

1 Mark N. Todzo, State Bar No. 168389  
2 Meredyth Merrow, State Bar No. 327338  
3 LEXINGTON LAW GROUP  
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 SAN FRANCISCO

11  
12 CENTER FOR ENVIRONMENTAL HEALTH,  
13 a non-profit corporation,  
14  
15 Plaintiff,  
16  
17 v.  
18 EASY SPIRIT LLC, *et al.*,  
19  
20 Defendants.

Case No. CGC-22-598022  
  
Assigned For All Purposes To The  
Honorable Ethan P. Schulman, Dept. 304  
  
**[PROPOSED] CONSENT  
JUDGMENT AS TO DEFENDANT  
ZHEJIANG YIHENG TEXTILE  
TECHNOLOGY CO., LTD.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for  
3 Environmental Health (“CEH”) and Defendant Zhejiang Yiheng Textile Technology Co., Ltd.  
4 (“Settling Defendant” or “Zhejiang”). CEH and Settling Defendant are referred to collectively as  
5 the “Parties.”

6 1.2 Settling Defendant manufactures, distributes, licenses, and/or sells socks made  
7 primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the State of California  
8 (“Covered Products”) or has done so in the past.

9 1.3 On June 23, 2022, CEH served a 60-Day Notice of Violation under  
10 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
11 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney  
12 General, the District Attorneys of every County in the State of California, and the City Attorneys  
13 for every City in the State of California with a population greater than 750,000. The Notice  
14 alleges violations of Proposition 65 with respect to the presence of BPA in the Covered Products.

15 1.4 On February 4, 2022 CEH filed the original complaint. On March 21, 2022  
16 CEH filed the operative First Amended Complaint. On September 2, 2022, CEH will amend the  
17 Complaint pursuant to California Code of Civil Procedure section 474 to add Settling Defendant  
18 as a defendant in the action.

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

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

1 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
2 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
3 this action.

## 4 **2. DEFINITIONS**

5 2.1 “Covered Products” means socks made primarily of polyester with spandex  
6 that are manufactured, distributed, licensed or sold by Settling Defendant.

7 2.2 “Effective Date” means the date on which this Consent Judgment is entered by  
8 the Court.

9 2.3 “Test Protocol” means a method for measuring total BPA content as set forth  
10 in Exhibit A.

## 11 **3. INJUNCTIVE RELIEF**

12 3.1 **Reformulation of Covered Products.** Within six months following the  
13 Effective Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute,  
14 license, sell, or offer for sale any Covered Product in California that contains BPA except as  
15 provided in Section 3.3 below. For purposes of this Consent Judgment, a product “contains  
16 BPA” if BPA is an intentionally added ingredient in either the Covered Product or a component  
17 of the Covered Product, or contains in excess of 1 part per million BPA as measured by the Test  
18 Protocol. Settling Defendant shall not replace the BPA with any other phenol (such as Bisphenol  
19 S or BPS). In the event that Settling Defendant learns either through Plaintiff or another means  
20 that the Products contain BPA or another phenol in excess of the requirements set forth herein,  
21 Settling Defendant shall notify its source supplier that it has breached its specification and take  
22 action to rectify the breach to prevent future breaches.

23 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective  
24 Date, Settling Defendant shall issue specifications to their source suppliers of Covered Products  
25 requiring that Covered Products not contain BPA or any other phenol (such as Bisphenol S or  
26 BPS).

27 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of  
28 Section 3.1 shall not apply to Covered Products that Settling Defendant had entered into a binding

1 agreement to purchase or sell, including product in production for the calendar year 2022 prior to  
2 the Effective Date, including but not limited to Covered Products in the process of manufacture,  
3 production, distribution, or in inventory in distribution centers, or at retail locations.

4           3.4           **Clear and Reasonable Warnings.**

5                   3.4.1   **Election to Warn.** If Settling Defendant is unable to comply with the  
6 Reformulation provision set forth in Section 3.1 or otherwise elects to permanently avail itself of  
7 the warning option provided by this Section 3.4, Settling Defendant shall provide written notice  
8 to CEH prior to the Reformulation Date, and Settling Defendant concurrently shall make the  
9 additional payment specified in Section 5.2.5 below. Settling Defendant shall then provide Clear  
10 and Reasonable Warnings for each Covered Product sold in California. A Clear and Reasonable  
11 Warning under this Agreement shall state:



12           **WARNING:** This product can expose you to chemicals including Bisphenol  
13           A which is known to the State of California to cause birth defects or other  
14           reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be  
16 preceded by the yellow warning triangle symbol depicted above, provided however, the  
17 symbol may be printed in black and white if the Covered Product label is produced without  
18 using the color yellow. This warning statement shall be prominently displayed on the outer  
19 packaging of the Covered Product and shall be displayed with such conspicuousness, as  
20 compared with other words, statements or designs as to render it likely to be seen, read and  
21 understood by an ordinary individual prior to sale. For internet, catalog or any other sale  
22 where the consumer is not physically present, the warning statement shall be displayed in  
23 such a manner that it is likely to be read and understood by an ordinary individual prior to the  
24 authorization of or actual payment.

25   **4.       ENFORCEMENT**

26           4.1           Plaintiff may, by motion or application for an order to show cause before the  
27 Superior Court of San Francisco County, enforce the terms and conditions contained in this  
28 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of

1 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy  
2 of any test results which purportedly support the Notice of Violation. The Parties shall then meet  
3 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it  
4 informally, including providing Settling Defendant(s) with a reasonable opportunity of at least  
5 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,  
6 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be  
7 enforced by the Parties.

8 **5. PAYMENTS**

9 **5.1 Payments by Settling Defendant.** Within ten (10) business days of mutual  
10 execution of this Consent Judgment, Settling Defendant shall transfer the total sum of \$30,000  
11 and no cents to its counsel, Rogers Joseph O'Donnell, P.C. via wire transfer to hold in trust  
12 pending distribution. Within ten (10) business days of the Effective Date, Settling Defendants'  
13 counsel will distribute this sum as a settlement payment as further set forth in this Section. Any  
14 payment by Settling Defendant shall be deemed to be timely and not subject to a late charge  
15 and/or other penalty if (1) postmarked (if sent by the United States Postal Service) or (2)  
16 delivered to an overnight carrier (e.g. Fed Ex), on or (3) wire transferred on or before the deadline  
17 set forth in this paragraph

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

27 **5.2.1** \$3,900 as a civil penalty pursuant to Health & Safety Code §  
28 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety

1 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental  
2 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for  
3 \$2,925 shall be made payable to OEHAA and associated with taxpayer identification number 68-  
4 0284486/ This payment shall be delivered as follows:

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

12 Attn: Mike Gyurics  
13 Fiscal Operations Branch Chief  
14 Office of Environmental Health Hazard Assessment  
15 1001 I Street, MS #19B  
16 Sacramento, CA 95814

17 The CEH portion of the civil penalty payment for \$975 shall be made payable to the Center for  
18 Environmental Health and associated with taxpayer identification number 94-3251981. This  
19 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
20 94117.

21 5.2.2 \$2,900 as an Additional Settlement Payment (“ASP”) to CEH  
22 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §  
23 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue  
24 its work educating and protecting people from exposures to toxic chemicals, including BPA, in  
25 textiles and other products. CEH may also use a portion of such funds to monitor compliance  
26 with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm  
27 compliance.

28 5.2.3 \$23,200 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 checks as follows: (a) \$20,000 payable to the Lexington Law Group and associated with

1 taxpayer identification number 94-3317175; and (b) \$3,200 payable to the Center for  
2 Environmental Health and associated with taxpayer identification number 94-3251981. Both of  
3 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
4 CA 94117.

5 5.2.4 To summarize, Settling Defendant's counsel shall deliver checks  
6 made out to the payees and in the amounts set forth below to Lexington Law Group at this address:  
7 503 Divisadero Street, San Francisco, CA 94117 for distribution by the Lexington Law Group as  
8 follows:

| 9 <b>Payee</b>                     | <b>Type</b>  | <b>Amount</b> | <b>Deliver To</b>             |
|------------------------------------|--------------|---------------|-------------------------------|
| 10 OEHHA                           | Penalty      | \$2,925       | OEHHA per Section<br>11 5.2.1 |
| 12 Center For Environmental Health | Penalty      | \$975         | LLG                           |
| 13 Center For Environmental Health | ASP          | \$2,900       | LLG                           |
| 14 Lexington Law Group             | Fee and Cost | \$20,000      | LLG                           |
| 15 Center For Environmental Health | Fee and Cost | \$3,200       | LLG                           |

17 5.3 If Settling Defendant avails itself of the permanent warning option provided for  
18 by Section 3.3, Settling Defendant shall make an additional payment of \$7,000 and no cents to be  
19 split between a civil penalty and ASP as set forth herein, concurrently with its written notice as  
20 provided in Section 3.2. Of the additional payment, \$3,300 shall be a civil penalty, apportioned in  
21 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of  
22 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the  
23 OEHHA portion of the civil penalty payment of \$2,475 shall be made payable to OEHHA,  
24 associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set  
25 forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$825 shall  
26 be made payable to the Center for Environmental Health and associated with taxpayer identification  
27 number 94-3251981. \$1,500 of the additional payment shall be made payable to Lexington Law  
28

1 Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the  
2 additional payment. The remaining \$2,200 of the additional payment shall be made payable to the  
3 Center for Environmental Health and associated with taxpayer identification number 94-3251981  
4 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH shall be delivered to  
5 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

6 **6. MODIFICATION**

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

10 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
11 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
12 modify the Consent Judgment.

13 **7. CLAIMS COVERED AND RELEASED**

14 7.1 Provided that Settling Defendant complies in full with its obligations under  
15 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of  
16 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities  
17 that are under common ownership, directors, officers, employees, agents, shareholders,  
18 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling  
19 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,  
20 retailers, including specifically Walgreen Co. (and its parents, subsidiaries, affiliated entities that  
21 are under common ownership, directors, officers, employees, agents, shareholders, successors,  
22 assigns, and attorneys), franchisees, licensors and licensees (“Downstream Defendant  
23 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to  
24 BPA contained in Covered Products that were sold by Settling Defendant prior to the Effective  
25 Date.

26 7.2 Provided that Settling Defendant complies in full with its obligations under  
27 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
28 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream



1 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
2 common law claims that have been or could have been asserted by CEH individually regarding  
3 the failure to warn about exposure to BPA contained in Covered Products sold by Settling  
4 Defendant prior to the Effective Date.

5 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant  
6 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
7 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to  
8 warn about BPA in Covered Products manufactured, distributed, or sold by Settling Defendant  
9 after the Effective Date.

10 7.4 Nothing in this Section 7 affects Plaintiff's right to commence or prosecute an  
11 action under Proposition 65 against any person other than Settling Defendant, Defendant  
12 Releasees, or Downstream Defendant Releasees.

13 **8. NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
15 notice shall be sent by first class and electronic mail to:

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

21 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Eva Han  
24 Zhejiang Yiheng Textile Technology Co., Ltd  
25 Shuangjing Road, Caota Town,  
26 Zhuji City, Zhejiang Province, China  
27 eva@yhsox.com  
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

With copy to:

Renee Wasserman  
Rogers Joseph O'Donnell, PC  
311 California Street, 10th Floor  
San Francisco, CA 94104-2695  
rwasserman@rjo.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. Plaintiff 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 Plaintiff prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, Plaintiff 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 against Plaintiff as a result of such motion or application upon a finding by the Court that Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear

1 its own attorneys' fees and costs.

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

4 **12. ENTIRE AGREEMENT**

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

19 **13. SUCCESSORS AND ASSIGNS**

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

23 **14. RETENTION OF JURISDICTION**

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

26  
27  
28

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

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

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

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

9 16.2 If CEH enters into any consent judgment (“Settlement Document”) with any  
10 other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in  
11 socks made primarily of polyester with spandex in which it agrees to different injunctive terms,  
12 including different testing methodology or reformulation standard, Settling Defendant may seek to  
13 modify this Consent Judgment to adopt those injunctive terms and comply with them instead of  
14 those presently set forth in Section 3. If either OEHHA or a court of competent jurisdiction  
15 determines that a different reformulation standard applies to BPA in socks made primarily of  
16 polyester with spandex, Settling Defendant may seek to modify this Consent Judgment to adopt  
17 those injunctive terms and comply with them instead of those presently set forth in Section 3. If  
18 Settling Defendant seeks to adopt different injunctive terms, it shall provide notice to CEH  
19 consistent with Section 6 of this Consent Judgment.

20  
21 **IT IS SO ORDERED:**

22  
23 Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge of the Superior Court

24  
25  
26  
27 **IT IS SO STIPULATED:**

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

Dated: August 18, 2022

**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Regina Jackson  
Interim Chief Executive Officer

**ZHEJIANG YIHENG TEXTILE  
TECHNOLOGY CO., LTD.**

Dated: August \_\_, 2022

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

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: August \_\_, 2022

**CENTER FOR ENVIRONMENTAL HEALTH**

Regina Jackson  
Interim Chief Executive Officer

**ZHEJIANG YIHENG TEXTILE  
TECHNOLOGY CO., LTD.**

Dated: August 19, 2022

Eva Han  
Signature

Eva Han  
Printed Name

General Manager  
Title

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

**EXHIBIT A**

**“Test Protocol” as defined in Section 2.3 of the Consent Judgment means the following test method:**

- a. Obtain homogenized 1 gram sample of the sock by shredding the entire sock and taking a representative 1-gram sample of the shreds.
- b. Add the 1-gram sock sample to 10 ml of acetonitrile
- c. Heat the solution using a hot plate for 3 hours at 40 degrees Celsius
- d. Analytical method - Isotope dilution LC-Tandem MS (LC-MS)
- e. Limit of detection 1 ppm
- f. Reporting -- BPA concentration in mg of BPA per kg of sample