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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 The
Honorable Ethan P. Schulman, Dept. 304

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
TY INC.**

1 **1. INTRODUCTION**

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

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

8 1.3 Settling Defendant maintains that it has engaged in significant efforts to
9 ensure that its products now comply with, and in the past have always complied with, Proposition
10 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
11 Code §§ 25249.5, *et seq.*) and all other health and safety requirements applicable to its products,
12 by, for example, conducting testing on all products sold by Settling Defendant in advance of
13 selling same by accredited testing agencies to ensure compliance with all applicable safety
14 standards.

15 1.4 On October 4, 2021, CEH served a 60-Day Notice of Violation under
16 Proposition 65 (“Notice”) to Settling Defendant, the California Attorney General, the District
17 Attorneys of every County in the State of California, and the City Attorneys for every City in the
18 State of California with a population greater than 750,000. The Notice alleges violations of
19 Proposition 65 with respect to the presence of BPA in the socks made primarily of polyester with
20 spandex.

21 1.5 Before Settling Defendant sold any socks made primarily of polyester with
22 spandex, Settling Defendant states that it obtained testing reports from independent laboratories
23 (including Bureau Veritas and TUV Rheinland), the results of which indicated that such products
24 were in compliance with all established safety requirements known to Settling Defendant to be
25 applicable to the products in North America and Europe at the time of such testing. The testing
26 referred to in this paragraph includes receiving passing test results pursuant to the following
27 testing from independent laboratories: (a) The mechanical hazards requirements of 16 CFR 1500,
28 “Federal Hazardous Substances Act Regulations”; (b) “Chemicals of High Concern to Children

1 (CHCCs) Content as Contaminant - Washington Revised Code (RCW), Chapter 70.240
2 Children’s Safe Product Act (CPSA), (c) Canada Consumer Product Safety Act; (d) fiber
3 composition testing pursuant to AATCC Test Method 20A, EN71 clauses 1-7 (EU); (e) relevant
4 provisions of European Regulation (EC) No. 1907/2006 of the Registration, Evaluation,
5 Authorisation and Restriction of Chemicals (REACH); and (f) Australian/New Zealand Standard,
6 “Safety of toys”, AS/NZS ISO 8124: Part 1. Settling Defendant further states that after receiving
7 CEH’s 60-Day Notice of Violation under Proposition 65, it hired Applied Technical Services to
8 conduct additional testing that determined that the amount of any BPA detected in a leachate test
9 on the Ty socks that were the subject of the 60-Day Notice of Violation was “N.D. [None
10 Detected] < 1ppb.”

11 1.6 Ty respectfully continues to deny that sold any products that violate
12 Proposition 65 or any other health and safety codes applicable to its products.

13 1.7 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
14 CEH filed the operative First Amended Complaint which names Settling Defendant as a
15 defendant.

16 1.8 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
17 Court has jurisdiction over the allegations of violations contained in the operative Complaint and
18 personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint; (ii) venue is
19 proper in the County of San Francisco; and (iii) this Court has jurisdiction to enter this Consent
20 Judgment.

21 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by
22 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
23 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
24 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
26 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
27 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
28 this action.

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means socks designed for females or children made
3 primarily of polyester with spandex that are manufactured, distributed, or sold by Settling
4 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 BPA content by solvent
8 extraction as set forth in Exhibit A.

9 **3. INJUNCTIVE RELIEF**

10 3.1 In December 2021, within three months of receiving CEH’s Notice of
11 Violation, Settling Defendant ceased the manufacture, distribution, and sale of Covered Products
12 for sale in California. Settling Defendant has no present plan to manufacture, distribute, or sell
13 Covered Products for sale in California, but should Settling Defendant in the future plan to begin
14 doing so, it shall not manufacture, distribute or sell any Covered Product for sale in California
15 that contains BPA. For purposes of this Consent Judgment, a Covered Product “contains BPA” if
16 either (a) BPA is an intentionally added ingredient in either the Covered Product or a component
17 of the Covered Product, or (b) the Covered Product contains in excess of 1 part per million BPA
18 as measured by the Test Protocol.

19 **4. ENFORCEMENT**

20 4.1 The Parties may, by motion or application for an order to show cause before
21 the Superior Court of San Francisco County, enforce the terms and conditions contained in this
22 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
23 Section 3 above, Plaintiff shall provide Settling Defendant with a Notice of Violation and a copy
24 of any test results which purportedly support the Notice of Violation. The Parties shall then meet
25 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it
26 informally, including providing the Settling Defendant with a reasonable opportunity of at least
27 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,
28

1 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be
2 enforced by the Parties.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** On or before ten (10) business days after
5 notice of the entry of this Consent Judgment and receipt of Forms W-9 for all payees, Settling
6 Defendant shall pay the total settlement amount of \$45,000 as a settlement payment as further set
7 forth in this Section. Any failure by a Settling Defendant to comply with the payment terms
8 herein shall be subject to a stipulated late fee to be paid by the Settling Defendant in the amount
9 of \$100 for each day the full payment is not received after the applicable payment due date set
10 forth in this Section 5.1. The late fees required under this Section shall be recoverable, together
11 with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of
12 this Consent Judgment.

13 5.2 **Allocation of Payments.** The total settlement amount shall be paid in five
14 separate checks in the amounts set forth below. The funds paid by Settling Defendant shall be
15 allocated as set forth below between the following categories and made payable as follows:

16 5.2.1 A civil penalty in the amount of \$5,800 pursuant to Health & Safety
17 Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &
18 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
19 Environmental Health Hazard Assessment). Accordingly, the OEHHA portion of the civil
20 penalty payment for \$4,350 shall be made by check payable to OEHHA and associated with
21 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010
28

1 For Non-United States Postal Service Delivery:

2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 5.2.2 The CEH portion of the civil penalty payment of \$1,450 shall be
8 made by check payable to the Center for Environmental Health and associated with taxpayer
9 identification number 94-3251981. This payment shall be delivered to Lexington Law Group,
10 503 Divisadero Street, San Francisco, CA 94117.

11 5.2.3 An Additional Settlement Payment (“ASP”) of \$4,200 to CEH
12 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11,
13 § 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to
14 continue its work educating and protecting people from exposures to toxic chemicals, including
15 BPA, in textiles and other products. CEH may also use a portion of such funds to monitor
16 compliance with this Consent Judgment and to purchase and test Settling Defendant’s products to
17 confirm compliance. The payment pursuant to this Section shall be made payable to the Center
18 for Environmental Health and associated with taxpayer identification number 94-3251981. This
19 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
20 94117.

21 5.2.4 A payment for reimbursement of a portion of CEH’s reasonable
22 attorneys’ fees and costs in the amount of \$35,000. The attorneys’ fees and cost reimbursement
23 shall be made in two separate checks as follows: (a) a check for \$29,000 payable to the Lexington
24 Law Group and associated with taxpayer identification number 94-3317175; and (b) a check for
25 \$6,000 payable to the Center for Environmental Health and associated with taxpayer
26 identification number 94-3251981. Both of these payments shall be delivered to Lexington Law
27 Group, 503 Divisadero Street, San Francisco, CA 94117.

28 5.2.5 To summarize, Settling Defendant shall deliver checks made out to

1 the payees and in the amounts set forth below:

2 Payee	Type	Amount	Deliver To
3 OEHHA	Penalty	\$4,350	OEHHA per section 5.2.1
4 Center for Environmental Health	Penalty	\$1,450	LLG
5 Center for Environmental Health	ASP	\$4,200	LLG
6 Lexington Law Group	Fees and Costs	\$29,000	LLG
7 Center for Environmental Health	Fees and Costs	6,000	LLG

9
10 **6. MODIFICATION**

11 6.1 **Written Consent.** This Consent Judgment may be modified from time to
12 time by express written agreement of the Parties with the approval of the Court, or by an order of
13 this Court upon motion and in accordance with law.

14 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
15 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
16 modify the Consent Judgment.

17 **7. CLAIMS COVERED AND RELEASED**

18 7.1 Provided that Settling Defendant complies in full with its obligations under
19 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
20 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
21 that are under common ownership, directors, officers, employees, agents, shareholders,
22 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
23 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
24 retailers, franchisees, licensors, licensees, consumers at the retail level, and any other individual
25 or entity who takes possession of, or exercises control over, the Covered Products by any means
26 whatsoever (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
27 alleged BPA content in the Covered Products or alleged failure to warn about alleged exposure to
28 BPA contained in Covered Products that were manufactured, purchased, imported, distributed, or

1 sold by Settling Defendant prior to the Compliance Date.

2 7.2 Provided that Settling Defendant complies in full with its obligations under
3 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
4 discharges any and all claims against Settling Defendant, its Defendant Releasees, and
5 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
6 statutory or common law claims that have been or could have been asserted by CEH individually
7 regarding the failure to warn about exposure to BPA contained in Covered Products
8 manufactured, purchased, imported, distributed, or sold by Settling Defendant prior to the
9 Compliance Date.

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

15 **8. NOTICE**

16 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
17 notice shall be sent by first class and electronic mail to:

18 Mark N. Todzo
19 Lexington Law Group
20 503 Divisadero Street
21 San Francisco, CA 94117
22 mtodzo@lexlawgroup.com

23 8.2 When Settling Defendant is entitled to receive any notice under this Consent
24 Judgment, the notice shall be sent by first class and electronic mail to:

25 J. Aron Carnahan
26 Husch Blackwell, LLP
27 120 South Riverside Plaza, Suite 2200
28 Chicago, IL 60606
 aron.carnahan@huschblackwell.com

 8.3 Any Party may modify the person and address to whom the notice is to be sent

1 by sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective upon entry by the Court.
4 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling
5 Defendant shall support entry of this Consent Judgment.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
11 of California.

12 **11. ATTORNEYS' FEES**

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

22 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
23 its own attorneys' fees and costs.

24 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
25 sanctions pursuant to law.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior

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

13 **13. SUCCESSORS AND ASSIGNS**

14 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
15 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
16 assigns of any of them.

17 **14. RETENTION OF JURISDICTION**

18 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

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

21 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
23 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

24 **16. NO EFFECT ON OTHER SETTLEMENTS/ "MOST FAVORED NATION"**
25 **CLAUSE**

26 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
27 against an entity other than Settling Defendant on terms that are different than those contained in
28 this Consent Judgment.

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16.2 If either (a) CEH enters into any consent judgment with any other entity or (b) any other judgment is entered in an action brought by CEH with respect to an alleged failure to warn of alleged exposures to BPA in socks made primarily of polyester with spandex, and said consent judgment or other judgment contains different injunctive terms, Settling Defendant may seek to modify this Consent Judgment to adopt those injunctive terms and comply with them instead of those presently set forth in Section 3. If Settling Defendant seeks to adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this Consent Judgment.

IT IS SO ORDERED:

Dated: _____, 2023

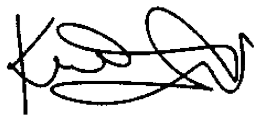
Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: October 27, 2023

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: October __, 2023

TY INC.

Signature

Printed Name

Title

1 IT IS SO STIPULATED:

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3 Dated: October __, 2023

CENTER FOR ENVIRONMENTAL HEALTH

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Kizzy Charles-Guzman
Chief Executive Officer

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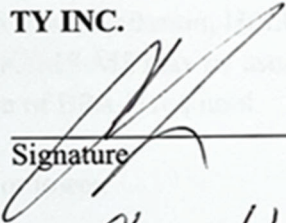
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10 Dated: October 27, 2023

TY INC.

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Signature 

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Chris Johnson
Printed Name

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VP IT
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EXHIBIT A

“Test Protocol” as defined in Section 2.3 of the Consent Judgment means the following test method:

1. Homogenized sample of minimum 1 gram.
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.