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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, vs. LULULEMON USA INC., *et al.*, Defendants.	Case No. 23CV029956 **[PROPOSED] CONSENT JUDGMENT AS TO LULULEMON USA INC.**

1. INTRODUCTION

1.1 The parties to this Consent Judgment ("Parties") are the Center for Environmental Health ("CEH") and defendant Lululemon USA INC. ("Settling Defendant"). CEH and Settling Defendant are referred to collectively as the "Parties."

1.2 CEH alleges that Settling Defendant is a corporation that employs ten (10) or more persons and that manufactures, distributes, and/or sells latex yoga mats that contain n-nitrosodimethylamine ("NDMA") in the State of California or has done so in the past.

1.3 Nitrosamines, such as NDMA, can form during the manufacturing process of latex rubber products, including the Covered Products. One study contends that Covered Products can be made using alternate accelerators (hereafter "Alternate Accelerator") that do not form Nitrosamines. *See* Sheth, et al., *Nitrosamine Generating Accelerators in Curing of Rubber*, IJSRD, Vol. 1, Issue 3 (2013).

1.4 On September 14, 2022, CEH served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*) ("Notices") on Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of NDMA in latex yoga mats that are distributed and/or sold by Settling Defendant.

1.5 On March 24, 2023, CEH filed the above-captioned action in the Superior Court of California for Alameda County, naming Settling Defendant as a defendant in this action.

1.6 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this Court has jurisdiction over the allegations of violations contained in the operative Complaint in the above-captioned action ("Complaint") and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter and enforce this Consent Judgment.

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

2. DEFINITIONS

2.1 "Covered Products" means latex yoga mats manufactured, distributed, or sold by Settling Defendant in California.

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

2.3 "Nitrosamine-Free Latex" means latex rubber that contains NDMA that is below the level of detection ("LOD") using a detection limit equal to 100 parts per billion (ppb) by weight when tested pursuant to ISO 19577-2019 by an independent accredited laboratory. In the event that CEH becomes aware that the International Organization for Standardization ("ISO") has validated and published a modified version of ISO 19577-2019 that results in a reduction in the LOD for NDMA, CEH may initiate a meet and confer pursuant to Section 6 to lower the LOD. In no event shall the LOD be reduced below 20 ppb. Alternatively, Nitrosamine-Free Latex may be demonstrated as containing NDMA less than 10 ppb as determined using ASTM F1313-90 (2011) or EN-71-12:2016, modified to use a sweat solution by an independent accredited laboratory.

2.4 "Reformulation Date" means 180 days after the Effective Date.

2.5 "Reformulation Requirements" means the injunctive obligations set forth in Sections 3.1 and 3.2.

3. INJUNCTIVE RELIEF

3.1 **Specification Compliance Date.** No more than thirty (30) days after the Effective Date, Settling Defendant shall issue specifications to its suppliers of the Covered Products requiring that the Covered Products manufactured after the Reformulation Date be made with Nitrosamine Free Latex. Settling Defendant shall obtain and maintain written certification(s) from the suppliers of Covered Products confirming that all such Covered Products manufactured or received by Settling Defendant for distribution in California are made with Nitrosamine-Free Latex. Settling Defendant may rely upon a written certification from its supplier that supplied a Covered Product that such Covered Product is made with Nitrosamine-Free Latex if such certification has not previously been demonstrated to be invalid. Settling

Defendant may comply with the requirements of this Section 3.1 by incorporating the requirements of this Section into its vendor guidelines, restricted substances list or similar vendor specifications documents and obtaining written confirmation from its suppliers through its standard vendor approval and consent processes.

3.2 Reformulation Commitment. As of the Reformulation Date, Settling Defendant shall not manufacture or purchase for sale in California any Covered Products that are not made with Nitrosamine-Free Latex. Nothing in this Consent Judgment requires Settling Defendant to (a) perform testing on the Covered Products; or (b) recall any Covered Products that are already in the stream of commerce as of the Reformulation Date.

3.3 Sell-Through for Existing Inventory. The Reformulation Requirements of Section 3 shall not apply to Covered Products that Settling Defendant has purchased or manufactured prior to the Reformulation Date, including but not limited to Covered Products in distribution centers, in inventory, or at retail locations.

4. ENFORCEMENT

4.1 CEH may, by motion or application for an order to show cause before the Superior Court of the County of Alameda, enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth the basis for the alleged violation. The Parties shall then meet and confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it informally. Should such attempts at meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any motion to enforce the terms of this Section, the Court may, in addition to ordering compliance with the terms of this Consent Judgment, employ such remedies as necessary to ensure compliance with Proposition 65 including, but not limited to, requiring Settling Defendant to provide warnings. Should CEH prevail on any motion or application to enforce a material violation of this Consent Judgment under this Section, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should Settling Defendant prevail on any motion or application under this Section, Settling Defendant may be awarded its reasonable attorneys' fees

and costs as a result of such motion or application upon a finding by the court that CEH's prosecution of the motion or application was not in good faith.

5. PAYMENTS

5.1 Payments by Settling Defendant. Within fifteen (15) calendar days of the Effective Date, Settling Defendant shall pay the total sum of $ 140,000 as a settlement payment as further set forth in this Section. Any payment by Settling Defendant shall be deemed to be timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set forth in this paragraph.

5.2 Allocation of Payments. The total settlement amount for Settling Defendant shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth below. The funds paid by Settling Defendant shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1 $38,500 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be 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 for $28,875 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B

Sacramento, CA 95814

The CEH portion of the civil penalty payment for $9,625 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.

5.2.2 $28,500 as an Additional Settlement Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH will use these funds to support CEH programs and activities that seek to educate the public about toxic chemicals, including carcinogenic nitrosamines such as NDMA, work with industries interested in moving toward safer alternatives, advocate with government, businesses, and communities for business practices that are safe for human health and the environment, and thereby reduce the public health impacts and risks of exposure to NDMA, and other toxic chemicals in consumer products sold in California. 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 (30) 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.

5.2.3 $73,000 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) $56,000 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) $17,000 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.

5.2.4 To summarize, Settling Defendant shall deliver checks made out to

the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	$ 28,875	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	$ 9,625	LLG
Center For Environmental Health	ASP	$ 28,500	LLG
Lexington Law Group	Fee and Cost	$ 56,000	LLG
Center For Environmental Health	Fee and Cost	$ 17,000	LLG

6. MODIFICATION

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

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

7. CLAIMS COVERED AND RELEASED

7.1 This Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and Settling Defendant's parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, members, employees, agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling Defendant directly or indirectly distributes or sells Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees ("Additional Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to NDMA contained in the Covered Products that were manufactured, imported, sold, distributed or offered for sale by Settling Defendant prior to the Reformulation Date.

7.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendant, Defendant Releasees, and

Additional Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH regarding a violation of Proposition 65 and/or the failure to warn about exposure to NDMA or any other Proposition 65 listed nitrosamine arising or in connection with the Covered Products that were manufactured, imported, sold, distributed or offered for sale by Settling Defendant prior to the Reformulation Date.

7.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall constitute compliance with Proposition 65 by Settling Defendant, the Defendant Releasees and its Additional Defendant Releasees with respect to any alleged failure to warn about NDMA in the Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective Date, except as to any other retail seller who fails to provide an internet or catalogue warning provided to said retailer pursuant to Section 3.6 in a manner consistent with Section 3.6.1.

8. NOTICE

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

Mark 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 electronic mail to:

George Gigounas
DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105
georgpe.gigounas@dlapiper.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. CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant 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 CEH prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should Settling Defendant prevail on any motion application for an order to show cause or other proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the Court that CEH's prosecution of the motion or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, California Code of Civil Procedure §§ 2016, *et seq.* This section is not intended to preclude the ordinary operation of California Civil Code §1717.

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

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

12. JOINT PREPARATION

12.1 The Parties have jointly participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly,

any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654. No inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Consent Judgment. It is conclusively presumed that the Parties participated equally in the drafting of this Consent Judgment.

13. ENTIRE AGREEMENT

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any 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. 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.

14. SUBMISSION OF REPORTS AND DATA TO CEH

14.1 For any report or information that Settling Defendant submits to CEH pursuant to this Consent Judgment, Settling Defendant may make such a submission subject to the terms of a protective order and/or confidentiality agreement as appropriate.

15. COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(f)

15.1 CEH and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

16. SUCCESSORS AND ASSIGNS

16.1 This Consent Judgment shall apply to and be binding upon CEH and Settling Defendant, and other respective divisions, subdivision, and subsidiaries, and the successors and assigns of any of them.

17. RETENTION OF JURISDICTION

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

18. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

18.1 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 bind that Party.

19. NO EFFECT ON OTHER SETTLEMENTS

19.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are different than those contained in this Consent Judgment.

20. EXECUTION IN COUNTERPARTS

20.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

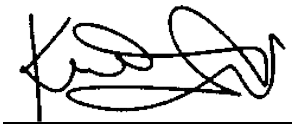
Dated: _____, 2023

_____
Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: October 12, 2023

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: _____, 2023

LULULEMON USA INC.

_____
Signature

_____
Printed Name

_____
Title

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____, 2023

_____
Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: _____, 2023

CENTER FOR ENVIRONMENTAL HEALTH

_____
Kizzy Charles-Guzman
Chief Executive Officer

Dated: October 17, 2023

LULULEMON USA INC.

E. Nicholas
_____
Signature

Erin Nicholas
_____
Printed Name

SVP Legal and Corporate Secretary
_____
Title