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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 EASY SPIRIT LLC, *et al.*,
19
20 Defendants.

Case No. CGC-22-598022

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
KAYSER ROTH CORPORATION**

1 **1. INTRODUCTION**

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

5 1.2 Settling Defendant is alleged to manufacture, distribute, license, and/or sell
6 socks made primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the State of
7 California (“Covered Products”) or has done so in the past.

8 1.3 On February 28, 2022, 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.*) (“Notices”) 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 the Covered Products.

14 1.4 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
15 CEH filed the operative First Amended Complaint. On July 13, 2022, CEH amended the
16 Complaint to name Settling Defendant as a defendant in the action.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
18 Court has jurisdiction over the allegations of violations contained in the operative Complaints
19 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
20 alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii) this Court
21 has jurisdiction to enter this Consent Judgment.

22 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
23 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
28 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in

1 this action.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means socks made primarily of polyester with spandex
4 that are manufactured, distributed, licensed or sold by Settling 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 total BPA content as set forth
8 in Exhibit A.

9 **3. INJUNCTIVE RELIEF**

10 3.1 **Reformulation of Covered Products.** Within six months following the
11 Effective Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute,
12 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes
13 of this Consent Judgment, a product “contains BPA” if BPA is an intentionally added ingredient
14 in either the Covered Product or a component of the Covered Product, or contains in excess of 1
15 part per million BPA as measured by the Test Protocol. Settling Defendant shall not replace the
16 BPA with any other bisphenol (such as Bisphenol AF (BPAF), Bisphenol AP (BPAP), Bisphenol
17 B (BPB), Bisphenol E (BPE), Bisphenol (BPF), Bisphenol P (BPP), Bisphenol S (BPS), or
18 Bisphenol Z (BPZ) (collectively referred to herein as “Bisphenols”).

19 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
20 Date, Settling Defendant shall issue specifications to their suppliers of Covered Products
21 requiring that Covered Products not contain BPA or any other Bisphenols.

22 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
23 Section 3 shall not apply to Covered Products that Settling Defendant has purchased prior to the
24 Effective Date, including but not limited to Covered Products in distribution centers, in inventory,
25 or at retail locations.

26 **4. ENFORCEMENT**

27 4.1 Plaintiff may, by motion or application for an order to show cause before the
28 Superior Court of San Francisco County, enforce the terms and conditions contained in this

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

9 4.2 The first time Plaintiff’s NOV involves any other Bisphenol other than BPA,
10 Settling Defendant must provide notice to its supplier as set forth in Section 3.2, but shall have no
11 further liability for violating the terms of this Consent Judgment. However, any subsequent
12 Notice of Violation involving any other Bisphenols other than BPA shall be governed by Section
13 4.1

14 **5. PAYMENTS**

15 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the
16 Effective Date, Settling Defendant shall pay the total sum of \$45,000 and no cents as a settlement
17 payment as further set forth in this Section. Any payment by Settling Defendant shall be deemed
18 to be timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the
19 United States Postal Service) or (2) delivered to an overnight carrier (e.g., Fed Ex), on or before
20 the deadline set forth in this paragraph.

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

1 made payable as follows:

2 5.2.1 \$5,800 as a civil penalty pursuant to Health & Safety Code §
3 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
4 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental
5 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
6 \$4,350 shall be made payable to OEHAA and associated with taxpayer identification number 68-
7 0284486/ This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

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

14 For Non-United States Postal Service Delivery:

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

20 The CEH portion of the civil penalty payment for \$1,450 shall be made payable to the Center for
21 Environmental Health and associated with taxpayer identification number 94-3251981. This
22 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
23 94117.

24 5.2.2 \$4,200 as an Additional Settlement Payment (“ASP”) to CEH
25 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
26 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
27 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
28 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 Defendant’s products to confirm

1 compliance.

2 5.2.3 \$35,000 as a reimbursement of a portion of CEH's reasonable
3 attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two
4 separate checks as follows: (a) \$29,000 payable to the Lexington Law Group and associated with
5 taxpayer identification number 88-4399775; and (b) \$6,000 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, 503 Divisadero Street, San Francisco,
8 CA 94117.

9 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the
10 payees and in the amounts set forth below:

11 Payee	12 Type	13 Amount	14 Deliver To
15 OEHHA	16 Penalty	17 \$ 4,350	18 OEHHA per Section 5.2.1
19 Center For Environmental Health	20 Penalty	21 \$ 1,450	22 LLG
23 Center For Environmental Health	24 ASP	25 \$ 4,200	26 LLG
27 Lexington Law Group	28 Fee and Cost	\$ 29,000	LLG
Center For Environmental Health	Fee and Cost	\$ 6,000	LLG

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20 **6. MODIFICATION**

21 6.1 **Written Consent.** This Consent Judgment may be modified from time to
22 time by express written agreement of the Parties with the approval of the Court, or by an order of
23 this Court upon motion and in accordance with law.

24 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
25 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
26 modify the Consent Judgment.

27 **7. CLAIMS COVERED AND RELEASED**

28 7.1 Provided that Settling Defendant complies in full with its obligations under

1 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
2 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
3 that are under common ownership, directors, officers, employees, agents, shareholders,
4 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
5 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
6 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
7 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
8 Covered Products that were sold by Settling Defendant prior to the Effective Date.

9 7.2 Provided that Settling Defendant complies in full with its obligations under
10 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
11 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
12 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
13 common law claims that have been or could have been asserted by CEH individually regarding
14 the failure to warn about exposure to BPA contained in Covered Products imported or sold by
15 Settling Defendant prior to the Effective Date.

16 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
17 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
18 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
19 warn about BPA in Covered Products manufactured, distributed, or sold by Settling Defendant
20 after the Effective Date.

21 7.4 Nothing in this Section 7 affects Plaintiff’s right to commence or prosecute an
22 action under Proposition 65 against any person other than Settling Defendant, Defendant
23 Releasees, or Downstream Defendant Releasees.

24 **8. NOTICE**

25 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail to:
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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:

Philip Hinerman
Fox Rothschild LLP
345 California Street
Suite 2200
San Francisco, CA 94104-2670
PHinerman@foxrothschild.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 the Parties 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 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 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should a Settling Defendant prevail on any motion application for an order to show cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs

1 against Plaintiff as a result of such motion or application upon a finding by the Court that
2 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes
3 of this Consent Judgment, the term substantial justification shall carry the same meaning as used
4 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

5 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
6 its own attorneys' fees and costs.

7 11.3 Nothing in this Section 1 shall preclude a Party from seeking an award of
8 sanctions pursuant to law.

9 **12. ENTIRE AGREEMENT**

10 12.1 This Consent Judgment contains the sole and entire agreement and
11 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
12 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
13 merged herein and therein. There are no warranties, representations or other agreements between
14 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
15 implied, other than those specifically referred to in this Consent Judgment have been made by any
16 Party hereto. No other agreements not specifically contained or referenced herein, oral or
17 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
18 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
19 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
20 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
23 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 **13. SUCCESSORS AND ASSIGNS**

25 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
26 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
27 assigns of any of them.

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1 **14. RETENTION OF JURISDICTION**

2 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

5 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

8 **16. NO EFFECT ON OTHER SETTLEMENTS/ “MOST FAVORED NATION”**
9 **CLAUSE**

10 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
11 against an entity other than Settling Defendant on terms that are different than those contained in
12 this Consent Judgment.

13 16.2 If CEH enters into any consent judgment (“Settlement Document”) with any
14 other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in
15 socks made primarily of polyester with spandex in which it agrees to different injunctive terms,
16 Settling Defendant may seek to modify this Consent Judgment to adopt those injunctive terms and
17 comply with them instead of those presently set forth in Section 3. If Settling Defendant seeks to
18 adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this
19 Consent Judgment.

20 **IT IS SO ORDERED:**

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22 Dated: _____, 2023

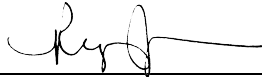
Judge of the Superior Court

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24 **IT IS SO STIPULATED:**
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Dated: April 6, 2023

CENTER FOR ENVIRONMENTAL HEALTH



Regina Jackson
Interim Chief Executive Officer

Dated: March __, 2023

KAYSER-ROTH CORPORATION

Signature

Printed Name

Title

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Dated: March __, 2023

CENTER FOR ENVIRONMENTAL HEALTH

Regina Jackson
Interim Chief Executive Officer

Dated: March 28, 2023

KAYSER-ROTH CORPORATION


Signature

NICOLA GALLOTTI
Printed Name

PRESIDENT & 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:

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.