CEH on
9 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
10 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
11 agents, shareholders, successors, assigns, attorneys, Gymshark Limited and its employees,
12 contractors, agents and attorneys, vendors, suppliers, consultants, contractors, laboratories, and
13 transportation providers (“Defendant Releasees”), and all entities to which Settling Defendant
14 directly or indirectly distribute or sell Covered Products, including but not limited to distributors,
15 wholesalers, customers, retailers, franchisees, licensors and licensees as well as natural
16 persons/customers who purchase directly from Gymshark, (“Downstream Defendant Releasees”),
17 of any violation of Proposition 65 based on failure to warn about alleged exposure to NDEA
18 contained in Covered Products that were sold, distributed or offered for sale by Settling Defendant
19 prior to the Effective Date.

20 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and forever
21 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
22 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
23 law claims that have been or could have been asserted by CEH regarding a violation of Proposition
24 65 and/or the failure to warn about exposure to NDEA arising in connection with Covered Products
25 manufactured by or for Settling Defendant prior to the Effective Date.

26 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant
27 shall constitute compliance with Proposition 65 by Settling Defendant, the Defendant Releasees
28 and its Downstream Defendant Releasees with respect to any alleged failure to warn about NDEA

1 in Covered Products manufactured, distributed or sold by Settling Defendant after the Effective
2 Date.

3 **8. NOTICE**

4 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by first class and electronic mail to:

6 Mark Todzo
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 mtodzo@lexlawgroup.com

11 **8.2** When Settling Defendant is entitled to receive any notice under this Consent
12 Judgment, the notice shall be sent by first class and electronic mail to:

13 Staci Jennifer Riordan
14 Nixon Peabody LLP
15 300 South Grand Avenue
16 Suite 4100
17 Los Angeles, CA 90071-3151
18 sriordan@nixonpeabody.com

19 **8.3** Any Party may modify the person and address to whom the notice is to be sent
20 by sending the other Party notice by first class and electronic mail.

21 **9. COURT APPROVAL**

22 **9.1** This Consent Judgment shall become effective upon entry by the Court. CEH
23 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
24 shall support entry of this Consent Judgment.

25 **9.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
26 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
27 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

28 **10. GOVERNING LAW AND CONSTRUCTION**

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

1 **11. ATTORNEYS' FEES**

2 **11.1** Should CEH prevail on any motion, application for an order to show cause, or
3 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
5 Settling Defendant prevail on any motion application for an order to show cause or other
6 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs incurred
7 as a result of such motion or application.

8 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear
9 its own attorneys' fees and costs.

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

12 **12. ENTIRE AGREEMENT**

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

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1 **13. RETENTION OF JURISDICTION**

2 **13.1** This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

5 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

8 **15. NO EFFECT ON OTHER SETTLEMENTS**

9 **15.1** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
10 against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are
11 different than those contained in this Consent Judgment.

12 **16. EXECUTION IN COUNTERPARTS**

13 **16.1** The stipulations to this Consent Judgment may be executed in counterparts and
14 by means of facsimile or portable document format (pdf), which taken together shall be deemed to
15 constitute one document.

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

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Dated: _____, 2022

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Judge of the Superior Court of the State of
California

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IT IS SO STIPULATED:

Dated: January 6, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

Dated: _____, 2022

GYMSHARK USA, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2022

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green
Chief Executive Officer

Dated: 1/28, 2022

GYMSHARK USA, INC.



Signature

Christos Katsarakis

Printed Name

Vice President, Legal

Title