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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: Judge  
Ethan P. Schulman, Dept. 304

**[PROPOSED] CONSENT  
JUDGMENT AS TO DEFENDANT  
DAYTONA APPAREL GROUP LLC**

1       **1.     INTRODUCTION**

2           1.1           The parties to this Consent Judgment (“Parties”) are the Center for  
3 Environmental Health (“CEH”) and Defendant Daytona Apparel Group LLC (“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           Beginning on September 10, 2021, CEH served 60-Day Notices of Violation  
9 under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California  
10 Health & Safety Code §§ 25249.5, *et seq.*) (“Notices”) to Settling Defendant, the California  
11 Attorney General, the District Attorneys of every County in the State of California, and the City  
12 Attorneys for every City in the State of California with a population greater than 750,000. The  
13 Notices allege violations of Proposition 65 with respect to the presence of BPA in the Covered  
14 Products. Settling Defendant has sold Covered Products under the G.H. Bass & Co., ZonePro  
15 and Jones New York brands, each of which were subject to a separate 60-day Notice.

16           1.4           On February 4, 2022 CEH filed the original complaint. On March 21, 2022,  
17 CEH filed the operative First Amended Complaint (“FAC”) naming Settling Defendant as a  
18 defendant in the action.

19           1.5           On March 24, 2022 (the “Sock Business Sale Date”), Settling Defendant sold  
20 its hosiery business, including the manufacturing, distribution and/or sale of the Covered  
21 Products, to Centric Socks LLC, which is also a named defendant in the FAC. This Consent  
22 Judgment resolves liability under Proposition 65 related to alleged exposure to BPA resulting  
23 from sales of the Covered Products prior to March 24, 2022.

24           1.6           For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
25 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
26 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts  
27 alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii) this Court  
28 has jurisdiction to enter this Consent Judgment.

1           1.7           Nothing in this Consent Judgment is or shall be construed as an admission by  
2 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
3 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
4 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
5 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
6 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
7 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
8 this action.

9           **2.       DEFINITIONS**

10           2.1           “Covered Products” means socks designed for females made primarily of  
11 polyester with spandex.

12           2.2           “Effective Date” means the date on which this Consent Judgment is entered by  
13 the Court.

14           2.3           “Test Protocol” means a method for measuring total BPA content as set forth  
15 in Exhibit A.

16           **3.       INJUNCTIVE RELIEF**

17           3.1           **Applicability of Injunctive Relief.** The provisions of this Section 3 shall  
18 apply to the extent that Settling Defendant begins manufacturing, distributing and/or selling  
19 Covered Products subsequent to the Effective Date.


20           3.2           **Reformulation of Covered Products.** If at any time after the Effective Date  
21 Settling Defendant begins manufacturing, distributing and/or selling Covered Products for use in  
22 California, Settling Defendant shall not manufacture, distribute, license, sell, or offer for sale any  
23 Covered Product in California that contains BPA. For purposes of this Consent Judgment, a  
24 product “contains BPA” if BPA is an intentionally added ingredient in either the Covered Product  
25 or a component of the Covered Product, or contains in excess of 1 part per million BPA as  
26 measured by the Test Protocol. Settling Defendant shall not replace the BPA with any other  
27 phenol (such as Bisphenol S or BPS).

28           3.3           **Specification to Suppliers.** In the event that Settling Defendant begins

1 manufacturing, distributing and/or selling Covered Products for use in California after the  
2 Effective Date, Settling Defendant shall issue specifications to its suppliers of Covered Products  
3 requiring that Covered Products not contain BPA or any other phenol (such as Bisphenol S or  
4 BPS).

5 3.4 **Clear and Reasonable Warnings.**

6 3.4.1 **Election to Warn.** If at any time after the Effective Date Settling  
7 Defendant begins manufacturing, distributing and/or selling Covered Products for use in  
8 California and Settling Defendant is unable to comply with the Reformulation provision set forth  
9 in Section 3.1 or otherwise elects to permanently avail itself of the warning option provided by  
10 this Section 3.4 and the product contains more than 1ppm BPA, Settling Defendant shall provide  
11 written notice to CEH, and Settling Defendant concurrently shall make the additional payment  
12 specified in Section 5.2.5 below. Settling Defendant shall then provide Clear and Reasonable  
13 Warnings for each Covered Product sold in California. A Clear and Reasonable Warning under  
14 this Agreement shall state:

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

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

1 **4. ENFORCEMENT**

2 4.1 Plaintiff may, by motion or application for an order to show cause before the  
3 Superior Court of San Francisco County, enforce the terms and conditions contained in this  
4 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of  
5 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy  
6 of any test results which purportedly support the Notice of Violation. The Parties shall then meet  
7 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it  
8 informally, including providing Settling Defendant(s) with a reasonable opportunity of at least  
9 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,  
10 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be  
11 enforced by the Parties.

12 **5. PAYMENTS**

13 5.1 **Payments by Settling Defendant.** Within five (5) business days of the  
14 Effective Date, Settling Defendant shall pay the total sum of \$120,000 as a settlement payment as  
15 further set forth in this Section. Any payment by Settling Defendant shall be deemed to be timely  
16 and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States  
17 Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set  
18 forth in this paragraph.

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

28 5.2.1 \$16,000 as a civil penalty pursuant to Health & Safety Code §

1 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety  
2 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental  
3 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for  
4 \$12,000 shall be made payable to OEHAA and associated with taxpayer identification number  
5 68-0284486/ This payment shall be delivered as follows:

6 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

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

18 The CEH portion of the civil penalty payment for \$4,000 shall be made payable to the Center for  
19 Environmental Health and associated with taxpayer identification number 94-3251981. This  
20 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
21 94117.

22 5.2.2 \$12,000 as an Additional Settlement Payment (“ASP”) to CEH  
23 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §  
24 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue  
25 its work educating and protecting people from exposures to toxic chemicals, including BPA, in  
26 textiles and other products. CEH may also use a portion of such funds to monitor compliance  
27 with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm  
28 compliance.

5.2.3 \$92,000 as a reimbursement of a portion of CEH’s reasonable  
attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two

1 separate checks as follows: (a) \$76,000 payable to the Lexington Law Group and associated with  
2 taxpayer identification number 94-3317175; and (b) \$16,000 payable to the Center for  
3 Environmental Health and associated with taxpayer identification number 94-3251981. Both of  
4 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
5 CA 94117.

6 5.2.4 To summarize, Settling Defendant shall deliver checks made out to  
7 the payees and in the amounts set forth below:

8 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
9 OEHHA	Penalty	\$ 12,000	OEHHA per Section 10 5.2.1
11 Center For Environmental Health	Penalty	\$ 4,000	LLG
12 Center For Environmental Health	ASP	\$ 12,000	LLG
13 Lexington Law Group	Fee and Cost	\$ 76,000	LLG
14 Center For Environmental Health	Fee and Cost	\$ 16,000	LLG

16 5.2.5 If Settling Defendant avails itself of the permanent warning option  
17 provided for by Section 3.4, Settling Defendant shall make an additional payment of \$30,000 to  
18 be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as  
19 provided in Section 3.2. Of the additional payment, \$18,500 shall be a civil penalty, apportioned  
20 in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of  
21 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the  
22 OEHHA portion of the civil penalty payment of \$13,875 shall be made payable to OEHHA,  
23 associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set  
24 forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$4,625  
25 shall be made payable to the Center for Environmental Health and associated with taxpayer  
26 identification number 94-3251981. \$1,500 of the additional payment shall be made payable to  
27 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs  
28

1 associated with the additional payment. The remaining \$10,000 of the additional payment shall  
2 be made payable to the Center for Environmental Health and associated with taxpayer  
3 identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both  
4 payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
5 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 or control, directors, officers, employees, agents, shareholders,  
18 members, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which  
19 Settling Defendant distributes or sells Covered Products, including Dollar General Corporation  
20 and other retailers, distributors, wholesalers, customers, franchisees, licensors and licensees  
21 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
22 about alleged exposure to BPA contained in Covered Products that were sold by Settling  
23 Defendant prior to the Sock Business Sale Date.

24 7.2 Provided that Settling Defendant complies in full with its obligations under  
25 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
26 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream  
27 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
28 common law claims that have been or could have been asserted by CEH individually regarding



1 the failure to warn about exposure to BPA contained in Covered Products sold by Settling  
2 Defendant prior to the Sock Business Date.

3 7.3 In the event that Settling Defendant begins manufacturing, distributing and/or  
4 selling Covered Products for use in California after the Effective Date, compliance with the terms  
5 of this Consent Judgment by Settling Defendant and Defendant Releasees shall constitute  
6 compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and Downstream  
7 Defendant Releasees with respect to any alleged failure to warn about BPA in Covered Products  
8 manufactured, distributed, or sold by Settling Defendant after the Effective Date.

9 **8. NOTICE**

10 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
11 notice shall be sent by first class and electronic mail to:

12 Mark N. Todzo  
13 Lexington Law Group  
14 503 Divisadero Street  
15 San Francisco, CA 94117  
16 mtodzo@lexlawgroup.com

17 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
18 Judgment, the notice shall be sent by first class and electronic mail to:

19 Andrew Tarshis  
20 General Counsel  
21 Tengram Capital Partners  
22 15 Riverside Avenue, 1st Floor  
23 Westport, CT 06880

24 8.3 Any Party may modify the person and address to whom the notice is to be sent  
25 by sending the other Party notice by first class and electronic mail.

26 **9. COURT APPROVAL**

27 9.1 This Consent Judgment shall become effective upon entry by the Court.  
28 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling  
Defendant shall support entry of this Consent Judgment.

1           9.2           If this Consent Judgment is not entered by the Court, it shall be of no force or  
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4       **10.    GOVERNING LAW AND CONSTRUCTION**

5           10.1          The terms of this Consent Judgment shall be governed by the laws of the State  
6 of California.

7       **11.    ATTORNEYS' FEES**

8           11.1          Should Plaintiff prevail on any motion, application for an order to show cause,  
9 or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to  
10 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
11 a Settling Defendant prevail on any motion application for an order to show cause or other  
12 proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs  
13 against Plaintiff as a result of such motion or application upon a finding by the Court that  
14 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes  
15 of this Consent Judgment, the term substantial justification shall carry the same meaning as used  
16 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

17          11.2          Except as otherwise provided in this Consent Judgment, each Party shall bear  
18 its own attorneys' fees and costs.

19          11.3          Nothing in this Section 10 shall preclude a Party from seeking an award of  
20 sanctions pursuant to law.

21       **12.    ENTIRE AGREEMENT**

22          12.1          This Consent Judgment contains the sole and entire agreement and  
23 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
24 discussions, negotiations, commitments or understandings related thereto, if any, are hereby  
25 merged herein and therein. There are no warranties, representations or other agreements between  
26 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
27 implied, other than those specifically referred to in this Consent Judgment have been made by any  
28 Party hereto. No other agreements not specifically contained or referenced herein, oral or

1 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
2 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
3 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
4 supplementation, modification, waiver or termination of this Consent Judgment shall be binding  
5 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
6 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
7 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

8 **13. SUCCESSORS AND ASSIGNS**

9 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling  
10 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or  
11 assigns of any of them.

12 **14. RETENTION OF JURISDICTION**

13 14.1 This Court shall retain jurisdiction of this matter to implement or modify the  
14 Consent Judgment.

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

16 15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
17 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
18 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

19 **16. NO EFFECT ON OTHER SETTLEMENTS/ "MOST FAVORED NATION"**  
20 **CLAUSE**

21 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
22 against an entity other than Settling Defendant on terms that are different than those contained in  
23 this Consent Judgment.

24 16.2 If CEH enters into any consent judgment ("Settlement Document") with any  
25 other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in  
26 socks made primarily of polyester with spandex in which it agrees to different injunctive terms,  
27 Settling Defendant may seek to modify this Consent Judgment to adopt those injunctive terms and  
28 comply with them instead of those presently set forth in Section 3. If Settling Defendant seeks to

1 adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this  
2 Consent Judgment.

3  
4 **IT IS SO ORDERED:**

5  
6 Dated: \_\_\_\_\_, 2023

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

8  
9 **IT IS SO STIPULATED:**

10  
11 Dated: February 24, 2023

**CENTER FOR ENVIRONMENTAL HEALTH**

12  
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14 

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

17  
18 Dated: February \_\_, 2023

**DAYTONA APPAREL GROUP LLC**

19  
20 *Marshall Bernstein*

\_\_\_\_\_  
21 Signature

22  
23 Marshall Bernstein

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

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26 CFO

\_\_\_\_\_  
27 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