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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: Judge
Ethan P. Schulman, Dept. 304

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
INTERBRAND LLC**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant Interbrand LLC (“Settling Defendant”). CEH and
4 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 10, 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 (“FAC”) naming Settling Defendant as a
16 defendant 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
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
28 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in

1 this action.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means socks made primarily of polyester with spandex
4 that are manufactured, distributed, licensed or sold by Settling Defendant.

5 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
6 the Court.

7 2.3 “Test Protocol” means a method for measuring total BPA content as set forth
8 in Exhibit A.

9 **3. INJUNCTIVE RELIEF**

10 3.1 **Reformulation of Covered Products.** Within six months following the
11 Effective Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute,
12 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes
13 of this Consent Judgment, a product “contains BPA” if BPA is an intentionally added ingredient
14 in either the Covered Product or a component of the Covered Product, or contains in excess of 1
15 part per million BPA as measured by the Test Protocol. Settling Defendant shall not replace the
16 BPA with any other phenol (such as Bisphenol S or BPS).

17 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
18 Date, Settling Defendant shall issue specifications to their suppliers of Covered Products
19 requiring that Covered Products not contain BPA or any other phenol (such as Bisphenol S or
20 BPS).

21 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
22 Section 3 shall not apply to Covered Products that Settling Defendant has purchased prior to the
23 Effective Date, including but not limited to Covered Products in distribution centers, in inventory,
24 or at retail locations.

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 five (5) business days of the
10 Effective Date, Settling Defendant shall pay the total sum of \$32,500 as a settlement payment as
11 further set forth in this Section. Any payment by Settling Defendant shall be deemed to be timely
12 and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States
13 Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set
14 forth in this paragraph.

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

24 **5.2.1** \$3,900 as a civil penalty pursuant to Health & Safety Code §
25 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
26 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
27 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
28 \$2,925 shall be made payable to OEHAA and associated with taxpayer identification number 68-

1 0284486/ This payment shall be delivered as follows:

2 For United States Postal Service Delivery:

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

8 For Non-United States Postal Service Delivery:

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

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

18 5.2.2 \$2,800 as an Additional Settlement Payment (“ASP”) to CEH
19 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
20 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
21 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
22 textiles and other products. CEH may also use a portion of such funds to monitor compliance
23 with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm
24 compliance.

25 5.2.3 \$25,800 as a reimbursement of a portion of CEH’s reasonable
26 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two
27 separate checks as follows: (a) \$21,000 payable to the Lexington Law Group; and (b) \$4,800
28 payable to the Center for Environmental Health and associated with taxpayer identification
number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503
Divisadero Street, San Francisco, CA 94117.

1 5.2.1 To summarize, Settling Defendant shall deliver checks made out to the
2 payees and in the amounts set forth below:

3

4 Payee	Type	Amount	Deliver To
5 OEHHA	Penalty	\$ 2,925	OEHHA per Section 5.2.1
6 Center For Environmental Health	Penalty	\$ 975	LLG
7 Center For Environmental Health	ASP	\$ 2,800	LLG
8 Lexington Law Group	Fee and Cost	\$ 21,000	LLG
9 Center For Environmental Health	Fee and Cost	\$ 4,800	LLG

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12 5.3 Notwithstanding the provisions of the Enforcement of Judgments Law and Code
13 of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its
14 payment obligations under this Section 5, in addition to any other enforcement mechanism available
15 to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor's examination in
16 the Alameda County Superior Court. In the event that Settling Defendant fails to submit to any
17 such debtor's examination ordered by the Court, CEH may seek an order holding Settling
18 Defendant in contempt of Court.

19 5.4 **Failure to Comply With Payment Obligations.** Notwithstanding the
20 provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the
21 event that Settling Defendant does not comply fully with its payment obligations under Section 5,
22 in addition to any other enforcement mechanism available to CEH, CEH may obtain an order
23 requiring Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant
24 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
25 Settling Defendant in contempt of Court.

26 **6. MODIFICATION**

27 6.1 **Written Consent.** This Consent Judgment may be modified from time to
28 time by express written agreement of the Parties with the approval of the Court, or by an order of

1 this Court upon motion and in accordance with law.

2 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
3 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
4 modify the Consent Judgment.

5 **7. CLAIMS COVERED AND RELEASED**

6 7.1 Provided that Settling Defendant complies in full with its obligations under
7 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
8 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
9 that are under common ownership, directors, officers, employees, agents, shareholders,
10 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
11 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
12 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
13 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
14 Covered Products that were sold by Settling Defendant prior to the Effective Date.

15 7.2 Provided that Settling Defendant complies in full with its obligations under
16 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
17 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
18 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
19 common law claims that have been or could have been asserted by CEH individually regarding
20 the failure to warn about exposure to BPA contained in Covered Products sold by Settling
21 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 R. Orr
13 Amin Talati Wasserman, LLP
14 515 South Flower Street, 18th Floor
15 Los Angeles, CA 90071
16 matt@amintalati.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 shall carry the same meaning as used
7 in the Civil Discovery Act of 1986, 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 10 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:**

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Dated: _____, 2023

Judge of the Superior Court

1 **IT IS SO STIPULATED:**

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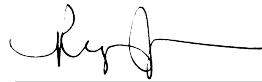
3 Dated: February 10, 2023

CENTER FOR ENVIRONMENTAL HEALTH

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Regina Jackson
Interim Chief Executive Officer

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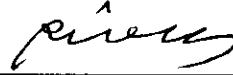
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10 Dated: February 8, 2023

INTERBRAND LLC

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Signature

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FAYE CHIANG

Printed Name

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Pres.

Title

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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