

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  
INFINITY CLASSICS  
INTERNATIONAL**

1       **1.     INTRODUCTION**

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

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

8               1.3           On September 1, 2021, CEH served a 60-Day Notice 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.*) (“Notice”) on 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. On August 9,  
13 2023, CEH served a supplemental Notice on the same parties. The Notices allege violations of  
14 Proposition 65 with respect to the presence of BPA in socks made primarily of polyester with  
15 spandex.

16              1.4           On February 4, 2022 CEH filed the original complaint. On March 21, 2022,  
17 CEH filed the operative First Amended Complaint. Both the original complaint and operative  
18 First Amended Complaint (“Complaint”) name Settling Defendant as a defendant to 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 Complaint  
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 containing at least 70% polyester and  
6 between 1% and 5% spandex that are manufactured, distributed, licensed or sold by Settling  
7 Defendant.

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

## 10 **3. INJUNCTIVE RELIEF**

11 3.1 **Sell-Through for Existing Inventory.** The requirements of Section 3 shall  
12 not apply to Covered Products that Settling Defendant has purchased prior to the Effective Date,  
13 including but not limited to Covered Products in distribution centers, in inventory, or at retail  
14 locations.

### 15 3.2 **Clear and Reasonable Warnings.**

16 3.2.1 **Election to Warn.** Settling Defendant shall provide Clear and Reasonable  
17 Warnings for each Covered Product sold in California. A Clear and Reasonable Warning under  
18 this Agreement shall state:



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

23 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be  
24 preceded by the yellow warning triangle symbol depicted above, provided however, the  
25 symbol may be printed in black and white if the Covered Product label is produced without  
26 using the color yellow. This warning statement shall be prominently displayed on the outer  
27 packaging of the Covered Product and shall be displayed with such conspicuousness, as  
28 compared with other words, statements or designs as to render it likely to be seen, read and

1 understood by an ordinary individual prior to sale. For internet, catalog or any other sale  
2 where the consumer is not physically present, the warning statement shall be displayed in  
3 such a manner that it is likely to be read and understood by an ordinary individual prior to the  
4 authorization of or actual payment. In lieu of the preceding warning content and methods set  
5 forth above, Settling Defendant may use any specific safe harbor warning content and  
6 method applicable to the Covered Products set forth in Title 27, California Code of  
7 Regulations, section 25600, *et seq.*, as amended August 30, 2018, and subsequently  
8 thereafter. In the event Settling Defendant agrees to use the specific warning language set  
9 forth in this paragraph, it will make the reduced payments identified in Section 5.2. for the  
10 long-form warning. In the event Settling Defendant elects to use another safe harbor warning  
11 other, it shall also make payments outlined in Section 5.3.

#### 12 **4. ENFORCEMENT**

13 4.1 Plaintiff may, by motion or application for an order to show cause before the  
14 Superior Court of San Francisco County, enforce the terms and conditions contained in this  
15 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of  
16 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy  
17 of any test results which purportedly support the Notice of Violation. The Parties shall then meet  
18 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it  
19 informally, including providing Settling Defendant(s) with a reasonable opportunity of at least  
20 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,  
21 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be  
22 enforced by the Parties.

#### 23 **5. PAYMENTS**

24 5.1 **Payments by Settling Defendant.** Within 10 business days of the Effective  
25 Date, Settling Defendant shall pay the total sum of \$85,000 and no cents as a settlement payment  
26 as further set forth in this Section. Any payment by Settling Defendant shall be deemed to be  
27 timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the  
28 United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before

1 the deadline set forth in this paragraph.

2           **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant  
3 shall be paid in five separate checks in the amounts specified below and delivered as set forth below.  
4 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a  
5 joint and several stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
6 day the full payment is not received after the applicable payment due date set forth in Section 5.1.  
7 The late fees required under this Section shall be recoverable, together with reasonable attorneys'  
8 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The  
9 funds paid by Settling Defendant shall be allocated as set forth below between the following  
10 categories and made payable as follows:

11                   5.2.1       \$11,500 as a civil penalty pursuant to Health & Safety Code §  
12 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety  
13 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental  
14 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for  
15 \$8,625 shall be made payable to OEHAA and associated with taxpayer identification number 68-  
16 0284486. This payment shall be delivered as follows:

17                               For United States Postal Service Delivery:

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

23                               For Non-United States Postal Service Delivery:

24                                       Attn: Mike Gyurics  
25                                       Fiscal Operations Branch Chief  
26                                       Office of Environmental Health Hazard Assessment  
27                                       1001 I Street, MS #19B  
28                                       Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$2,875 shall be made payable to the Center for  
Environmental Health and associated with taxpayer identification number 94-3251981. This

1 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
2 94117.

3 5.2.2 \$8,500 as an Additional Settlement Payment (“ASP”) to CEH  
4 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §  
5 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue  
6 its work educating and protecting people from exposures to toxic chemicals, including BPA, in  
7 textiles and other products. CEH may also use a portion of such funds to monitor compliance  
8 with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm  
9 compliance.

10 5.2.3 \$65,000 as a reimbursement of a portion of CEH’s reasonable  
11 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two  
12 separate checks as follows: (a) \$55,000 payable to the Lexington Law Group and associated with  
13 taxpayer identification number 88-4399775; and (b) \$10,000 payable to the Center for  
14 Environmental Health and associated with taxpayer identification number 94-3251981. Both of  
15 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
16 CA 94117.

17 5.2.1 To summarize, Settling Defendant shall deliver checks made out to the  
18 payees and in the amounts set forth below:

19

20 <b>Payee</b>	21 <b>Type</b>	22 <b>Amount</b>	23 <b>Deliver To</b>
24 OEHHA	25 Penalty	26 \$8,625	27 OEHHA per Section 5.2.1
28 Center For Environmental Health	Penalty	\$2,875	LLG
Center For Environmental Health	ASP	\$8,500	LLG
Lexington Law Group	Fee and Cost	\$55,000	LLG
Center For Environmental Health	Fee and Cost	\$10,000	LLG

1           5.3           If Settling Defendant elects to use any other safe harbor warning language other  
2 than the specific warning language set forth in Section 3.2.1, Settling Defendant shall make an  
3 additional payment of \$5,000 and no cents to be split between a civil penalty and ASP as set forth  
4 herein. Of the additional payment, \$2,500 shall be a civil penalty, apportioned in accordance with  
5 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of  
6 Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the  
7 civil penalty payment of \$1,875 shall be made payable to OEHHA, associated with taxpayer  
8 identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above.  
9 The CEH portion of the additional civil penalty payment of \$625 shall be made payable to the  
10 Center for Environmental Health and associated with taxpayer identification number 94-3251981.  
11 \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero  
12 Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The  
13 remaining \$1,000 of the additional payment shall be made payable to the Center for Environmental  
14 Health and associated with taxpayer identification number 94-3251981 and shall be used as set  
15 forth in Section 5.2.2 above. Both payments to CEH shall be delivered to Lexington Law Group,  
16 503 Divisadero Street, San Francisco, CA 94117.

17           5.4           **Failure to Comply With Payment Obligations.** Notwithstanding the  
18 provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the  
19 event that Settling Defendant does not comply fully with its payment obligations under this Section  
20 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order  
21 requiring Settling Defendant to submit to a debtor’s examination in the San Francisco County  
22 Superior Court. Settling Defendant shall be entitled to appear at such a debtor’s examination  
23 remotely, subject to the approval of the San Francisco County Superior Court; however, CEH shall  
24 not object to such a remote appearance. In the event that Settling Defendant fails to submit to any  
25 such debtor’s examination ordered by the Court, CEH may seek an order holding Settling  
26 Defendant in contempt of Court.

27           **6.       MODIFICATION**

28           6.1           **Written Consent.** This Consent Judgment may be modified from time to

1 time by express written agreement of the Parties with the approval of the Court, or by an order of  
2 this Court upon motion and in accordance with law.

3           6.2           **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
4 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
5 modify the Consent Judgment.

6 **7. CLAIMS COVERED AND RELEASED**

7           7.1           Provided that Settling Defendant complies in full with its obligations under  
8 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of  
9 itself and the public interest, and Settling Defendant and its parents, subsidiaries, affiliated  
10 entities that are under common ownership, directors, officers, employees, agents, shareholders,  
11 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Defendant  
12 Releasees distribute or sell Covered Products, such as distributors, wholesalers, customers,  
13 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any  
14 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in  
15 Covered Products that were sold by Settling Defendant prior to the Effective Date.

16           7.2           Provided that Settling Defendant complies in full with its obligations under  
17 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
18 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream  
19 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
20 common law claims that have been or could have been asserted by CEH regarding Covered  
21 Products sold by Settling Defendant prior to the Effective Date.

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

27           7.4           Nothing in this Section 7 affects Plaintiff’s right to commence or prosecute an  
28 action under Proposition 65 against any person other than Settling Defendant, Defendant



1 Releasees, or Downstream Defendant Releasees.

2 **8. NOTICE**

3 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
4 notice shall be sent by first class and electronic mail to:

5 Mark N. Todzo  
6 Lexington Law Group  
7 503 Divisadero Street  
8 San Francisco, CA 94117  
9 mtodzo@lexlawgroup.com

10 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
11 Judgment, the notice shall be sent by first class and electronic mail to:

12 Matthew I. Kaplan  
13 Tucker Ellis LLP  
14 515 South Flower Street, 42nd Floor  
15 Los Angeles, CA 90071  
16 Matthew.kaplan@tuckerellis.com

17 8.3 Any Party may modify the person and address to whom the notice is to be sent  
18 by sending the other Party notice by first class and electronic mail.

19 **9. COURT APPROVAL**

20 9.1 This Consent Judgment shall become effective upon entry by the Court.  
21 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling  
22 Defendant shall support entry of this Consent Judgment.

23 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
24 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
25 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

26 **10. GOVERNING LAW AND CONSTRUCTION**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of the State  
28 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

1 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
2 a Settling Defendant prevail on any motion application for an order to show cause or other  
3 proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs  
4 against Plaintiff as a result of such motion or application upon a finding by the Court that  
5 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes  
6 of this Consent Judgment, the term substantial justification means a justification that is well  
7 grounded in both law and fact.

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

1 **13. SUCCESSORS AND ASSIGNS**

2 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling  
3 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or  
4 assigns of any of them.

5 **14. RETENTION OF JURISDICTION**

6 14.1 This Court shall retain jurisdiction of this matter to implement or modify the  
7 Consent Judgment.

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

9 15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
11 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

12 **16. NO EFFECT ON OTHER SETTLEMENTS/ “MOST FAVORED NATION”**  
13 **CLAUSE**

14 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
15 against an entity other than Settling Defendant on terms that are different than those contained in  
16 this Consent Judgment.

17 16.2 If CEH enters into any consent judgment (“Settlement Document”) with any  
18 other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in  
19 socks made primarily of polyester with spandex in which it agrees to different injunctive terms,  
20 Settling Defendant may seek to modify this Consent Judgment to adopt those injunctive terms and  
21 comply with them instead of those presently set forth in Section 3. If Settling Defendant seeks to  
22 adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this  
23 Consent Judgment.

24 **IT IS SO ORDERED:**

25  
26 Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Hon. Ethan P. Schulman

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

**IT IS SO STIPULATED:**

Dated: October 27, 2023

**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Kizzy Charles-Guzman  
Chief Executive Officer

Dated: October \_\_, 2023

**INFINITY CLASSICS INTERNATIONAL**

\_\_\_\_\_  
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

**IT IS SO STIPULATED:**

Dated: October \_\_, 2023

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Kizzy Charles-Guzman  
Chief Executive Officer

Dated: October 18, 2023

**INFINITY CLASSICS INTERNATIONAL**

  
\_\_\_\_\_  
Signature

**Joseph Steinberg**  
\_\_\_\_\_  
Printed Name

**Owner**  
\_\_\_\_\_  
Title