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CENTER FOR ENVIRONMENTAL HEALTH

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,
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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 DEFENDANTS
EVERYTHING LEGWEAR
HOLDINGS, LLC AND JO-ANN'S
STORES, LLC**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant Everything Legwear Holdings, LLC (“Settling
4 Defendant I”) and Defendant Jo-Ann Stores LLC (“Settling Defendant II”) CEH and Settling
5 Defendants I and II are referred to collectively as the “Parties.”

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

9 1.3 Settling Defendant II sells socks Covered Products or has done so in the past.

10 1.4 On February 28, 2022, CEH served 60-Day Notices of Violation under
11 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
12 & Safety Code §§ 25249.5, *et seq.*) (“Notices”) to Settling Defendants, the California Attorney
13 General, the District Attorneys of every County in the State of California, and the City Attorneys
14 for every City in the State of California with a population greater than 750,000. The Notice
15 alleges violations of Proposition 65 with respect to the presence of BPA in the Covered Products.

16 1.5 On February 4, 2022 CEH filed the original complaint. On March 21, 2022,
17 CEH filed the operative First Amended Complaint. On July 14, 2022, CEH amended the
18 Complaint to name Settling Defendants as defendants in the action.

19 1.6 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
20 Court has jurisdiction over the allegations of violations contained in the operative Complaint
21 applicable to Settling Defendants and personal jurisdiction over Settling Defendants as to the acts
22 alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii) this Court
23 has jurisdiction to enter this Consent Judgment.

24 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by
25 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
26 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
27 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any

1 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
2 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
3 this action.

4 **2. DEFINITIONS**

5 2.1 "Covered Products" means socks made primarily of polyester with spandex
6 that are manufactured, distributed, licensed or sold by Settling Defendant I.

7 2.2 "Effective Date" means the date on which this Consent Judgment is entered by
8 the Court.

9 2.3 "Test Protocol" means a method for measuring total BPA content as set forth
10 in Exhibit A.

11 **3. INJUNCTIVE RELIEF**

12 3.1 **Reformulation of Covered Products.** Within six months following the
13 Effective Date (the "Reformulation Date"), Settling Defendants shall not manufacture, distribute,
14 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes
15 of this Consent Judgment, a product "contains BPA" if BPA is an intentionally added ingredient
16 in either the Covered Product or a component of the Covered Product, or contains in excess of 1
17 part per million BPA as measured by the Test Protocol. Settling Defendant I shall not replace the
18 BPA with any other phenol (such as Bisphenol S or BPS).

19 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
20 Date, Settling Defendant I shall issue specifications to its suppliers of Covered Products requiring
21 that Covered Products not contain BPA or any other phenol (such as Bisphenol S or BPS).

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

26 3.4 **Clear and Reasonable Warnings.**

27 3.4.1 **Election to Warn.** If Settling Defendant I is unable to comply with the
28 Reformulation provision set forth in Section 3.1 or otherwise elects to permanently avail itself of

1 the warning option provided by this Section 3.4, Settling Defendant I shall provide written notice
2 to CEH prior to the Reformulation Date, and Settling Defendant I concurrently shall make the
3 additional payment specified in Section 5.2.5 below. Settling Defendant I shall then provide
4 Clear and Reasonable Warnings for each Covered Product sold in California that contains BPA.
5 A Clear and Reasonable Warning under this Agreement shall state:



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

9 The word "WARNING" shall be displayed in all capital letters and bold print and shall be
10 preceded by the yellow warning triangle symbol depicted above, provided however, the
11 symbol may be printed in black and white if the Covered Product label is produced without
12 using the color yellow. This warning statement shall be prominently displayed on the outer
13 packaging of the Covered Product and shall be displayed with such conspicuousness, as
14 compared with other words, statements or designs as to render it likely to be seen, read and
15 understood by an ordinary individual prior to sale. For internet, catalog or any other sale
16 where the consumer is not physically present, the warning statement shall be displayed in
17 such a manner that it is likely to be read and understood by an ordinary individual prior to the
18 authorization of or actual payment.

19 **4. ENFORCEMENT**

20 4.1 Plaintiff may, by motion or application for an order to show cause before the
21 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 Defendants 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 Settling Defendant(s) 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 I.** Within five (5) business days of the
5 Effective Date, Settling Defendant I shall pay the total sum of \$40,000 and no cents as a
6 settlement payment as further set forth in this Section. Any payment by Settling Defendant I shall
7 be deemed to be timely and not subject to a late charge and/or other penalty if (1) postmarked (if
8 sent by the United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on
9 or before the deadline set forth in this paragraph.

10 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant I
11 shall be paid in five separate checks in the amounts specified below and delivered as set forth below.
12 Any failure by Settling Defendant I to comply with the payment terms herein shall be subject to a
13 joint and several stipulated late fee to be paid by Settling Defendant I in the amount of \$100 for
14 each day the full payment is not received after the applicable payment due date set forth in Section
15 5.1. The late fees required under this Section shall be recoverable, together with reasonable
16 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent
17 Judgment. The funds paid by Settling Defendant I shall be allocated as set forth below between
18 the following categories and made payable as follows:

19 **5.2.1** \$5,280 as a civil penalty pursuant to Health & Safety Code §
20 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
21 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
22 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
23 \$3,960 shall be made payable to OEHAA and associated with taxpayer identification number 68-
24 0284486/ This payment shall be delivered as follows:

25 **For United States Postal Service Delivery:**

26 **Attn: Mike Gyurics**
27 **Fiscal Operations Branch Chief**
Office of Environmental Health Hazard Assessment
28 **P.O. Box 4010, MS #19B**

1 Sacramento, CA 95812-4010

2 For Non-United States Postal Service Delivery:

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

8 The CEH portion of the civil penalty payment for \$1,320 shall be made payable to the Center for
9 Environmental Health and associated with taxpayer identification number 94-3251981. This
10 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
11 94117.

12 5.2.2 \$3,920 as an Additional Settlement Payment ("ASP") to CEH
13 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
14 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
15 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
16 textiles and other products. CEH may also use a portion of such funds to monitor compliance
17 with this Consent Judgment and to purchase and test Settling Defendant's products to confirm
18 compliance.

19 5.2.3 \$30,800 as a reimbursement of a portion of CEH's reasonable
20 attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two
21 separate checks as follows: (a) \$25,800 payable to the Lexington Law Group and associated with
22 taxpayer identification number 94-3317175; and (b) \$5,000 payable to the Center for
23 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
24 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
25 CA 94117.

26 5.2.4 To summarize, Settling Defendant I shall deliver checks made out
27 to the payees and in the amounts set forth below:
28

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$3,960	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$1,320	LLG
Center For Environmental Health	ASP	\$3,920	LLG
Lexington Law Group	Fee and Cost	\$25,800	LLG
Center For Environmental Health	Fee and Cost	\$5,000	LLG

5.3 If Settling Defendant I avails itself of the permanent warning option provided for by Section 3.3, Settling Defendant I shall make an additional payment of \$10,000 and no cents to be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as provided in Section 3.2. Of the additional payment, \$5,000 shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of \$3,750 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$1,250 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The remaining \$3,500 of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.4 **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 I does not comply fully with its payment obligations under Section

1 5, in addition to any other enforcement mechanism available to CEH, CEH may obtain an order
2 requiring Settling Defendant I to submit to a Debtors Exam. In the event that Settling Defendant
3 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
4 Settling Defendant in contempt of Court.

5 **6. MODIFICATION**

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

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

12 **7. CLAIMS COVERED AND RELEASED**

13 7.1 **Provided that Settling Defendant I complies in full with its obligations under**
14 **Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of**
15 **itself and the public interest and Settling Defendants and their parents, subsidiaries, affiliated**
16 **entities that are under common ownership, directors, officers, employees, agents, shareholders,**
17 **successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling**
18 **Defendants distributes or sells Covered Products, such as distributors, wholesalers, customers,**
19 **retailers, franchisees, licensors and licensees, including but not limited to Jo-Ann Stores LLC,**
20 **(“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn**
21 **about alleged exposure to BPA contained in Covered Products that were sold by Settling**
22 **Defendant I prior to the Effective Date.**

23 7.2 **Provided that Settling Defendant I complies in full with its obligations under**
24 **Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever**
25 **discharges any and all claims against Settling Defendants, Defendant Releasees and Downstream**
26 **Defendant Releasees arising from any violation of Proposition 65 or any other statutory or**
27 **common law claims that have been or could have been asserted by CEH individually regarding**
28 **the failure to warn about exposure to BPA contained in Covered Products sold by Settling**

1 Defendant prior to the Effective Date.

2 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant I
3 and II and Defendant Releasees shall constitute compliance with Proposition 65 by Settling
4 Defendants, Defendant Releasees, and Downstream Defendant Releasees with respect to any
5 alleged failure to warn about BPA in Covered Products manufactured, distributed, or sold by
6 Settling Defendants after the Effective Date.

7 7.4 Nothing in this Section 7 affects Plaintiff's right to commence or prosecute an
8 action under Proposition 65 against any person other than Settling Defendants, Defendant
9 Releasees, or Downstream Defendant Releasees.

10 **8. NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Mark N. Todzo
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 mtodzo@lexlawgroup.com

18 8.2 When Settling Defendants are entitled to receive any notice under this
19 Consent Judgment, the notice shall be sent by first class and electronic mail to:

20 Daniel J. Herling
21 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
22 44 Montgomery Street, 36th Floor
23 San Francisco, CA 94104
24 DJHerling@mintz.com

25 8.3 Any Party may modify the person and address to whom the notice is to be sent
26 by sending the other Party notice by first class and electronic mail.

27 **9. COURT APPROVAL**

28 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
Defendants 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

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

8 **13. SUCCESSORS AND ASSIGNS**

9 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
10 Defendants, and their respective divisions, subdivisions and subsidiaries, and the successors or
11 assigns of any of them.

12 **14. RETENTION OF JURISDICTION**

13 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
14 Consent Judgment.

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

16 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
17 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
18 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

19 **16. NO EFFECT ON OTHER SETTLEMENTS/ "MOST FAVORED NATION"**

20 **CLAUSE**

21 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
22 against an entity other than Settling Defendants on terms that are different than those contained in
23 this Consent Judgment.

24 16.2 If CEH enters into any consent judgment ("Settlement Document") with any
25 other entity in this action with respect to an alleged failure to warn of alleged exposures to BPA in
26 socks made primarily of polyester with spandex in which it agrees to different injunctive terms,
27 Settling Defendants may seek to modify this Consent Judgment to adopt those injunctive terms and
28 comply with them instead of those presently set forth in Section 3. If a Settling Defendant seeks to

1 adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this
2 Consent Judgment.

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IT IS SO ORDERED:

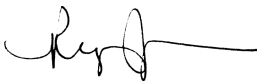
Dated: _____, 2022

Judge of the Superior Court

IT IS SO STIPULATED:

Dated: December 20, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Regina Jackson
Interim Chief Executive Officer

Dated: December __, 2022

EVERYTHING LEGWEAR HOLDINGS, LLC

Signature

Printed Name

Title

1 adopt different injunctive terms, it shall provide notice to CEH consistent with Section 6 of this
2 Consent Judgment.

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5 **IT IS SO ORDERED:**

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7 Dated: _____, 2022

Judge of the Superior Court

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10 **IT IS SO STIPULATED:**

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12 Dated: December __, 2022

CENTER FOR ENVIRONMENTAL HEALTH

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Regina Jackson
Interim Chief Executive Officer

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17 Dated: December 19, 2022

EVERYTHING LEGWEAR HOLDINGS, LLC

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Signature

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21 Lisa Sizemore

Printed Name

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23 President & CEO

Title

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January 4

Dated: December __, 2022/3

JO-ANN STORES LLC

Robert D Icsman

Signature

Robert D. Icsman

Printed Name

Asst. General Counsel

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 sock and taking a representative 1-gram sample of the shreds.
- b. Add the 1-gram sock sample to 10 ml acetonitrile
- c. Heat extraction 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