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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11

12 CENTER FOR ENVIRONMENTAL HEALTH, )  
13 a non-profit corporation, )  
14 Plaintiff, )  
15 vs. )  
16 GYMSHARK USA, INC., et al, )  
17 Defendants. )  
18 )  
19 )

Case No. RG21107796  
**[PROPOSED] CONSENT  
JUDGMENT AS TO URBAN  
OUTFITTERS WHOLESALE, INC.**

20  
21 **1. INTRODUCTION**

22 **1.1** The parties to this Consent Judgment (“Parties”) are the Center for  
23 Environmental Health (“CEH”) and defendant Urban Outfitters Wholesale, Inc. (“Settling  
24 Defendant”). CEH and 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 n-nitrosodiethylamine  
4 (“NDEA”) in latex resistance bands that are distributed, and/or sold by Settling Defendant.

5 **1.4** On July 20, 2021, CEH filed the above-captioned action in the Superior Court  
6 of California for Alameda County. On September 30, 2021, CEH amended the complaint to  
7 name Settling Defendant as a defendant in this action.

8 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
9 Court has jurisdiction over the allegations of violations contained in the operative Complaint in  
10 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to  
11 the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this  
12 Court has jurisdiction to enter this Consent Judgment.

13 **1.6** Settling Defendant denies the material, factual, and legal allegations contained  
14 in CEH’s 60-day Notice of Violation and Complaint, and maintains that all of the products that it  
15 has sold in California have been, and are, in compliance with all laws. Nothing in this Consent  
16 Judgment is, or shall be construed as, an admission by the Parties of any fact, conclusion of law,  
17 issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be  
18 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation  
19 of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,  
20 argument, or defense the Parties may have in any other legal proceeding. This Consent Judgment  
21 is the product of negotiation and compromise and is accepted by the Parties for purposes of  
22 settling, compromising, and resolving issues disputed in this action.

## 23 **2. DEFINITIONS**

24 **2.1** “Covered Products” means latex resistance bands.

25 **2.2** “Effective Date” means the date on which this Consent Judgment is entered by  
26 the Court.

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1     **3.     INJUNCTIVE RELIEF**

2             **3.1             Reformulation of Covered Products.** No later than ninety (90) days after the  
3 Effective Date, Settling Defendant shall not distribute, sell, or offer for sale any Covered Product  
4 that contains NDEA in excess of 10 parts per billion (“ppb”) as determined using ISO Standard  
5 19577 (the “Test protocol”) by an independent accredited laboratory that will be sold or offered  
6 for sale to California consumers.

7             **3.2             Specification to and Certification from Suppliers.** No more than sixty (60)  
8 days after the Effective Date, Settling Defendant shall issue specifications to its suppliers of  
9 Covered Products requiring that Covered Products to be sold in California not contain NDEA in  
10 excess of 10 ppb, and shall encourage each supplier to use reasonable efforts to eliminate  
11 Covered Products containing NDEA on a nationwide basis. Settling Defendant shall obtain and  
12 maintain written certification(s) from its suppliers of Covered Products confirming that all such  
13 Covered Products received by Settling Defendant for distribution in California do not contain  
14 NDEA in excess of 10 ppb as determined using the Test Protocol by an independent accredited  
15 laboratory. Settling Defendant shall not be deemed in violation of the requirements of Section 3.1  
16 for any Covered Product to the extent: (a) it has relied on a written certification from its vendor  
17 that supplied a Covered Product that such Covered Product does not contain NDEA in excess of  
18 10 ppb as determined using the Test Protocol by an independent accredited laboratory and such  
19 certification has not previously been demonstrated to be invalid, or (b) it has obtained a test result  
20 from an independent third party accredited laboratory reporting that the Covered Product does not  
21 contain NDEA in excess of 10 ppb as determined using the Test Protocol.

22     **4.     ENFORCEMENT**

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

1 meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any  
2 motion to enforce the terms of this section, the Court may, in addition to ordering compliance with  
3 the terms of this Consent Judgment, employ such remedies as necessary to ensure compliance with  
4 Proposition 65 including, but not limited to, requiring Settling Defendant to provide warnings. The  
5 prevailing party on any motion under this section shall be entitled to its reasonable attorneys' fees  
6 and costs associated with such motion.

## 7 **5. PAYMENTS**

8 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the  
9 Effective Date, Settling Defendant shall pay the total sum of Twenty-Eight Thousand Five Hundred  
10 Dollars (\$28,500.00) and no cents as a settlement payment as further set forth in this Section. Any  
11 payment by Settling Defendant shall be deemed to be timely and not subject to a late charge and/or  
12 other penalty if (1) postmarked (if sent by the United States Postal Service) or (2) delivered to an  
13 overnight carrier (e.g. Fed Ex), on or before the deadline set forth in this paragraph.

14 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant  
15 shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth  
16 below. Any failure by Settling Defendant to comply with the payment terms herein shall be subject  
17 to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of \$100 for  
18 each day the full payment is not received after the applicable payment due date set forth in Section  
19 5.1. The late fees required under this Section shall be recoverable, together with reasonable  
20 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent  
21 Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between the  
22 following categories and made payable as follows:

23 **5.2.1** Three Thousand Eight Hundred Dollars (\$3,800.00) as a civil penalty  
24 pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in  
25 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of  
26 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the  
27 OEHHA portion of the civil penalty payment for Two Thousand Eight Hundred Fifty Dollars  
28 (\$2,850.00) shall be made payable to OEHHA and associated with taxpayer identification number

1 68-0284486. This payment shall be delivered as follows:

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For United States Postal Service Delivery:

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

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For Non-United States Postal Service Delivery:

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

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The CEH portion of the civil penalty payment for Nine Hundred Fifty Dollars (\$950.00) 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.

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5.2.2 Two Thousand Eight Hundred Dollars (\$2,800.00) 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

1 identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503  
2 Divisadero Street, San Francisco, CA 94117.

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4 5.2.3 Twenty-One Thousand Nine Hundred Dollars (\$21,900.00) as a  
5 reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and  
6 cost reimbursement shall be made in two separate checks as follows: (a) Eighteen Thousand Three  
7 Hundred Dollars (\$18,300.00) payable to the Lexington Law Group and associated with taxpayer  
8 identification number 94-3317175; and (b) Three Thousand Six Hundred Dollars (\$3,600.00)  
9 payable to the Center for Environmental Health and associated with taxpayer identification number  
10 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero  
11 Street, San Francisco, CA 94117.

12 5.2.4 To summarize, Settling Defendant shall deliver checks made out to  
13 the payees and in the amounts set forth below:

14 Payee	15 Type	16 Amount	17 Deliver To
18 OEHHA	19 Penalty	\$2,850	OEHHA per Section 5.2.1
20 Center For Environmental Health	21 Penalty	\$950	LLG
22 Center For Environmental Health	23 ASP	\$2,800	LLG
24 Lexington Law Group	25 Fee and Cost	\$18,300	LLG
26 Center For Environmental Health	27 Fee and Cost	\$3,600	LLG

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29 **5.3** Notwithstanding the provisions of the Enforcement of Judgments Law and Code of  
30 Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its  
31 payment obligations under this Section 5, in addition to any other enforcement mechanism  
32 available to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor's  
33 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to

1 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding  
2 Settling Defendant in contempt of Court.

## 3 **6. MODIFICATION**

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

7 **6.2 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. The Parties acknowledge and agree that a change in the no  
10 significant risk level for NDEA as well as a material change in law may provide a reason for  
11 modification of Sections 3.1 and 3.2 of this Consent Judgment.

## 12 **7. CLAIMS COVERED AND RELEASED**

13 **7.1** This Consent Judgment is a full, final and binding resolution between CEH on  
14 behalf of itself and the public interest and Settling Defendant and Settling Defendant's parents,  
15 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
16 agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), all entities to  
17 which Settling Defendant directly or indirectly distributes or sells Covered Products, including but  
18 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees  
19 ("Downstream Defendant Releasees"), and Settling Defendant's suppliers and distributors of  
20 Covered Products of any violation of Proposition 65 based on failure to warn about alleged  
21 exposure to NDEA contained in Covered Products that were sold, distributed or offered for sale by  
22 Settling Defendant any time up until 90-days following the Effective Date.

23 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
24 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
25 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common  
26 law claims that have been or could have been asserted by CEH regarding a violation of Proposition  
27 65 and/or the failure to warn about exposure to NDEA contained in Covered Products that were  
28 sold, distributed or offered for sale by Settling Defendant any time up until 90-days following the

1 Effective Date. CEH specifically waives any and all rights and benefits related to the Covered  
2 Product which it now has, or in the future may have, conferred by virtue of the provisions of Section  
3 1542 of the California Civil Code, which reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
5 THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
6 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
7 THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
8 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
9 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
10 OR RELEASED PARTY.

11 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant  
12 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees  
13 and its Downstream Defendant Releasees with respect to any alleged failure to warn about NDEA  
14 in Covered Products distributed or sold by Settling Defendant after the Effective Date.

15 **8. NOTICE**

16 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the  
17 notice shall be sent by first class and electronic mail to:

18 Mark Todzo  
19 Lexington Law Group  
20 503 Divisadero Street  
21 San Francisco, CA 94117  
22 mtodzo@lexlawgroup.com

23 **8.2** When Settling Defendant is entitled to receive any notice under this Consent  
24 Judgment, the notice shall be sent by first class and electronic mail to:

25 Gary J. Smith  
26 Beveridge & Diamond PC  
27 456 Montgomery Street  
28 Suite 1800  
San Francisco, CA 94104  
GSmith@bdlaw.com

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

**9. COURT APPROVAL**

**9.1** This Consent Judgment shall become effective upon entry by the Court. CEH



1 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
2 shall support entry of this Consent Judgment.

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

6 **10. GOVERNING LAW AND CONSTRUCTION**

7 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State  
8 of California.

9 **11. ATTORNEYS' FEES**

10 **11.1** Should CEH prevail on any motion, application for an order to show cause, or  
11 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
12 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
13 Settling Defendant prevail on any motion application for an order to show cause or other  
14 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
15 of such motion or application.

16 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear  
17 its own attorneys' fees and costs.

18 **11.3** Nothing in this Section 10 shall preclude a Party from seeking an award of  
19 sanctions pursuant to law.

20 **12. ENTIRE AGREEMENT**

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

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

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

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

11 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

12 **14.1** CEH and its attorneys agree to comply with the reporting form requirements  
13 referenced in California Health and Safety Code section 25249.7(f).

14 **15. RETENTION OF JURISDICTION**

15 **15.1** This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

17 **16. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18 **16.1** Each signatory to this Consent Judgment certifies that he or she is fully  
19 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
20 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

21 **17. NO EFFECT ON OTHER SETTLEMENTS**

22 **17.1** Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
23 against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are  
24 different than those contained in this Consent Judgment.

25 **18. EXECUTION IN COUNTERPARTS**

26 **18.1** The stipulations to this Consent Judgment may be executed in counterparts and  
27 by means of facsimile or portable document format (pdf), which taken together shall be deemed to  
28 constitute one document.

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

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge of the Superior Court of the State of  
California

**IT IS SO STIPULATED:**

Dated: March 8, 2022

**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Michael Green  
Chief Executive Officer

Dated: \_\_\_\_\_, 2022

**URBAN OUTFITTERS WHOLESALE, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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Title

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

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge of the Superior Court of the State of  
California

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2022

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Michael Green  
Chief Executive Officer

Dated: 2/22/2022, 2022

**URBAN OUTFITTERS WHOLESALE, INC.**

DocuSigned by:  
*Frank Conforti*  
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\_\_\_\_\_  
Signature

Frank Conforti

\_\_\_\_\_  
Printed Name

Co-President & Chief Operating Off

\_\_\_\_\_  
Title