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7 CENTER FOR ENVIRONMENTAL HEALTH

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

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12 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG21107796  
13 a non-profit corporation, )  
14 ) **[PROPOSED] CONSENT**  
15 Plaintiff, ) **JUDGMENT AS TO TRIMAX**  
16 ) **SPORTS, INC.**  
17 )  
18 vs. )  
19 )  
20 GYMSHARK USA, INC., et al, )  
21 )  
22 Defendants. )  
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21 **1. INTRODUCTION**

22 **1.1** The parties to this Consent Judgment (“Parties”) are the Center for  
23 Environmental Health (“CEH”) and defendant TriMax Sports, Inc. (“Settling Defendant”). CEH  
24 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 and  
26 that manufactures, distributes, and/or sells latex resistance bands that contain n-  
27 nitrosodiethylamine (“NDEA”) in the State of California or has done so in the past.

1           **1.3**           On April 14, 2021, CEH served a 60-Day Notice of Violation under  
2 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
3 & Safety Code § 25249.5, *et seq.*) (“Notice”) on Settling Defendant, the California Attorney  
4 General, the District Attorneys of every County in the State of California, and the City Attorneys  
5 for every City in the State of California with a population greater than 750,000. The Notice  
6 alleges violations of Proposition 65 with respect to the presence of NDEA in latex resistance  
7 bands that are manufactured, distributed, and/or sold by Settling Defendant.

8           **1.4**           On July 20, 2021, CEH filed the above-captioned action in the Superior Court  
9 of California for Alameda County. On September 30, 2021, CEH filed a First Amended  
10 Complaint naming Settling Defendant as a defendant in this action.

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

16           **1.6**           Nothing in this Consent Judgment is, or shall be construed as, an admission by  
17 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
18 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
19 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
20 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
21 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
22 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
23 this action. While this Consent Judgment requires reformulation of the Covered Products, the  
24 Parties acknowledge that this is not the exclusive method of complying with Proposition 65 and  
25 its implementing regulations for the Covered Products.

26           **1.7**

27 **2.    DEFINITIONS**

28           **2.1**           “Covered Products” means latex resistance bands.

1           **2.2**           “Effective Date” means the date on which this Consent Judgment is entered by  
2 the Court.

3           **3.       INJUNCTIVE RELIEF**

4           **3.1           Reformulation of Covered Products.** As of the Effective Date, Settling  
5 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that  
6 contains NDEA in excess of 20 parts per billion (“ppb”) as determined using as determined using  
7 ISO Standard 19577 (the “Test protocol”) by an independent accredited laboratory that will be  
8 sold or offered for sale to California consumers.

9           **3.2           Specification to and Certification from Suppliers.** Before purchasing  
10 Covered Products that will be sold or offered for sale to California consumers after the Effective  
11 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products requiring  
12 that Covered Products not contain NDEA in excess of 20 ppb.

13           **4.       ENFORCEMENT**

14           **4.1**           CEH may, by motion or application for an order to show cause before the  
15 Superior Court of the County of Alameda, enforce the terms and conditions contained in this  
16 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of  
17 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth the  
18 basis for the alleged violation. The Parties shall then meet and confer regarding the basis for CEH’s  
19 anticipated motion or application in an attempt to resolve it informally. Should such attempts at  
20 meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any  
21 motion to enforce the terms of this section, the Court may, in addition to ordering compliance with  
22 the terms of this Consent Judgment, employ such remedies as necessary to ensure compliance with  
23 Proposition 65 including, but not limited to, requiring Settling Defendant to provide warnings.  
24 Should CEH prevail on any motion or application to enforce a material violation of this Consent  
25 Judgment under this Section, CEH shall be entitled to its reasonable attorneys’ fees and costs  
26 incurred as a result of such motion or application. Should Settling Defendant prevail on any motion  
27 or application under this Section, Settling Defendant may be awarded its reasonable attorneys’ fees  
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1 and costs as a result of such motion or application upon a finding by the court that CEH's  
2 prosecution of the motion or application was not in good faith.

3 **5. PAYMENTS**

4 **5.1 Payments by Settling Defendant.** In accordance with the schedule set forth in  
5 Section 5.2.4 below, Settling Defendant shall pay the total sum of \$23,500 and no cents as a  
6 settlement payment as further set forth in this Section. Any payment by Settling Defendant shall  
7 be deemed to be timely and not subject to a late charge and/or other penalty if (1) postmarked (if  
8 sent by the United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on  
9 or before the deadline set forth in this paragraph.

10 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant  
11 shall be paid in six (6) separate checks in the amounts specified below and delivered as set forth  
12 below. Any failure by Settling Defendant to comply with the payment terms herein shall be subject  
13 to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of \$100 for  
14 each day the full payment is not received after the applicable payment due date set forth in Section  
15 5.1. The late fees required under this Section shall be recoverable, together with reasonable  
16 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent  
17 Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between the  
18 following categories and made payable as follows:

19 5.2.1 \$3,200 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 \$2,400 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 \$800 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 \$2,300 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 \$18,000 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) \$15,000 payable to the Lexington Law Group and associated with taxpayer  
2 identification number 94-3317175; and (b) \$3,000 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 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
9 OEHHA	Penalty	\$2,400	OEHHA per Section 10 5.2.1
11 Center For Environmental Health	Penalty	\$800	LLG
12 Center For Environmental Health	ASP	\$2,300	LLG
13 Lexington Law Group	Fee and Cost	\$15,000 <sup>1</sup>	LLG
14 Center For Environmental Health	Fee and Cost	\$3,000	LLG

15  
16 The payments required under this section shall be payable in two installments. The first installment  
17 of \$15,000 shall be due within 10 days following the Effective Date and shall include all of the  
18 payments to CEH, the payment to OEHHA and a payment of \$6,500 to Lexington Law Group. The  
19 second installment of \$8,500 shall be due on or before October 13, 2022 and will be made payable  
20 to Lexington Law Group.

21 **6. MODIFICATION**

22 **6.1 Written Consent.** This Consent Judgment may be modified from time to  
23 time by express written agreement of the Parties with the approval of the Court, or by an order of  
24 this Court upon motion and in accordance with law.

25 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
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27 \_\_\_\_\_  
28 <sup>1</sup> This payment may be divided into two payments of \$6,500 and \$8,500 as set forth in the  
sentence below the chart.

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

5 **7. CLAIMS COVERED AND RELEASED**

6 **7.1** This Consent Judgment is a full, final and binding resolution between CEH on  
7 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,  
8 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
9 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
10 which Settling Defendant directly or indirectly distribute or sell Covered Products, including but  
11 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees  
12 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
13 about alleged exposure to NDEA contained in Covered Products that were sold, distributed or  
14 offered for sale by Settling Defendant prior to the Effective Date.

15 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
16 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
17 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common  
18 law claims that have been or could have been asserted by CEH regarding a violation of Proposition  
19 65 and/or the failure to warn about exposure to NDEA arising in connection with Covered Products  
20 manufactured by or for Settling Defendant prior to the Effective Date .

21 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant  
22 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees  
23 and its Downstream Defendant Releasees with respect to any alleged failure to warn about NDEA  
24 in Covered Products manufactured, distributed or sold by Settling Defendant after the Effective  
25 Date.

26 **8. NOTICE**

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

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Mark Todzo  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
mtodzo@lexlawgroup.com

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

Stella Wang  
TriMax Sports Inc.  
510 East Kent Ave. South  
Vancouver, BC  
Canada V5X4V6  
[stella@zenathletics.com](mailto:stella@zenathletics.com)

Lauren Shoor  
Norton Rose Fulbright US LLP  
555 South Flower St., Forty First Floor  
Los Angeles, CA 90071  
[lauren.shoor@nortonrosefulbright.com](mailto:lauren.shoor@nortonrosefulbright.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 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent Judgment.

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

**10. GOVERNING LAW AND CONSTRUCTION**

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

**11. ATTORNEYS' FEES**

**11.1** Should CEH prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its



1 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
2 Settling Defendant prevail on any motion application for an order to show cause or other  
3 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
4 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
5 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
6 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
7 Code of Civil Procedure §§ 2016, *et seq.*

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 11 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.

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, AND**  
18 **DECREED:**

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

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

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**IT IS SO STIPULATED:**

Dated: May 9, 2022

**CENTER FOR ENVIRONMENTAL HEALTH**



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Michael Green  
Chief Executive Officer

1 Dated: April 21st, 2022

TRIMAX SPORTS, INC.

2  
3 Stellawang

4 Signature

5 STELLA WANG

6 Printed Name

7 President

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