

1 Mark N. Todzo, State Bar No. 168389
2 Meredyth Merrow, State Bar No. 328337
3 LEXINGTON LAW GROUP
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 mmerrow@lexlawgroup.com

6 Counsel for Plaintiff
7 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

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12 CENTER FOR ENVIRONMENTAL HEALTH,
13 a non-profit corporation,
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15 Plaintiff,
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17 v.
18
19 EASY SPIRIT LLC, *et al.*,
20
21
22 Defendants.

Case No. CGC-22-598022

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

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
GERTEX HOSIERY INC.**

1 **1. INTRODUCTION**

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

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

8 1.3 On October 13, 2021, CEH served a 60-Day Notice of Violation under
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) on Settling Defendant, the California Attorney
11 General, the District Attorneys of every County in the State of California, and the City Attorneys
12 for every City in the State of California with a population greater than 750,000. 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. Both the original complaint and operative
17 First Amended Complaint (“Complaint”) name Settling 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 “Covered Products” means socks made primarily of polyester with spandex
5 that are manufactured, distributed, licensed or sold by Settling Defendant.

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

8 2.3 “Other Bisphenols” means Bisphenol AF (BPAF), Bisphenol AP (BPAP),
9 Bisphenol B (BPB), Bisphenol E (BPE), Bisphenol F (BPF), Bisphenol P (BPP), Bisphenol S
10 (BPS), and Bisphenol Z (BPZ).

11 2.4 “Reformulation Level” means 10 ppm BPA as measured by the Test Protocol.

12 2.5 “Test Protocol” means a standard method for measuring total BPA content as
13 set forth in Exhibit A.

14 **3. INJUNCTIVE RELIEF**

15 3.1 **Reformulation of Covered Products.** Within one year following the Effective
16 Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute, license, sell,
17 or offer for sale any Covered Product in California that contains BPA. For purposes of this Consent
18 Judgment, a product “contains BPA” if BPA is an intentionally added ingredient in either the
19 Covered Product or a component of the Covered Product, or contains in excess of 10 parts per
20 million BPA as measured by the Test Protocol. Settling Defendant shall not replace the BPA with
21 any Other Bisphenols (such as Bisphenol S (BPS), BPAF, BPAP, BPB, BPE, BPF, BPP, and BPZ,).
22 In the event that Settling Defendant learns either through Plaintiff or another means that the
23 Products contain BPA or Other Bisphenols in excess of the requirements set forth herein, Settling
24 Defendant shall notify its source supplier that it has breached its specification and take action to
25 rectify the breach to prevent future breaches.

26 3.2 **Specifications to Suppliers.** No more than thirty (30) days after the Effective
27 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products requiring
28 that Covered Products not contain BPA or any Other Bisphenols

1 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
2 Section 3 shall not apply to Covered Products that Settling Defendant has purchased prior to the
3 Effective Date, including but not limited to Covered Products in the process of manufacture,
4 production, distribution, or in inventory or distribution centers, or at retail locations.

5 3.4 **Clear and Reasonable Warnings.**

6 3.4.1 **Election to Warn.** Settling Defendant intends to comply with the
7 Reformulation provision set forth in Section 3.1 and test all batches (lots) of Products. In the
8 event, however, that a specific SKU or SKUs exceed the Reformulation Level, Settling Defendant
9 may comply with the terms of this section through use of Clear and Reasonable Warnings, as set
10 forth below. A Clear and Reasonable Warning under this Agreement shall state:



12 **WARNING:** This product can expose you to chemicals, including Bisphenol
13 A (BPA) which is known to the State of California to cause birth defects or
14 other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

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

26 3.4.2 **Reporting Covered Products that Exceed the Reformulation Level to**
27 **CEH.** During the first twelve months following the Effective Date, Settling Defendant is
28 required to report to CEH the percentage of Covered Products for which Settling Defendant

1 provided clear and reasonable Proposition 65 warnings. If Settling Defendant provides clear and
2 reasonable warnings on 1% or more Covered Products sold in California, Settling Defendant will
3 be required to make an additional payment of \$13,000 as set forth in Section 5.4 below.

4 **4. ENFORCEMENT**

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

15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total
17 settlement amount of \$55,000 as a settlement payment in three installments as further set forth in
18 this Section. Any payment by Settling Defendant shall be deemed to be timely and not subject to a
19 late charge and/or other penalty if (1) postmarked (if sent by the United States Postal Service) or
20 (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set forth in this
21 paragraph.

22 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant
23 shall be allocated between civil penalties, an additional settlement payment and attorneys' fees and
24 costs as set forth below. Any failure by Settling Defendant to comply with the payment terms
25 herein shall be subject to a joint and several stipulated late fee to be paid by Settling Defendant in
26 the amount of \$100 for each day the full payment is not received after the applicable payment due
27 dates set forth in Section 5.3.1-5.3.3. The late fees required under this Section shall be recoverable,
28 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to

1 Section 4 of this Consent Judgment. The funds paid by Settling Defendant shall be allocated as set
2 forth below between the following categories and made payable as follows:

3 5.2.1 \$7,255 of the total payment is a civil penalty pursuant to Health &
4 Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with
5 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
6 Environmental Health Hazard Assessment). Accordingly, the OEHHA portion of the civil
7 penalty payment for \$5,441.25 shall be made payable to OEHAA and associated with taxpayer
8 identification number 68-0284486. This payment shall be delivered as follows:

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

21 The CEH portion of the civil penalty payment for \$1,813.75 shall be made payable to the Center
22 for Environmental Health and associated with taxpayer identification number 94-3251981. This
23 payment shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco,
24 CA 94117.

25 5.2.2 \$5,440 of the total payment is an Additional Settlement Payment
26 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
27 Regulations, Title 11, § 3204 and California Code of Regulations, Title 11, § 3204. CEH will use
28 such funds to continue its work educating and protecting people from exposures to toxic
chemicals, including BPA, in textiles and other products. CEH may also use a portion of such
funds to monitor compliance with this Consent Judgment and to purchase and test Settling

1 Defendant's products to confirm compliance.

2 5.2.3 \$42,305 of the total payment is a reimbursement of a portion of
3 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be
4 divided as follows: (a) \$35,805 payable to the Lexington Law Group, LLP and associated with
5 taxpayer identification number 88-4399775; and (b) \$6,500 payable to the Center for
6 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
7 these payments shall be delivered to Lexington Law Group, LLP 503 Divisadero Street, San
8 Francisco, CA 94117.

9 5.3 The payments described above shall be payable in three installments of \$30,000,
10 \$15,000 and \$10,000 and shall be payable as set forth below.

11 5.3.1 The first installment of \$30,000 shall be due within ten (10) days
12 following the Effective Date, and paid in five separate checks made out to the payees as follows:

13 Payee	Type	Amount	Deliver To
14 OEHHA	Penalty	\$ 5,441.25	OEHHA per Section 5.1.1
15 Center For Environmental Health	Penalty	\$ 1,813.75	LLG
16 Center For Environmental Health	ASP	\$ 5,440	LLG
17 Lexington Law Group, LLP	Fee and Cost	\$ 10,805	LLG
18 Center For Environmental Health	Fee and Cost	\$ 6,500	LLG

19
20 5.3.2 The second installment of \$15,000 shall be due within sixty (60)
21 days following the Effective Date, with one check made payable to Lexington Law Group, LLP.

22 5.3.3 The third installment of \$10,000 shall be due within one hundred
23 twenty (120) days following the Effective Date, with one check made payable to Lexington Law
24 Group, LLP.

25 5.4 If Settling Defendant avails itself of the warning option provided for by Section
26 3.3 for more than 1% of the Covered Products sold in California during the first 12 months
27 following the Effective Date, Settling Defendant shall make an additional payment of \$ \$13,000
28 and no cents to be split between a civil penalty and ASP as set forth herein, concurrently with its

1 written notice as provided in Section 3.2. Of the additional payment, \$6,500 shall be a civil penalty,
2 apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the
3 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)).
4 Accordingly, the OEHHA portion of the civil penalty payment of 4,875 shall be made payable to
5 OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA
6 address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment
7 of \$1,625 shall be made payable to the Center for Environmental Health and associated with
8 taxpayer identification number 94-3251981. \$2,000 of the additional payment shall be made
9 payable to Lexington Law Group, LLP 503 Divisadero Street, San Francisco, CA 94117 for fees
10 and costs associated with the additional payment. The remaining \$4,500 of the additional payment
11 shall be made payable to the Center for Environmental Health and associated with taxpayer
12 identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both
13 payments to CEH shall be delivered to Lexington Law Group, LLP 503 Divisadero Street, San
14 Francisco, CA 94117.

15 **5.5 Failure to Comply With Payment Obligations.** Notwithstanding the
16 provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the
17 event that Settling Defendant does not comply fully with its payment obligations under this Section
18 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order
19 requiring Settling Defendant to submit to a debtor’s examination in the San Francisco County
20 Superior Court. Settling Defendant shall be entitled to appear at such a debtor’s examination
21 remotely, subject to the approval of the San Francisco County Superior Court; however, CEH shall
22 not object to such a remote appearance. In the event that Settling Defendant fails to submit to any
23 such debtor’s examination ordered by the Court, CEH may seek an order holding Settling
24 Defendant in contempt of Court.

25 **6. MODIFICATION**

26 **6.1 Written Consent.** This Consent Judgment may be modified from time to
27 time by express written agreement of the Parties with the approval of the Court, or by an order of
28

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
9 entities that are under common ownership, directors, officers, employees, agents, shareholders,
10 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Defendant
11 Releasees distribute or sell 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 manufactured, distributed, or sold by Settling Defendant prior to the
15 Effective Date.

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

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

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

1 Releasees, or Downstream Defendant Releasees.

2 **8. NOTICE**

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

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

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

12 Garth N. Ward
13 Lewis Brisbois Bisgaard & Smith LLP
14 550 West C Street, Suite 1700
15 San Diego, CA 92101
16 Garth.Ward@lewisbrisbois.com

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

19 **9. COURT APPROVAL**

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

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

26 **10. GOVERNING LAW AND CONSTRUCTION**

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

11. ATTORNEYS' FEES

11.1 Should Plaintiff prevail on any motion, application for an order to show cause,
or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to

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

8 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
9 its own attorneys' fees and costs.

10 11.3 Nothing in this Section 101 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. If CEH enters into any Settlement Document with any other entity in this action
24 with respect to an alleged failure to warn of alleged exposures to BPA in socks made primarily of
25 polyester with spandex that contains a different test protocol for determining the total content of
26 BPA in socks, Settling Defendant may use that test protocol in addition to the one set forth in
27 Exhibit A.
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IT IS SO ORDERED:

Dated: _____, 2024

Hon. Ethan P. Schulman

IT IS SO STIPULATED:

Dated: September 4, 2024

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: September 3, 2024

GERTEX HOSIERY INC.

Barry Digitally signed by
Signature Barry Rotenberg

Rotenberg Date: 2024.08.26
12:09:47 -04'00'
Printed Name

VP
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EXHIBIT A

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

- a. Homogenized sample of minimum 1 gram, cut in a manner to include materials from each region and color of the sock.
- b. Quantitative solvent extraction by acetonitrile. If acetonitrile not available, may substitute with methanol.
- c. Extraction by EPA methods 3540 (Soxhlet), 3546 (microwave), or hot plate for 3 hours at 40 degrees Celsius.
- d. 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.
- e. Reporting limit of 0.5 mg/kg or lower.
- f. 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.