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7 CENTER FOR ENVIRONMENTAL HEALTH

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

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12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 EASY SPIRIT LLC, *et al.*,)

17 Defendants.)
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Case No. CGC-22-598022

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

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
BIOWORLD MERCHANDISING,
INC.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant Bioworld Merchandising Inc. (“Settling
4 Defendant”). 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 has done so in the past.

8 1.3 On November 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 (“FAC”). Settling Defendant is named in the
17 FAC. CEH filed the Complaint naming Settling Defendant as a defendant (“Complaint”).

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 Complaints; (ii) venue is proper in the County of Alameda; and (iii) this Court has
22 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, and/or sold by each Settling Defendant.

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

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

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Reformulation of Covered Products.** On or before the date that is six
12 months following the Effective Date (“Compliance Date”), Settling Defendants shall not
13 manufacture, distribute, sell, or offer for sale any Covered Product in California that contains
14 BPA except as provided in Section 3.3 below. For purposes of this Consent Judgment, a product
15 “contains BPA” if BPA is an intentionally added ingredient in either the Covered Product or a
16 component of the Covered Product and contains in excess of 1 part per million BPA as measured
17 by the Test Protocol. Settling Defendants shall not replace the BPA with any other phenol (such
18 as Bisphenol S or BPS) in quantities in excess of 1 part per million as measured by the Test
19 Protocol.

20 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
21 Date, Settling Defendants shall issue specifications to their suppliers of Covered Products
22 requiring that Covered Products not contain BPA or any other phenol (such as Bisphenol S
23 (“BPS”). In the event that Settling Defendant learns either through Plaintiff or another means that
24 the Covered Products contain BPA or another phenol in excess of the requirements set forth
25 herein, Settling Defendant shall notify its supplier that it has breached its specification. In the
26 event that this happens more than two (2) times, Settling Defendant must change suppliers.

27 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
28 Section 3.1 shall not apply to Covered Products that Settling Defendant had purchased or entered

1 into a binding agreement to purchase prior to the Effective Date, including but not limited to
2 Covered Products in transit, in distribution centers, in inventory, or at third-party retail locations.

3 **4. ENFORCEMENT**

4 4.1 Plaintiff may, by motion or application for an order to show cause before the
5 Superior Court of San Francisco County, enforce the terms and conditions contained in this
6 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
7 Section 3 above, Plaintiff shall provide Settling Defendant(s) with a Notice of Violation and a
8 copy of any test results which purportedly support the Notice of Violation. The Parties shall then
9 meet and confer regarding the basis for the anticipated motion or application in an attempt to
10 resolve it informally, including providing Settling Defendant(s) with a reasonable opportunity of
11 at least thirty (30) days to cure any alleged violation. During the meet and confer process, upon
12 request from Settling Defendant, CEH will provide Settling Defendant with a sample of the
13 Covered Product or Products that form the basis of the Notice of Violation. Should Settling
14 Defendant obtain a test result of that sample from an independent accredited laboratory based in
15 the United States that is below the 1 ppm reformulation level, CEH may either withdraw the
16 Notice of Violation or request that the Parties obtain a test result from a third laboratory, a test
17 which would be paid for jointly by the Parties. The test result from the third laboratory will then
18 serve as determinative of whether or not there was a violation of the 1 ppm standard. Should such
19 attempts at informal resolution fail, Plaintiff may file an enforcement motion or application,
20 provided that no enforcement motion or application will be filed during the pendency of any
21 additional testing described herein. This Consent Judgment may only be enforced by the Parties.

22 4.2 The first two times Plaintiff's Notice of Violation involves BPS or any phenol
23 other than BPA in excess of 1 part per million as measured by the Test Protocol, Settling
24 Defendant must provide notice to its supplier as set forth in Section 3.2, but shall have no further
25 liability for violating the terms of this Consent Judgment. However, any subsequent Notice of
26 Violation involving BPS or any phenol other than BPA in excess of 1 part per million BPA as
27 measured by the Test Protocol shall be governed by Section 4.1.

1 **5. PAYMENTS**

2 **5.1 Total Settlement Payment.** Within fifteen (15) business days of the Effective
3 Date, Settling Defendant shall pay the total settlement amount of \$72,500 as a settlement payment
4 as further set forth in this Section.

5 **5.1.1** A civil penalty in the amount of \$9,800 pursuant to Health & Safety
6 Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety
7 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
8 Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty
9 payment for \$7,350 shall be made payable to OEHHA and associated with taxpayer identification
10 number 68-0284486. This payment shall be delivered as follows:

11 For United States Postal Service Delivery:

12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
 P.O. Box 4010, MS #19B
 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
 1001 I Street, MS #19B
 Sacramento, CA 95814

19 The CEH portion of the civil penalty payment for \$2,450 shall be made payable to the Center for
20 Environmental Health and associated with taxpayer identification number 94-3251981. This
21 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
22 94117.

23 **5.1.2** An Additional Settlement Payment (“ASP”) in the amount of
24 \$7,200 to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and
25 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work
26 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles
27 and other products. CEH may also use a portion of such funds to monitor compliance with this
28 Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance.

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

5.1.3 Settling Defendant shall pay \$55,500 as a reimbursement of a portion of Plaintiff's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$46,800 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$8,700 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.1.4 To summarize, Settling Defendants shall deliver checks made out to the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$7,350	OEHHA per Section 5.1.1
Center For Environmental Health	Penalty	\$2,450	LLG
Center For Environmental Health	ASP	\$7,200	LLG
Lexington Law Group	Fee and Cost	\$46,800	LLG
Center For Environmental Health	Fee and Cost	\$8,700	LLG

5.2 **Failure to Comply With Payment Obligations.** Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the event that Settling Defendant does not comply fully with its payment obligations under Section 5, in addition to any other enforcement mechanism available to CEH, CEH may obtain an order requiring Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant

1 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
2 Settling Defendant in contempt of Court.

3 **6. MODIFICATION**

4 6.1 **Written Consent.** This Consent Judgment may be modified from time to
5 time by express written agreement of the Parties with the approval of the Court, or by an order of
6 this Court upon motion and in accordance with law.

7 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
8 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASED**

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

22 7.2 Provided that Settling Defendant complies in full with its obligations under
23 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives, covenants not to
24 sue, and forever discharges any and all claims against Settling Defendant and all Releasees
25 arising from any violation of Proposition 65 or any other statutory or common law claims that
26 have been or could have been asserted by CEH individually regarding the failure to warn about
27 exposure to BPA contained in Covered Products (i) sold by Settling Defendant prior to the
28 Compliance Date or (ii) which Settling Defendants purchased or entered into binding

commitments to purchase prior to the Effective Date.

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

7.4 Nothing in this Section 6.1 affects Plaintiff's right to commence or prosecute an action under Proposition 65 against any person other than Settling Defendants, Defendant Releasees, or Downstream Defendant Releasees.

8. NOTICE

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

Mark N. Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

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

John Allen
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543
jallen@allenmatkins.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. 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

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

13. SUCCESSORS AND ASSIGNS

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

14. RETENTION OF JURISDICTION

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

15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

16. NO EFFECT ON OTHER SETTLEMENTS

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

16.2 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), it shall provide Settling Defendant with notice thereof by serving the Settlement Document on the Attorney General for posting on its public website, and

1 Settling Defendant may thereafter seek to modify this Consent Judgment to adopt those injunctive
2 terms and comply with them instead of those presently set forth in Section 3. If Settling Defendant
3 seeks to adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6
4 of this Consent Judgment and CEH agrees to meet and confer in accordance with that provision
5 and not to oppose Settling Defendants request for modification provided that the products at issue
6 in the Settlement Document are substantially similar to the Covered Products.

7 16.3 In the event that the different injunctive terms referenced in Section 16.2
8 involve the provision of clear and reasonable warnings, Settling Defendant may seek to comply
9 with the warning requirement set forth therein, but shall provide CEH with notice thereof as set
10 forth in Section 16.2 and make an additional payment proportional with any additional payment
11 required by the other defendant to avail itself of the warning option in its Consent Judgment. shall
12 provide written notice to CEH.

13 **IT IS SO ORDERED:**
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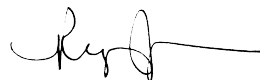
15 Dated: _____, 2022

16 _____
Judge of the Superior Court

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18 **IT IS SO STIPULATED:**
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21 Dated: October 26, 2022

CENTER FOR ENVIRONMENTAL HEALTH

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Regina Jackson
Interim Chief Executive Officer

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Dated: October 20, 2022

BIOWORLD MERCHANDISING INC.



Signature

Rajeev Malik

Printed Name

CEO

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