

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

8
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 FIT FOR LIFE**
16) **LLC**
17)
18 vs.)
19)
20 GYMSHARK USA, INC. *et al.*,)
21)
22 Defendants.)
23)
24)
25)
26)
27)
28)

21 **1. INTRODUCTION**

22 **1.1** The parties to this Consent Judgment (“Parties”) are the Center for
23 Environmental Health (“CEH”) and defendant Fit for Life LLC (“Settling Defendant”). CEH and
24 Settling Defendant are referred to collectively as the “Parties.”

25 **1.2** Settling Defendant is a limited liability company that employs ten (10) or
26 more persons and that distributes and/or sells latex resistance bands that may contain n-
27 nitrosodiethylamine (“NDEA”) in the State of California or has done so in the past.

1 **1.3** Nitrosamines, such as NDEA and NDMA, can form during the manufacturing
2 process of latex rubber products, including the Covered Products. One study contends that
3 Covered Products can be made using alternate accelerators (hereafter “Alternate Accelerator”)
4 that do not form Nitrosamines. *See* Sheth, et al., *Nitrosamine Generating Accelerators in Curing*
5 *of Rubber*, IJSRD, Vol. 1, Issue 3 (2013).

6 **1.4** On April 14, 2021, CEH served a 60-Day Notices of Violation under
7 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
8 & Safety Code § 25249.5, *et seq.*) (“Notice”) on Settling Defendant, the California Attorney
9 General, the District Attorneys of every County in the State of California, and the City Attorneys
10 for every City in the State of California with a population greater than 750,000. The Notice
11 alleges violations of Proposition 65 with respect to the presence of NDEA in latex resistance
12 bands that are manufactured, distributed, and/or sold by Settling Defendant.

13 **1.5** On July 22, 2021, CEH filed the above-captioned action in the Superior Court
14 of California for Alameda County. On September 30, 2021, CEH filed a First Amended
15 Complaint naming Settling Defendant as a defendant in this action.

16 **1.6** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
17 Court has jurisdiction over the allegations of violations contained in the operative Complaint in
18 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to
19 the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this
20 Court has jurisdiction to enter and enforce this Consent Judgment.

21 **1.7** Nothing in this Consent Judgment is, or shall be construed as, an admission by
22 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
23 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
24 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
26 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
27 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
28 this action.

1 **2. DEFINITIONS**

2 **2.1** “Covered Products” means latex rubber resistance bands manufactured,
3 distributed, or sold by Settling Defendant in California.

4 **2.2** “Effective Date” means the date CEH serves by email notice of entry of this
5 Consent Judgment.

6 **2.3** “Nitrosamine-Free Latex” means latex rubber that contains NDEA that is
7 below the level of detection (“LOD”) using a detection limit equal to 50 parts per billion (ppb) by
8 weight when tested pursuant to ISO 19577-2019 by an independent accredited laboratory. In the
9 event that CEH becomes aware that the International Organization for Standardization (“ISO”)
10 has validated a modified version of ISO 19577-2019 that results in a reduction in the LOD for
11 NDEA, CEH may initiate a meet and confer pursuant to Section 6 to lower the LOD. In no event
12 shall the LOD be reduced below 20 ppb. Alternatively, Nitrosamine-Free Latex may be
13 demonstrated as containing NDEA less than 10 ppb as determined using ASTM F1313-90 (2011)
14 or EN-71-12:2013, modified to use a sweat solution by an independent accredited laboratory.

15 **2.4** “Reformulation Date” means 180 days after the Effective Date.

16 **2.5** “Reformulation Requirements” means the injunctive obligations set forth in
17 Sections 3.1 and 3.2.

18 **3. INJUNCTIVE RELIEF**

19 **3.1 Specification Compliance Date.** No more than thirty (30) days after the
20 Effective Date, Settling Defendant shall issue specifications to its suppliers of the Covered
21 Products requiring that the Covered Products be made with Nitrosamine-Free Latex beginning no
22 later than the Reformulation Date. Settling Defendant shall obtain and maintain written
23 certification(s) from the suppliers of Covered Products confirming that all such Covered Products
24 received by Settling Defendant for distribution in California are made with Nitrosamine-Free
25 Latex. Settling Defendant may rely upon a written certification from its supplier that supplied a
26 Covered Product that such Covered Product is made with Nitrosamine-Free Latex if such
27 certification has not previously been demonstrated to be invalid. Settling Defendant may comply
28 with the requirements of this Section 3.1 by incorporating the requirements of this Section into its

1 vendor guidelines, restricted substances list or similar vendor specifications documents and
2 obtaining written confirmation from its suppliers through its standard vendor approval and
3 consent processes.

4 **3.2 Reformulation Commitment.** As of the Reformulation Date, Settling
5 Defendant shall not manufacture or import for sale in California any Covered Products that are
6 not certified to be made with Nitrosamine-Free Latex. Nothing in this Consent Judgment requires
7 Settling Defendant to (a) perform testing on the Covered Products; or (b) recall any Covered
8 Products that are already in the stream of commerce as of the Reformulation Date.

9 **3.3 Sell-Through for Existing Inventory.** The Reformulation Requirements of
10 Section 3 shall not apply to Covered Products that Settling Defendant has purchased prior to the
11 Reformulation Date, including but not limited to Covered Products in distribution centers, in
12 inventory, or at retail locations.

13 **3.4 Extension of Time to Comply with Reformulation Date.** If Settling
14 Defendant is unable to satisfy the Reformulation Requirements prior to the Reformulation Date,
15 Settling Defendant shall provide written notice to CEH at least thirty (30) days before the
16 Reformulation Date of its need to extend the Reformulation Date by an additional six (6) months.
17 Such written notice shall include a reasonably detailed description of Settling Defendant's efforts
18 to reformulate and the anticipated date of compliance. In addition, if Settling Defendant avails
19 itself of the extension allowed under this Section 3.3, Settling Defendant shall make the
20 additional payments specified in Section 5.4 below for such an extension.

21 **3.5 Additional Payment for Warning Option.** If Settling Defendant has not
22 satisfied the Reformulation Requirements by the applicable Reformulation Date (or any extension
23 pursuant to Section 3.3) for any Covered Products, then for all such Covered Products it shall
24 provide a clear and reasonable warning that complies with Section 3.6.1. In addition, if Settling
25 Defendant avails itself of the warning option allowed under this Section 3.6, Settling Defendant
26 shall make the additional payments specified in Section 5.3 below.

27 **3.6 Reformulation Alternative - Clear and Reasonable Warnings.** If Settling
28 Defendant determines that it is unable to comply with the Reformulation Requirements, Settling

1 Defendant may elect to label Covered Products with a Clear and Reasonable Warning that
2 complies with the provisions of this Section 3.5 and Title 27 California Code of Regulations
3 section 25601, *et seq.* (the “Warning Option”) and make additional payments as set forth in
4 Section 5.3.

5 3.6.1 **Warning Language.** A Clear and Reasonable Warning under this
6 Agreement shall state:



8 **WARNING:** This product can expose you to chemicals including N-
9 Nitrosodiethylamine, which are known to the State of California to cause
cancer. For more information go to 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 that is the same height as the text of the word
12 **WARNING**, provided however, the symbol may be printed in black and white if the Covered
13 Product label is produced without using the color yellow. This warning statement shall be
14 prominently displayed on the outer packaging or tag or visible through the outer packaging of the
15 Covered Product and shall be displayed with such conspicuousness, as compared with other
16 words, statements or designs as to render it likely to be seen, read and understood by an ordinary
17 individual prior to sale. For internet, catalog, or any other sale where the product is not
18 physically present, the warning statement shall be displayed in such a manner that it is likely to be
19 read and understood by an ordinary individual prior to the authorization of or actual payment. In
20 lieu of the preceding warning method set forth above, Settling Defendant may use any specific
21 safe-harbor warning method applicable to the Covered Products set forth in Title 27, California
22 Code of Regulations, section 25600 *et seq.*, as amended August 30, 2018 and subsequently
thereafter.

23 3.6.2 **Notice to CEH of Election to Warn.** At least thirty (30) days before selling
24 or distributing any Covered Products with warnings hereunder for NDEA, the Settling Defendant
25 shall provide written notice to CEH that Settling Defendant has elected to utilize the Warning
26 Option.

1 **4. ENFORCEMENT**

2 **4.1** CEH may, by motion or application for an order to show cause before the
3 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
4 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
5 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth
6 the basis for the alleged violation. The Parties shall then meet and confer regarding the basis for
7 CEH's anticipated motion or application in an attempt to resolve it informally. If, as part of the
8 meet and confer process, Settling Defendant provides CEH with evidence that its supplier(s) has
9 switched to an Alternate Accelerator as described in Section 1.3, such evidence shall serve as a
10 complete defense to a CEH enforcement notice. Should Settling Defendant produce test results
11 showing that the Covered Product that CEH has tested meets the Reformulation Requirements
12 hereunder, such evidence shall serve as a defense to a CEH enforcement notice. Should attempts
13 at meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on
14 any motion to enforce the terms of this section, the Court may, in addition to ordering compliance
15 with the terms of this Consent Judgment, employ such remedies as necessary to ensure
16 compliance with Proposition 65 including, but not limited to, requiring Settling Defendant to
17 provide warnings. Should CEH prevail on any motion or application to enforce a material
18 violation of this Consent Judgment under this Section, CEH shall be entitled to its reasonable
19 attorneys' fees and costs incurred as a result of such motion or application. Should Settling
20 Defendant prevail on any motion or application under this Section, Settling Defendant may be
21 awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a
22 finding by the court that CEH's prosecution of the motion or application lacked substantial
23 justification. CEH's exclusive remedy for any failure to comply with the terms of this Consent
24 Judgment shall be a motion to enforce after meeting and conferring as set forth herein. Only the
25 Parties hereto may enforce the terms of this Consent Judgment.

26 **5. PAYMENTS**

27 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the
28 Effective Date, Settling Defendant shall pay the total sum of \$35,000 as a settlement payment as

1 further set forth in this Section. Any payment by Settling Defendant shall be deemed to be timely
2 and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States
3 Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set
4 forth in this paragraph.

5 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant
6 shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth
7 below. The funds paid by Settling Defendant shall be allocated as set forth below between the
8 following categories and made payable as follows:

9 5.2.1 \$4,700 as a civil penalty pursuant to Health & Safety Code §
10 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
11 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health
12 Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty payment
13 for \$3,525 shall be made payable to OEHHA and associated with taxpayer identification number
14 68-0284486. This payment shall be delivered as follows:

15 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

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

25 The CEH portion of the civil penalty payment for \$1,175 shall be made payable to the Center for
26 Environmental Health and associated with taxpayer identification number 94-3251981. This
27 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
28

1 94117.

2 5.2.2 \$3,300 as an Additional Settlement Payment (“ASP”) to CEH
3 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
4 3204. CEH will use these funds to support CEH programs and activities that seek to educate the
5 public about toxic chemicals, including carcinogenic nitrosamines such as NDEA and NDMA,
6 work with industries interested in moving toward safer alternatives, advocate with government,
7 businesses, and communities for business practices that are safe for human health and the
8 environment, and thereby reduce the public health impacts and risks of exposure to NDEA, NDMA,
9 and other toxic chemicals in consumer products sold in California. CEH shall obtain and maintain
10 adequate records to document that ASPs are spent on these activities and CEH agrees to provide
11 such documentation to the Attorney General within thirty (30) days of any request from the
12 Attorney General. The payment pursuant to this Section shall be made payable to the Center for
13 Environmental Health and associated with taxpayer identification number 94-3251981. This
14 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
15 94117.

16 5.2.3 \$27,000 as a reimbursement of a portion of CEH’s reasonable
17 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the
18 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
19 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
20 94117.

21 5.2.4 To summarize, Settling Defendant shall deliver checks made out to
22 the payees and in the amounts set forth below:

23
24
25
26
27
28

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$3,525	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$1,175	LLG
Center For Environmental Health	ASP	\$3,300	LLG
Lexington Law Group	Fee and Cost	\$27,000	LLG

5.3 Payment if Settling Defendant Elects Warning Option for NDEA. If

Settling Defendant avails itself of the Warning Option provided for by Section 3.6, Settling Defendant shall make an additional payment of \$7,500 to be split as set forth herein, concurrently with its written notice as provided in Section 3.4.2. Of the additional payment, \$4,000 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 \$3,000 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$1,000 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The remaining \$2,000 of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. The additional payment in this Section only applies to warnings for NDEA. Should Settling Defendant begin providing a Proposition 65 warning for the Covered Products that names a chemical other than NDEA, Settling Defendant shall not be responsible for making the additional payment required under section if it provides CEH with evidence that its supplier(s) has switched to an alternative accelerator as described in Section 1.3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.4 Additional Contingent Payments for Extending Compliance Date. If

Settling Defendant avails itself of the extension option provided for Covered Products by Section 3.3, within thirty (30) days of first electing to extend the Compliance Date, Settling Defendant shall make an additional payment of \$4,000 as a civil penalty. At the same time it makes any necessary payment under this Section, Settling Defendant may provide CEH with sales data on a confidential basis to support a reduction of the payment. Any such reduction of the payment shall be calculated based on Settling Defendant's most recent annual California sales of Covered Products. If CEH disagrees as to the amount of the reduction, the parties shall meet and confer in good faith. If the parties cannot informally resolve the dispute within thirty (30) days of initiating their meet and confer efforts, CEH may seek to have the dispute resolved by the Court. Any additional civil penalty payments under this section shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to OEHHA). The CEH portion of the civil penalty payment for \$1,000 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. The OEHHA portion of the civil penalty for \$3,000 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

1 **6. MODIFICATION**

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

5 **6.2 Alternative Compliance Standards.** If CEH enters into a court-approved
6 settlement or a court enters final judgment in a Proposition 65 enforcement action involving
7 exposure to NDEA in latex that includes a different reformulation standard or definition of
8 Nitrosamine-Free Latex than Section 2.3 or a court determines that there is no reliable or
9 validated methodology for testing for NDEA, Settling Defendant only is entitled at its option to
10 initiate a meet and confer in good faith on conforming modifications to this Consent Judgment. If
11 the Parties are unable to reach agreement, Settling Defendant may move the Court to modify the
12 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**This Consent Judgment is a full, final and binding resolution between CEH on
18 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
19 subsidiaries, affiliated entities that are under common ownership directors, officers, members,
20 employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”),
21 Settling Defendant’s suppliers, and all entities to which Settling Defendant directly or indirectly
22 distributes or sells Covered Products, including but not limited to distributors, wholesalers,
23 customers, retailers, franchisees, licensors and licensees, including Fila U.S.A., Inc., Gaiam
24 Americans, Inc. and Gaiam, Inc. (“Additional Defendant Releasees”), of any violation of
25 Proposition 65 based on failure to warn about alleged exposure to NDEA contained in the
26 Covered Products that were manufactured, imported, sold, distributed or offered for sale by
27 Settling Defendant prior to the Reformulation Date.

1 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and
2 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and
3 Additional Defendant Releasees arising from any violation of Proposition 65 or any other
4 statutory or common law claims that have been or could have been asserted by CEH regarding a
5 violation of Proposition 65 and/or the failure to warn about exposure to NDEA or NDMA or any
6 other Proposition 65 listed nitrosamine arising or in connection with the Covered Products that
7 were manufactured, imported, sold, distributed or offered for sale by Settling Defendant prior to
8 the Reformulation Date.

9 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant
10 shall constitute compliance with Proposition 65 by Settling Defendant, the Defendant Releasees
11 and its Additional Defendant Releasees with respect to any alleged failure to warn about NDEA
12 in the Covered Products manufactured, distributed, or sold by Settling Defendant after the
13 Effective Date, except as to any other retail seller who fails to provide an internet or catalogue
14 warning provided to said retailer pursuant to Section 3.6 in a manner consistent with Section
15 3.6.1.

16 **7.4** The Parties intend the above release to be a full, final accord and satisfaction
17 and release of claims with respect to the Covered Products. In furtherance of this intention, CEH,
18 on behalf of itself only, acknowledges it is familiar with California Civil Code section 1542,
19 which is set forth below, and waives and relinquishes all of the rights and benefits it has, or may
20 have under this statute or any similar laws with respect to the Covered Products.

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
22 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
24 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

25 **8. NOTICE**

26 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:
28

1 Mark Todzo
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 mtodzo@lexlawgroup.com

6 **8.2** When Settling Defendant is entitled to receive any notice under this Consent
7 Judgment, the notice shall be sent by first class and electronic mail to:

8 J. Robert Maxwell
9 Rogers Joseph O'Donnell, P.C.
10 Robert Dollar Building
11 311 California St., 10th Floor
12 San Francisco, CA, 94104
13 jmaxwell@rjo.com

14 **8.3** Any Party may modify the person and address to whom the notice is to be sent
15 by sending the other Party notice by first class and electronic mail.

16 **9. COURT APPROVAL**

17 **9.1** This Consent Judgment shall become effective upon entry by the Court. CEH
18 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
19 shall support entry of this Consent Judgment.

20 **9.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
21 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
22 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

23 **10. GOVERNING LAW AND CONSTRUCTION**

24 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State
25 of California.

26 **11. ATTORNEYS' FEES**

27 **11.1** Should CEH prevail on any motion, application for an order to show cause, or
28 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
Settling Defendant prevail on any motion application for an order to show cause or other
proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result

1 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
2 or application lacked substantial justification. For purposes of this Consent Judgment, the term
3 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
4 Code of Civil Procedure §§ 2016, *et seq.* This section is not intended to preclude the ordinary
5 operation of Civil Code §1717.

6 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear
7 its own attorneys' fees and costs.

8 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of
9 sanctions pursuant to law.

10 **12. JOINT PREPARATION**

11 **12.1** The Parties have jointly participated in the preparation of this Consent
12 judgment and this Consent judgment is the result of the joint efforts of the Parties. Accordingly,
13 any uncertainty or ambiguity existing in this Consent judgment shall not be interpreted against
14 any Party as a result of the manner of the preparation of this Consent judgment. Each Party to
15 this Consent judgment agrees that any statute or rule of construction providing that ambiguities
16 are to be resolved against the drafting Party shall not be employed in the interpretation of this
17 Consent judgment and, in this regard, the Parties hereby waive California Civil Code § 1654. No
18 inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment
19 shall be construed against any Party, based upon the fact that one of the Parties and/or their
20 counsel prepared or drafted any portion of this Consent Judgment. It is conclusively presumed
21 that the Parties participated equally in the drafting of this Consent Judgment.

22 **13. ENTIRE AGREEMENT**

23 **13.1** This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
25 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
26 merged herein and therein. There are no warranties, representations, or other agreements between
27 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
28 implied, other than those specifically referred to in this Consent Judgment have been made by any

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

9 **14. SUBMISSION OF REPORTS AND DATA TO CEH**

10 **14.1** For any report or information that Settling Defendant submits to CEH
11 pursuant to this Consent Judgment, Settling Defendant may make such a submission subject to
12 the terms of a protective order and/or confidentiality agreement as appropriate.

13 **15. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

14 **15.1** CEH and its attorneys agree to comply with the reporting form
15 requirements referenced in California Health and Safety Code section 25249.7(f).

16 **16. SUCCESSORS AND ASSIGNS**

17 **16.1** This Consent Judgment shall apply to and be binding upon CEH and Settling
18 Defendant, and other respective divisions, subdivision, and subsidiaries, and the successors and
19 assigns of any of them.

20 **17. RETENTION OF JURISDICTION**

21 **17.1** This Court shall retain jurisdiction of this matter to implement, enforce or
22 modify the Consent Judgment.

23 **18. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

24 **18.1** Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
26 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
27 Party.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. NO EFFECT ON OTHER SETTLEMENTS

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

20. EXECUTION IN COUNTERPARTS

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

IT IS SO ORDERED, ADJUDGED, AND DECREED:


Dated: _____, 2023

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: January 26, 2023

CENTER FOR ENVIRONMENTAL HEALTH




Regina Jackson
Interim Chief Executive Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: Jan 19th 2023
_____, 2022

FIT FOR LIFE LLC



Signature

Joseph Maleh

Printed Name

MEMBER

Title