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7 CENTER FOR ENVIRONMENTAL HEALTH

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

12 CENTER FOR ENVIRONMENTAL HEALTH,  
13 a non-profit corporation,  
14 Plaintiff,  
15 v.  
16 DOLLS KILL, *et al.*,  
17 Defendants.

Case No. CGC-22-602383

Assigned for all purposes to: Judge Ethan  
P. Schulman, Dept. 304

**[PROPOSED] CONSENT  
JUDGMENT AS TO TORRID  
MERCHANDISING, INC. and  
TORRID LLC**

1       **1.       INTRODUCTION**

2               1.1           The parties to this Consent Judgment (“Parties”) are the Center for  
3 Environmental Health (“CEH”) and Defendants Torrid LLC and its subsidiary Torrid  
4 Merchandising, Inc. (“Settling Defendants”). CEH and Settling Defendants are referred to  
5 collectively as the “Parties.”

6               1.2           Settling Defendants sell socks made primarily of polyester with spandex that  
7 contain Bisphenol A (“BPA”) in the State of California or have done so in the past.

8               1.3           On November 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.*) (“Notice”) to Settling Defendants, 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 October 13, 2022 CEH filed the original complaint in this matter. On  
16 February 10, 2023, CEH filed an amendment to the complaint pursuant to C.C.P. §474 naming  
17 Settling Defendants as defendants in the 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 Defendants and personal jurisdiction over Settling Defendants as to the acts  
21 alleged in the Complaints; (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 contained in this Consent Judgment is or shall be construed as an  
24 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
25 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
26 of any fact, conclusion of law, issue of law, or violation of law and liability by the Settling  
27 Defendants is expressly denied. Nothing in this Consent Judgment shall prejudice, waive, or  
28 impair any right, remedy, argument, or defense the Parties may have in any other legal

1 proceeding. This Consent Judgment is the product of negotiation and compromise and is  
2 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 Torrid S 5 Pack Tie-dye Stars Skills Low Cut  
6 socks, U.P.C. No. 16905723, which are made primarily of polyester with spandex that were sold  
7 by Settling Defendants and manufactured by Horizon.

8 2.2 “Effective Date” means the date on which this Consent Judgment is entered by  
9 the Court.

10 2.3 “Test Protocol” means a standard method for measuring total BPA content as  
11 set forth in Exhibit A.

## 12 **3. INJUNCTIVE RELIEF**

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

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, if  
22 applicable, requiring that Covered Products not contain prohibited levels of BPA or any other  
23 phenol (such as Bisphenol S or BPS).

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

28

1     **4.     ENFORCEMENT**

2             4.1             Plaintiff may, by motion or application for an order to show cause before the  
3 Superior Court of San Francisco County, enforce the terms and conditions contained in this  
4 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of  
5 Section 3 above, Plaintiff shall provide Settling Defendant(s) with a Notice of Violation and a  
6 copy of any test results which purportedly support the Notice of Violation. The Parties shall then  
7 meet and confer regarding the basis for the anticipated motion or application in an attempt to  
8 resolve it informally, including providing Settling Defendant(s) with a reasonable opportunity of  
9 at least forty-five (45) days to cure any alleged violation. Should such attempts at informal  
10 resolution fail, Plaintiff may file an enforcement motion or application. This Consent Judgment  
11 may only be enforced by the Parties. To the extent that Settling Defendant can demonstrate that it  
12 purchased the Covered Product subject to the Notice of Violation prior to the Effective Date, the  
13 sale of such Covered Product will not constitute a violation of the terms of this Consent  
14 Judgment.

15     **5.     PAYMENTS**

16             5.1             **Total Settlement Payment.** Within fourteen (14) days of the Effective Date,  
17 Settling Defendants shall together pay the total settlement amount of Thirty Thousand Dollars and  
18 No Cents (\$30,000.00) as a settlement payment as further set forth in this Section.

19                     5.1.1             A civil penalty in the amount of \$ 8,000 pursuant to Health &  
20 Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health &  
21 Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of  
22 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of  
23 the civil penalty payment of \$6,000 shall be made payable to OEHHA and associated with  
24 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

25  
26                                     For United States Postal Service Delivery:  
27                                     Attn: Mike Gyurics  
28                                     Fiscal Operations Branch Chief  
  Office of Environmental Health Hazard Assessment  
  P.O. Box 4010, MS #19B  
  Sacramento, CA 95812-4010

1  
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  
9 The CEH portion of the civil penalty payment of \$2,000 shall be made  
10 payable to the Center for Environmental Health and associated with taxpayer identification number  
11 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
12 Francisco, CA 94117.

13  
14 5.1.2 An Additional Settlement Payment (“ASP”) in the amount of  
15 \$6,000 to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and  
16 California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work  
17 educating and protecting people from exposures to toxic chemicals, including BPA, in textiles  
18 and other products. CEH may also use a portion of such funds to monitor compliance with this  
19 Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance.  
20 CEH shall obtain and maintain adequate records to document that ASPs are spent on these  
21 activities and CEH agrees to provide such documentation to the Attorney General within thirty  
22 days of any request from the Attorney General. The payment pursuant to this Section shall be  
23 made payable to the Center for Environmental Health and associated with taxpayer identification  
24 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
25 Street, San Francisco, CA 94117.

26  
27 5.1.3 Settling Defendant shall pay \$16,000 as a reimbursement of a  
28 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) \$12,400 payable to the  
Lexington Law Group and associated with taxpayer identification number 88-4399775; and (b)  
\$3,600 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.

1                    5.1.4        To summarize, Settling Defendants shall deliver checks made out to  
2 the payees and in the amounts set forth below:

3 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
4                    OEHHA	Penalty	\$ 6,000	OEHHA per Section 5.2.1
5                    Center For Environmental Health	Penalty	\$ 2,000	LLG
6                    Center For Environmental Health	ASP	\$ 6,000	LLG
7                    Lexington Law Group	Fee and Cost	\$12,400	LLG
8                    Center For Environmental Health	Fee and Cost	\$ 3,600	LLG

9  
10  
11                    5.2                    **Failure to Comply With Payment Obligations.** Notwithstanding the  
12 provisions of the Enforcement of Judgments Law and Code of Civil Procedure §708.160, in the  
13 event that Settling Defendants do not comply fully with the payment obligations under Section 5,  
14 in addition to any other enforcement mechanism available to CEH, CEH may obtain an order  
15 requiring Settling Defendants to submit to a Debtors Exam. In the event that Settling Defendants  
16 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding  
17 Settling Defendants in contempt of Court.

18                    **6.        MODIFICATION**

19                    6.1                    **Written Consent.** This Consent Judgment may be modified from time to  
20 time by express written agreement of the Parties with the approval of the Court, or by an order of  
21 this Court upon motion and in accordance with law.

22                    6.2                    **Alternative Compliance Standards.** If either (i) CEH enters into a court-  
23 approved settlement or a court enters a final judgment in a Proposition 65 enforcement action  
24 over exposure to BPA from socks made primarily of polyester with spandex that includes a  
25 different reformulation level than that set forth in Section 3.1; or (ii) the State of California adopts  
26 a different definition or method for determining exposure to BPA for purposes of Proposition 65,  
27 the Parties will meet and confer in good faith on conforming modifications to this Consent  
28 Judgment. If the Parties are unable to reach agreement, either Party may move the Court to

1 modify the Consent Judgment.

2           6.3           **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 Defendants comply in full with their 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 Defendants, its parents, subsidiaries, affiliated entities  
9 that are under common ownership, directors, officers, employees, agents, shareholders,  
10 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling  
11 Defendants 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 sold by Settling Defendant prior to the Effective Date.

15           7.2           Provided that Settling Defendants comply in full with their obligations under  
16 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
17 discharges any and all claims against Settling Defendants, Defendant Releasees and Downstream  
18 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
19 common law claims that have been or could have been asserted by CEH individually regarding  
20 the failure to warn about exposure to BPA contained in Covered Products sold by Settling  
21 Defendants prior to the Effective Date.

22           7.3           Compliance with the terms of this Consent Judgment by Settling Defendants  
23 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants,  
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 Defendants  
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 Defendants, 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 any Settling Defendant is entitled to receive any notice under this  
11 Consent Judgment, the notice shall be sent by first class and electronic mail to:

12 Robert L. Theiring  
13 Burke, Williams & Sorensen, LLP  
14 501 West Broadway, Ste. 1600  
15 San Diego, CA 92101

16 8.3 Any Party may modify the person and address to whom the notice is to be sent  
17 by sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court.  
20 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling  
21 Defendants shall support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
23 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
24 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

25 **10. GOVERNING LAW AND CONSTRUCTION**

26 10.1 The terms of this Consent Judgment shall be governed by the laws of the State  
27 of California.

28 **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 Defendants prevail on any motion application for an order to show cause or other  
3 proceeding, that Settling Defendants 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 shall carry the same meaning as used  
7 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

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 10 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 Defendants, 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 they are fully authorized  
10 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
11 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

12 **16. NO EFFECT ON OTHER SETTLEMENTS**

13 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
14 against an entity other than Settling Defendants on terms that are different than those contained in  
15 this Consent Judgment.

16

17 **IT IS SO ORDERED:**

18

19 Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Judge of the Superior Court

20

21 **IT IS SO STIPULATED:**

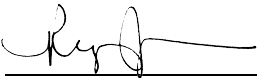
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23 Dated: July 24, 2023

**CENTER FOR ENVIRONMENTAL HEALTH**

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\_\_\_\_\_  
Regina Jackson  
Interim Chief Executive Officer

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Dated: July 11, 2023

**TORRID LLC & TORRID  
MERCHANDISING, INC.**

DocuSigned by:  
*Lisa Washington-Watts*  
84AEED7EECA0407  
\_\_\_\_\_  
Signature

Lisa Washington-Watts  
Printed Name

Senior Corporate 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 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