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LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
Meredyth Merrow, State Bar No. 328337
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
mmerrow@lexlawgroup.com

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

EASY SPIRIT LLC, et al.,

Defendants.

Case No. CGC-22-598022

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

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT DOLLAR TREE
STORES, INC.**

1 **1. INTRODUCTION**

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

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

8 1.3 On September 10, 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”) 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 socks made primarily
14 of polyester with spandex.

15 1.4 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
16 CEH filed the operative First Amended Complaint (“Complaint”) which named Settling
17 Defendant as a defendant to the action.

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

23 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
25 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
2 this action.

3 **2. DEFINITIONS**

4 2.1 “Compliance Date” means the date that is twelve months following the
5 Effective Date or January 1, 2025, whichever is later.

6 2.2 “Covered Products” means socks designed for females whose composition
7 includes spandex and 51 percent or more polyester that are manufactured, distributed, and/or sold
8 by Settling Defendant.

9 2.3 “Effective Date” means the date on which this Consent Judgment is entered by
10 the Court.

11 2.4 “Other Bisphenols” means Bisphenol AF (BPAF), Bisphenol AP (BPAP),
12 Bisphenol B (BPB), Bisphenol E (BPE), Bisphenol F (BPF), Bisphenol P (BPP), Bisphenol S
13 (BPS), and Bisphenol Z (BPZ).

14 2.5 “Reformulation Level” means 10 ppm BPA as measured by the Test Protocol.

15 2.6 “Test Protocol” means a standard method for measuring total BPA content as
16 set forth in Exhibit A.

17 2.7 “Manufacturer Defendant Releasees” means manufacturers, suppliers,
18 licensors, brand owners, and intellectual property owners of Covered Products for Settling
19 Defendant.

20 **3. INJUNCTIVE RELIEF**

21 3.1 **Reformulation of Covered Products.** On and after the Compliance Date,
22 Settling Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product in
23 California that contains BPA in excess of the Reformulation Level except as provided in Sections
24 3.3 and 3.5 below.

25 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
26 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products that
27 Covered Products shall not contain BPA in excess of the Reformulation Level or shall comply
28 with Section 3.5 below.

1 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
2 Section 3.1 shall not apply to Covered Products that Settling Defendant had purchased or entered
3 into a binding agreement to purchase prior to the Effective Date, including but not limited to
4 finished Covered Products in transit, in distribution centers, in inventory, or in the possession of
5 third-party distributors, retailers, and Manufacturer Defendant Releasees.

6 3.4 **Notification to Suppliers Regarding Other Bisphenols.** No more than
7 ninety (90) days after the Effective Date, Settling Defendant shall request that its suppliers of
8 Covered Products, to the extent possible, not replace any intentionally added BPA with Other
9 Bisphenols in manufacturing the Covered Products. Nothing in this Section 3.4 shall be
10 construed to require Settling Defendant, or its suppliers or customers, to test for the presence of
11 Other Bisphenols.

12 3.5 **Alternative Compliance – Warnings.** To the extent Settling Defendant is
13 unable to comply with the Reformulation Provisions set forth above, Settling Defendant must
14 alternatively comply with the provisions of this section. Settling Defendant shall not
15 manufacture, purchase, or import any Covered Product for sale in California that contains BPA,
16 unless it provides a warning pursuant to Section 3.5.1. For purposes of this Consent Judgment, a
17 product “contains BPA” if either (a) BPA is an intentionally added ingredient in either the
18 Covered Product or a component of the Covered Product, or (b) the Covered Product contains in
19 excess of 10 part per million BPA as measured by the Test Protocol.

20 3.5.1 **Clear and Reasonable Warnings.** A Clear and Reasonable
21 Warning under this Agreement shall state:



22 **WARNING:** This product can expose you to chemicals including Bisphenol
23 A which are known to the State of California to cause birth defects or other
24 reproductive harm. For more information go to www.P65Warnings.ca.gov.

25 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be
26 preceded by the yellow warning triangle symbol depicted above, provided however, the symbol
27 may be printed in black and white if the Covered Product label is produced without using the
28 color yellow. This warning statement shall be prominently displayed on the Covered Product’s

1 label or hangtag, or any outer packaging, or on a placard, shelf tag, or sign provided such placard,
2 shelf tag or sign specifically identifies the particular Covered Product or Covered Products to
3 which it applies. The warning statement shall be displayed with such conspicuousness, as
4 compared with other words, statements or designs as to render it likely to be seen, read and
5 understood by an ordinary individual prior to sale. For internet, catalog or any other sale where
6 the consumer is not physically present, the warning statement shall be displayed in a manner
7 consistent with 27 Cal. Code Regs § 25602(b), or any successor regulation. In lieu of the
8 preceding warning content and methods set forth above, Settling Defendant may use any specific
9 safe harbor warning content and method applicable to the Covered Products set forth in Title 27,
10 California Code of Regulations, section 25600 et seq., as amended August 30, 2018 and
11 subsequently thereafter.

12 **4. ENFORCEMENT**

13 4.1 CEH 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.

16 4.2 Prior to bringing any motion or application to enforce the requirements of
17 Section 3 above, CEH shall provide Settling Defendant(s) with a Notice of Violation (“NOV”)
18 and a copy of any test results which purportedly support the NOV. The Parties shall then meet
19 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it
20 informally, including providing Settling Defendant(s) with a reasonable opportunity of at least
21 thirty (30) days to cure any alleged violation, or so long as such cure is being diligently pursued
22 by the Settling Defendant and the Settling Defendant provides written notice to CEH regarding its
23 actions constituting the diligent pursuit. During the meet and confer process, upon request from
24 Settling Defendant, CEH will provide Settling Defendant with a sample of the Covered Product
25 or Products that form the basis of the NOV. Should Settling Defendant obtain a test result of that
26 sample from an independent accredited laboratory based in the United States that is below the
27 applicable Reformulation Level, CEH may either withdraw the NOV or request that the Parties
28 obtain a test result from a third laboratory, using agreed-upon methods of analysis permitted

1 under the specific protocol set forth on Exhibit A, agreed to by the Parties, a test which would be
2 paid for jointly by the Parties. The test result from the third laboratory will then serve as
3 determinative of the level of BPA in the Covered product. Should such attempts at informal
4 resolution fail, CEH may file an enforcement motion or application, provided that no enforcement
5 motion or application will be filed during the pendency of any additional testing described herein.

6 4.3 For purposes of this Section 4, a violation of Section 3 is established by a test
7 undertaken pursuant to the protocol in Exhibit A that includes equivalent-mass homogenized
8 samples from two or more units of the Covered Product that exceeds the Reformulation Level.
9 For avoidance of doubt, and by way of example, if a sample is taken from each of two socks in a
10 package, each sample shall be 0.5 grams and the two samples shall be homogenized and analyzed
11 together.

12 **5. PAYMENTS**

13 5.1 **Total Settlement Payment.** Within thirty (30) days of the Effective Date,
14 Settling Defendant shall pay the total sum of \$100,937 and no cents 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 \$14,000 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 \$10,500 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 \$3,500 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 \$10,000 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
23 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204 and
24 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work
25 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles and
26 other products. CEH may also use a portion of such funds to monitor compliance with this Consent
27 Judgment and to purchase and test Settling Defendant’s products to confirm compliance. CEH
28 shall obtain and maintain adequate records to document that ASPs are spent on these activities and
CEH agrees to provide such documentation to the Attorney General within thirty days of any
request from the Attorney General. The payment pursuant to this Section shall be made payable to

1 the Center for Environmental Health and associated with taxpayer identification number 94-
2 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
3 Francisco, CA 94117.

4 5.2.3 \$76,937 as a reimbursement of a portion of CEH's reasonable
5 attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two
6 separate checks as follows: (a) \$70,937 payable to the Lexington Law Group and associated with
7 taxpayer identification number 88-4399775; and (b) \$6,000 payable to the Center for
8 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
9 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
10 CA 94117.

11 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the
12 payees and in the amounts set forth below:

13 Payee	Type	Amount	Deliver To
14 OEHHA	Penalty	\$ 10,500	OEHHA per Section 15 5.2.1
16 Center For Environmental Health	Penalty	\$ 3,500	LLG
17 Center For Environmental Health	ASP	\$ 10,000	LLG
18 Lexington Law Group	Fee and Cost	\$ 70,937	LLG
19 Center For Environmental Health	Fee and Cost	\$ 6,000	LLG

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22 **6. MODIFICATION**

23 6.1 **Written Consent.** This Consent Judgment may be modified from time to
24 time by express written agreement of the Parties with the approval of the Court, or by an order of
25 this Court upon motion and in accordance with law.

26 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
27 provide notice to and attempt in good faith to meet and confer with all affected Parties prior to
28 filing a motion to modify the Consent Judgment.

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6.3 Modification of Injunctive Relief.

6.3.1 If CEH enters into any consent judgment (“Settlement Document”) with any other entity with respect to an alleged failure to warn of alleged exposures to BPA in socks made primarily of polyester with spandex in which it agrees to different injunctive terms (including without limitation a different Test Protocol), Settling Defendant may thereafter seek to modify this Consent Judgment as to it to adopt those injunctive terms and comply with them instead of those presently set forth in Section 3. CEH agrees not to oppose Settling Defendant’s request for modification, provided that the products at issue in the Settlement Document are substantially similar to the Covered Products.

7. CLAIMS COVERED AND RELEASED

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

7.2 Provided that Settling Defendant complies in full with its obligations under Section 5, CEH, for itself, its agents, successors and assigns, releases, waives, covenants not to sue, and forever discharges any and all claims against that Settling Defendant and all Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH individually regarding the failure to warn about

1 exposure to BPA contained in Covered Products (i) sold by Settling Defendant prior to the
2 Compliance Date or (ii) which Settling Defendant purchased or entered into binding
3 commitments to purchase prior to the Effective Date.

4 7.3 Provided that Settling Defendant complies in full with its obligations under
5 Section 5, CEH shall file a dismissal with prejudice of the Complaint, or any other complaint or
6 cause of action asserted against any Releasee(s) of the Settling Defendant based on a claim within
7 the scope of Sections 7.1 and 7.2 that relates to Covered Products that were manufactured,
8 distributed, or sold by the Settling Defendant prior to the Effective Date provided that the
9 Releasee(s) agree to waive costs.

10 7.4 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, Downstream Defendant Releasees, and Manufacturer Defendant Releasees
13 with respect to any alleged failure to warn about BPA in Covered Products manufactured,
14 distributed, or sold by Settling Defendant after the Effective Date.

15 7.5 Nothing in this Section 7 affects CEH's right to commence or prosecute an
16 action under Proposition 65 against any person other than Settling Defendant, Defendant
17 Releasees, Downstream Defendant Releasees, or Manufacturer 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 the person identified on
28 Exhibit B for such Settling Defendant:

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Trenton Norris
Hogan Lovells US LLP
4 Embarcadero Center, Suite 3500
San Francisco CA 94111
Trent.norris@hoganlovells.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. CEH 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 Except as provided in Section 11.2, should CEH prevail on any motion, application for an order to show cause, or other proceeding pursuant to this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.

11.2 Should CEH prevail on any motion or application for enforcement of the injunctive provisions pursuant to Section 4.1, and the Settling Defendant had provided to CEH, before it filed such motion or application, a test report either (i) from a sample taken prior to the issuance of the Notice of Violation, or (ii) from the sample of the Covered Product or Products that form the basis of the NOV that was provided to the Settling Defendant by CEH, then CEH may be awarded its reasonable attorneys' fees and costs only upon a finding by the Court that the Settling Defendant's opposition to the motion or application lacked substantial justification. For

1 purposes of this Consent Judgment, the term substantial justification shall carry the same meaning
2 as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

3 11.3 Should Settling Defendant prevail on any motion application for an order to
4 show cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys'
5 fees and costs against CEH as a result of such motion or application upon a finding by the Court
6 that CEH's prosecution of the motion or application lacked substantial justification.

7 11.4 Except as otherwise provided in this Consent Judgment, each Party shall bear
8 its own attorneys' fees and costs.

9 11.5 Nothing in this Section 11 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

11 **12. TERMINATION OF INJUNCTIVE RELIEF**

12 12.1 Commencing on the fifth anniversary of the Compliance Date, Settling
13 Defendant may terminate the injunctive relief in Section 3 of this Consent Judgment by filing a
14 Notice of Termination of Injunctive Relief with the Court and serving it on CEH. Thirty days after
15 the filing of the notice, the provisions of Sections 3 and Section 7.4 shall no longer apply to Settling
16 Defendant.

17 **13. ENTIRE AGREEMENT**

18 13.1 This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
20 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
21 merged herein and therein. There are no warranties, representations or other agreements between
22 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
23 implied, other than those specifically referred to in this Consent Judgment have been made by any
24 Party hereto. No other agreements not specifically contained or referenced herein, oral or
25 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
26 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
27 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
28 supplementation, modification, waiver or termination of this Consent Judgment shall be binding

1 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
2 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
3 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **14. SUCCESSORS AND ASSIGNS**

5 14.1 This Consent Judgment shall apply to and be binding upon CEH and each
6 Settling Defendant, and their respective divisions, subdivisions and subsidiaries, and the
7 successors or assigns of any of them.

8 **15. RETENTION OF JURISDICTION**

9 15.1 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 **16. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 16.1 Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
14 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
15 Party.

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

17 17.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
18 claim against an entity other than Settling Defendant on terms that are different than those
19 contained in this Consent Judgment.

20 **IT IS SO ORDERED:**

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22 Dated: _____, 2024

23 Hon. Ethan P. Schulman

24 **IT IS SO STIPULATED:**

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Dated: October 31, 2024

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: _____, 2024

DOLLAR TREE STORES, INC.

Signature

Printed Name

Title

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Dated: _____, 2024

CENTER FOR ENVIRONMENTAL HEALTH

Kizzy Charles-Guzman
Chief Executive Officer

Dated: November 13, 2024

DOLLAR TREE STORES, INC.

Alvin Liu

Signature

Alvin Liu

Printed Name

Assistant General Counsel, Merchandise & Operations

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EXHIBIT A

“Test Protocol” as defined in Section 2.5 of the Consent Judgment means the following test method:

1. Homogenized sample of minimum 1 gram, cut in a manner to include materials from each region and color of the sock.
2. Quantitative solvent extraction by acetonitrile. If acetonitrile not available, may substitute with methanol.
3. Extraction by EPA methods 3540 (Soxhlet), 3546 (microwave), or hot plate for 3 hours at 40 degrees Celsius.
4. Analysis by LC/MS-MS, with isotope dilution; HPLC-DADMS, subject to performance criteria below. GC/MS-MS may be used if other methods not available and no derivatization of BPA is required.
5. Reporting limit of 0.5 mg/kg or lower.
6. Performance criteria – demonstration of accuracy, precision, and quality control, per EPA Method 3500C sections 9, 11, and 13. Include on-going routine quality control testing of method blanks, laboratory control samples/duplicates, and matrix spike samples/duplicates.