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7 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

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12 CENTER FOR ENVIRONMENTAL HEALTH,
13 a non-profit corporation,

14 Plaintiff,

15 v.

16 EASY SPIRIT LLC, *et al.*,

17 Defendants.
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Case No. CGC-22-598022

Assigned For All Purposes To The
Honorable Ethan P. Schulman, Dept. 304

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
F21 OPCO, LLC**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant F21 Opco, LLC¹ (“Settling Defendant”). CEH
4 and Settling Defendant are referred to collectively as the “Parties.”

5 1.2 CEH alleges that Settling Defendant manufactures, distributes, licenses, and/or
6 sells socks made primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the
7 State of California (“Covered Products”) or has done so in the past.

8 1.3 On September 1, 2021, CEH served 60-Day Notices of Violation under
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code §§ 25249.5, *et seq.*) (“Notices”) to Settling Defendant, the California Attorney
11 General, the District Attorneys of every County in the State of California, and the City Attorneys
12 for every City in the State of California with a population greater than 750,000. The Notice
13 alleges violations of Proposition 65 with respect to the presence of BPA in the Covered Products.

14 1.4 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
15 CEH filed the operative First Amended Complaint naming both Settling Defendant and Forever
16 21, Inc. as defendants in the action.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
18 Court has jurisdiction over the allegations of violations contained in the operative Complaints
19 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
20 alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii) this Court
21 has jurisdiction to enter this Consent Judgment.

22 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
23 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
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27 _____
28 ¹ F21 Opco, LLC is formerly known as Forever 21, Inc. This Consent Judgment resolves CEH’s claims regarding the Covered Products as to both entities.

1 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
2 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
3 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
4 this action.

5 **2. DEFINITIONS**

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

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

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

12 **3. INJUNCTIVE RELIEF**

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

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

28 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of

1 Section 3.1 shall not apply to Covered Products that Settling Defendant had entered into a binding
2 agreement to purchase prior to the Effective Date, including but not limited to Covered Products
3 in distribution centers, in inventory, 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 be a developmental and
14 female reproductive toxicant. For more information go to
15 www.P65Warnings.ca.gov.

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

26 **4. ENFORCEMENT**

27 4.1 Plaintiff may, by motion or application for an order to show cause before the
28 Superior Court of San Francisco County, enforce the terms and conditions contained in this

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

9 4.2 The first time Plaintiff's Notice of Violation involves BPS or any phenol other
10 than BPA, Settling Defendant must provide notice to its supplier as set forth in Section 3.2, but
11 shall have no further liability for violating the terms of this Consent Judgment. However, any
12 subsequent Notice of Violation involving BPS or any phenol other than BPA shall be governed
13 by Section 4.1

14 **5. PAYMENTS**

15 5.1 **Payments by Settling Defendant.** Within fifteen (15) days of the Effective
16 Date, Settling Defendant shall pay the total sum of \$72,500 and no cents as a settlement payment
17 as further set forth in this Section. Any payment by Settling Defendant shall be deemed to be
18 timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the
19 United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before
20 the deadline set forth in this paragraph.

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

1 categories and made payable as follows:

2 5.2.1 \$9,800 as a civil penalty pursuant to Health & Safety Code §
3 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
4 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental
5 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
6 \$7,350 shall be made payable to OEHAA and associated with taxpayer identification number 68-
7 0284486/ This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

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

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The CEH portion of the civil penalty payment for \$2,450 shall be made payable to the Center for
21 Environmental Health and associated with taxpayer identification number 94-3251981. This
22 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
23 94117.

24 5.2.2 \$7,200 as an Additional Settlement Payment (“ASP”) to CEH
25 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
26 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
27 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
28 textiles and other products. CEH may also use a portion of such funds to monitor compliance
with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm
compliance.

1 5.2.3 \$55,500 as a reimbursement of a portion of CEH’s reasonable
 2 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two
 3 separate checks as follows: (a) \$46,800 payable to the Lexington Law Group and associated with
 4 taxpayer identification number 94-3317175; and (b) \$8,700 payable to the Center for
 5 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
 6 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
 7 CA 94117.

8 5.2.4 To summarize, Settling Defendant shall deliver checks made out to
 9 the payees and in the amounts set forth below:

10 Payee	11 Type	12 Amount	13 Deliver To
14 OEHHA	15 Penalty	16 \$7,350	17 OEHHA per Section 5.2.1
18 Center For Environmental Health	19 Penalty	20 \$2,450	21 LLG
22 Center For Environmental Health	23 ASP	24 \$7,200	25 LLG
26 Lexington Law Group	27 Fee and Cost	28 \$46,800	LLG
Center For Environmental Health	Fee and Cost	\$8,700	LLG

18 5.3 If Settling Defendant avails itself of the permanent warning option provided for
 19 by Section 3.4, Settling Defendant shall make an additional payment of \$18,000 and no cents to be
 20 split between a civil penalty and ASP as set forth herein, concurrently with its written notice as
 21 provided in Section 3.4.1. Of the additional payment, \$9,200 shall be a civil penalty, apportioned
 22 in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of
 23 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
 24 OEHHA portion of the civil penalty payment of \$6,900 shall be made payable to OEHHA,
 25 associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set
 26 forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$2,300
 27 shall be made payable to the Center for Environmental Health and associated with taxpayer
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1 identification number 94-3251981. \$2,000 of the additional payment shall be made payable to
2 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs
3 associated with the additional payment. The remaining \$6,800 of the additional payment shall be
4 made payable to the Center for Environmental Health and associated with taxpayer identification
5 number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH
6 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

7 **5.4 Failure to Comply With Payment Obligations.** Notwithstanding the
8 provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the
9 event that Settling Defendant does not comply fully with its payment obligations under Section 5,
10 in addition to any other enforcement mechanism available to CEH, CEH may obtain an order
11 requiring Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant
12 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
13 Settling Defendant in contempt of Court.

14 **6. MODIFICATION**

15 **6.1 Written Consent.** This Consent Judgment may be modified from time to
16 time by express written agreement of the Parties with the approval of the Court, or by an order of
17 this Court upon motion and in accordance with law.

18 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
19 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
20 modify the Consent Judgment.

21 **7. CLAIMS COVERED AND RELEASED**

22 **7.1** Provided that Settling Defendant complies in full with its obligations under
23 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
24 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
25 that are under common ownership, directors, officers, employees, agents, shareholders,
26 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
27 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
28 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any

1 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
2 Covered Products that were sold by Settling Defendant prior to the Effective Date.

3 7.2 Provided that Settling Defendant complies in full with its obligations under
4 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
5 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
6 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
7 common law claims that have been or could have been asserted by CEH individually regarding
8 the failure to warn about exposure to BPA contained in Covered Products sold by Settling
9 Defendant prior to the Effective Date.

10 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
11 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
12 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
13 warn about BPA in Covered Products manufactured, distributed, or sold by Settling Defendant
14 after the Effective Date.

15 7.4 Nothing in this Section 7 affects Plaintiff's right to commence or prosecute an
16 action under Proposition 65 against any person other than Settling Defendant, Defendant
17 Releasees, or Downstream Defendant Releasees.

18 **8. NOTICE**

19 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail to:

21 Mark N. Todzo
22 Lexington Law Group
23 503 Divisadero Street
24 San Francisco, CA 94117
25 mtodzo@lexlawgroup.com

26 8.2 When Settling Defendant is entitled to receive any notice under this Consent
27 Judgment, the notice shall be sent by first class and electronic mail to:

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John Allen
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street, Ste. 2800
Los Angeles, CA 900017-2543
jallen@allenmatkins.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 a Settling Defendant prevail on any motion application for an order to show cause or other proceeding, that 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 its own attorneys' fees and costs.

1 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
2 sanctions pursuant to law.

3 **12. ENTIRE AGREEMENT**

4 12.1 This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
6 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
7 merged herein and therein. There are no warranties, representations or other agreements between
8 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
9 implied, other than those specifically referred to in this Consent Judgment have been made by any
10 Party hereto. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
13 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
14 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
15 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
16 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
17 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

18 **13. SUCCESSORS AND ASSIGNS**

19 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
20 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
21 assigns of any of them.

22 **14. RETENTION OF JURISDICTION**

23 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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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 with respect to an alleged failure to warn of alleged exposures to BPA in socks made
11 primarily of polyester with spandex in which it agrees to different injunctive terms (including
12 without limitation a different Test Protocol), it shall provide Settling Defendant with notice thereof
13 by serving the Settlement Document on the Attorney General for posting on its public website, and
14 Settling Defendant may thereafter seek to modify this Consent Judgment to adopt those injunctive
15 terms and comply with them instead of those presently set forth in Section 3. If Settling Defendant
16 seeks to adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6
17 of this Consent Judgment and CEH agrees to meet and confer in accordance with that provision
18 and not to oppose Settling Defendants request for modification provided that the products at issue
19 in the Settlement Document are substantially similar to the Covered Products.

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IT IS SO ORDERED:

Dated: _____, 2022

Judge of the Superior Court

1 **IT IS SO STIPULATED:**

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3 Dated: October 18, 2022

CENTER FOR ENVIRONMENTAL HEALTH

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Regina Jackson
Interim Chief Executive Officer


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10 Dated: October 5, 2022

F21 OPCO, LLC

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DocuSigned by:

Signature D9DA973AC102408...

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Brad Sell

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Printed Name

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CFO, F21 Opco, LLC

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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