

1 Mark N. Todzo, State Bar No. 168389
2 Meredyth Merrow, State Bar No. 328337
3 LEXINGTON LAW GROUP
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 mmerrow@lexlawgroup.com

6 Counsel for Plaintiff
7 CENTER FOR ENVIRONMENTAL HEALTH

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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 ATHLETA LLC, *et al.*,
19
20 Defendant.

Case No. CGC-23-604604

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

**[PROPOSED] CONSENT
JUDGMENT AS TO DOLLAR TREE
STORES, INC. AND FAMILY
DOLLAR, LLC**

1 **1. INTRODUCTION**

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

6 1.2 Settling Defendants manufacture, distribute, and/or sell sports bras made
7 primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the State of California
8 or have done so in the past.

9 1.3 On June 28, 2023, CEH served a 60-Day Notice of Violation under
10 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
11 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendants, the California Attorney
12 General, the District Attorneys of every County in the State of California, and the City Attorneys
13 for every City in the State of California with a population greater than 750,000. The Notice
14 alleges violations of Proposition 65 with respect to the presence of BPA in sports bras made
15 primarily of polyester with spandex.

16 1.4 On February 9, 2023, CEH filed the original complaint in this matter. On
17 October 13, 2023, CEH filed the first amended complaint (the “Complaint”) naming Settling
18 Defendants as defendants in this action.

19 1.5 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 Complaints; (ii) venue is proper in the County of San Francisco; and (iii) this Court
23 has jurisdiction to enter this Consent Judgment.

24 1.6 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 sports bras made primarily of polyester with
6 spandex that are sold by Settling Defendants, including but not limited to “Just Be” brand sports
7 bras.

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

10 2.3 “Other Bisphenols” means Bisphenol AF (BPAF), Bisphenol AP (BPAP),
11 Bisphenol B (BPB), Bisphenol E (BPE), Bisphenol F (BPF), Bisphenol P (BPP), Bisphenol S
12 (BPS), and Bisphenol Z (BPZ).

13 2.4 “Test Protocol” means a standard method for measuring total BPA content as
14 set forth in Exhibit A.

15 **3. INJUNCTIVE RELIEF**

16 3.1 **Reformulation of Covered Products.** Within twelve (12) months following
17 the Effective Date (the “Reformulation Date”), Settling Defendants shall not manufacture,
18 distribute, license, sell, or offer for sale any Covered Product in California that contains BPA.
19 For purposes of this Consent Judgment, a product “contains BPA” if BPA is an intentionally
20 added ingredient in either the Covered Product or a component of the Covered Product, or
21 contains in excess of 200 parts per billion BPA as measured by the Test Protocol (the
22 “Reformulation Level”).

23 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
24 Date, Settling Defendants shall issue specifications to their suppliers of Covered Products that
25 Covered Products shall not contain BPA in excess of the Reformulation Level.

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

1 inventory, or at retail locations.

2 3.4 **Notification to Suppliers Regarding Other Bisphenols.** No more than
3 ninety (90) days after the Effective Date, Settling Defendants shall request that its suppliers of
4 Covered Products, to the extent possible, not replace any intentionally added BPA with Other
5 Bisphenols in manufacturing the Covered Products. Nothing in this Section 3.4 shall be construed
6 to require Settling Defendants, or their suppliers or customers, to test for the presence of Other
7 Bisphenols.

8 3.5 **Alternative Compliance – Warnings.** To the extent Settling Defendants are
9 unable to comply with the Reformulation Level by the Reformulation Date, Settling Defendants
10 must alternatively comply with the provisions of this section. Settling Defendants shall not
11 manufacture, purchase, or import any Covered Product for sale in California that contains BPA,
12 unless it provides a warning pursuant to Section 3.5.1. For purposes of this Consent Judgment, a
13 product “contains BPA” if either (a) BPA is an intentionally added ingredient in either the
14 Covered Product or a component of the Covered Product, or (b) the Covered Product contains in
15 excess of 200 parts per billion BPA as measured by the Test Protocol.

16 3.5.1 **Clear and Reasonable Warnings.** A Clear and Reasonable
17 Warning under this Agreement shall state:



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

21 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be
22 preceded by the yellow warning triangle symbol depicted above, provided however, the symbol
23 may be printed in black and white if the Covered Product label is produced without using the
24 color yellow. This warning statement shall be prominently displayed on the label or hangtag, or
25 any outer packaging, of the Covered Product and shall be displayed with such conspicuousness,
26 as compared with other words, statements or designs as to render it likely to be seen, read and
27 understood by an ordinary individual prior to sale. For internet, catalog or any other sale where
28 the consumer is not physically present, the warning statement shall be displayed in a manner

1 consistent with 27 Cal. Code Regs § 25602(b), or any successor regulation. In lieu of the
2 preceding warning content and methods set forth above, Settling Defendants may use any specific
3 safe harbor warning content and method applicable to the Covered Products set forth in Title 27,
4 California Code of Regulations, section 25600 et seq., as amended August 30, 2018 and
5 subsequently thereafter.

6 **4. ENFORCEMENT**

7 4.1 Plaintiff may, by motion or application for an order to show cause before the
8 Superior Court of San Francisco County, enforce the terms and conditions contained in this
9 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
10 Section 3 above, Plaintiff shall provide Settling Defendants with a Notice of Violation and a copy
11 of any test results which purportedly support the Notice of Violation. The Parties shall then meet
12 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it
13 informally, including providing Settling Defendants with a reasonable opportunity of at least
14 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,
15 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be
16 enforced by the Parties. To the extent that Settling Defendants can demonstrate that they
17 purchased the Covered Product subject to the Notice of Violation prior to the Effective Date, the
18 sale of such Covered Product will not constitute a violation of the terms of this Consent
19 Judgment.

20 **5. PAYMENTS**

21 5.1 **Total Settlement Payment.** Within thirty (30) days of the Effective Date,
22 Settling Defendants shall pay the total settlement amount of \$25,000 and no cents as a settlement
23 payment as further set forth in this Section. The payment obligations herein are joint and several
24 between the Settling Defendants. Any payment by Settling Defendants shall be deemed to be
25 timely and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the
26 United States Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before
27 the deadline set forth in this paragraph.

28 5.2 **Allocation of Payments.** The total settlement amount shall be paid in five

1 separate checks in the amounts specified below and delivered as set forth below. Any failure by
2 Settling Defendants to comply with the payment terms herein shall be subject to a joint and several
3 stipulated late fee to be paid by Settling Defendants in the amount of \$100 for each day the full
4 payment is not received after the applicable payment due date set forth in Section 5.1. The late fees
5 required under this Section shall be recoverable, together with reasonable attorneys' fees, in an
6 enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid
7 by Settling Defendants shall be allocated as set forth below between the following categories and
8 made payable as follows:

9 5.2.1 \$2,700 as a civil penalty pursuant to Health & Safety Code §
10 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
11 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
12 Health Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for
13 \$2,025 shall be made payable to OEHAA and associated with taxpayer identification number 68-
14 0284486/ This payment shall be delivered as follows:

15 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

22 Attn: Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street, MS #19B
26 Sacramento, CA 95814

27 The CEH portion of the civil penalty payment of \$675 shall be made payable to the Center for
28 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.

1 5.2.2 \$6,900 as an Additional Settlement Payment (“ASP”) to CEH
 2 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
 3 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue
 4 its work educating and protecting people from exposures to toxic chemicals, including BPA, in
 5 textiles and other products. CEH may also use a portion of such funds to monitor compliance with
 6 this Consent Judgment and to purchase and test Settling Defendant’s products to confirm
 7 compliance. CEH shall obtain and maintain adequate records to document that ASPs are spent on
 8 these activities and CEH agrees to provide such documentation to the Attorney General within
 9 thirty days of any request from the Attorney General. The payment pursuant to this Section shall
 10 be made payable to the Center for Environmental Health and associated with taxpayer identification
 11 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
 12 Street, San Francisco, CA 94117.

13 5.2.3 \$15,400 as a reimbursement of a portion of CEH’s reasonable
 14 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two
 15 separate checks as follows: (a) \$13,000 payable to the Lexington Law Group and associated with
 16 taxpayer identification number 88-4399775; and (b) \$2,400 payable to the Center for
 17 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
 18 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
 19 CA 94117.

20 5.2.4 To summarize, Settling Defendants shall deliver checks made out to the
 21 payees and in the amounts set forth below:

| Payee | Type | Amount | Deliver To |
|---------------------------------|--------------|---------------|-------------------------|
| OEHHA | Penalty | \$2,025 | OEHHA per Section 5.2.1 |
| Center For Environmental Health | Penalty | \$675 | LLG |
| Center For Environmental Health | ASP | \$6,900 | LLG |
| Lexington Law Group | Fee and Cost | \$13,000 | LLG |

| | | | |
|---------------------------------|--------------|---------|-----|
| Center For Environmental Health | Fee and Cost | \$2,400 | LLG |
|---------------------------------|--------------|---------|-----|

5.3 **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 Defendants do 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 a Settling Defendant to submit to a Debtors Exam. In the event that a Settling Defendant fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding such Settling Defendant in contempt of Court.

6. MODIFICATION

6.1 **Written Consent.** 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 **Alternative Compliance Standards.** If CEH enters into a court-approved settlement or a court enters a final judgment (“Judgment”) in a Proposition 65 enforcement action over exposure to BPA from sports bras made primarily of polyester with spandex (including sports bras) that contains different injunctive terms (including without limitation, a different reformulation level or test protocol) than that set forth in Section 3.1, Settling Defendants may thereafter seek to modify this Consent Judgment to adopt those injunctive terms from such Judgment and comply with them instead of those presently set forth in Section 3 without affecting any other terms of this Consent Judgment. CEH agrees not to oppose such a request for modification by Settling Defendants, provided that the products at issue in the Judgment include products that are substantially similar to the Covered Products. If Settling Defendants seek to adopt different injunctive terms, they shall provide notice to CEH consistent with this Section. Furthermore, if the State of California adopts a different definition or method for determining exposure to BPA for purposes of Proposition 65, the Parties will meet and confer in good faith on conforming modifications to this Consent Judgment. If the Parties are unable to reach agreement,

1 either Party may move the Court to 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, their suppliers, parents, subsidiaries,
9 affiliated entities that are under common ownership, directors, officers, employees, agents,
10 shareholders, successors, assigns, and attorneys (“Upstream Defendant Releasees”), all entities to
11 which Settling Defendants distribute or sell Covered Products, such as distributors, wholesalers,
12 customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”) (collectively “Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
13 about alleged exposure to BPA contained in Covered Products that were sold by Settling
14 Defendants 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, Downstream Defendant Releasees, and
18 Upstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory
19 or common law claims that have been or could have been asserted by CEH regarding the failure
20 to warn about exposure to BPA contained in Covered Products sold by Settling Defendants prior
21 to the Effective Date or thereafter provided such Covered Products are subject to the provisions of
22 Section 3.3 above.

23 7.3 Provided that Settling Defendants comply in full with their obligations under
24 Section 5, compliance with the terms of this Consent Judgment by Settling Defendants and
25 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants,
26 Defendant Releasees, Downstream Defendant Releasees and Upstream Defendant Releasees with
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1 respect to any alleged failure to warn about BPA in Covered Products manufactured, distributed,
2 or sold by Settling Defendants after the Effective Date.

3 7.4 Nothing in this Section 7 affects Plaintiff's right to commence or prosecute an
4 action under Proposition 65 against any person other than Settling Defendants, Defendant
5 Releasees, Downstream Defendant Releasees, or Upstream Defendant Releasees.

6 **8. NOTICE**

7 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class and electronic mail to:

9 Mark N. Todzo
10 Lexington Law Group
11 503 Divisadero Street
12 San Francisco, CA 94117
13 mtodzo@lexlawgroup.com

14 8.2 When Settling Defendants are entitled to receive any notice under this Consent
15 Judgment, the notice shall be sent by first class and electronic mail to:

16 Trenton Norris
17 Hogan Lovells US LLP
18 4 Embarcadero Center, Suite 3500
19 San Francisco CA 94111
20 Trent.norris@hoganlovells.com

21 8.3 Any Party may modify the person and address to whom the notice is to be sent
22 by sending the other Party notice by first class and electronic mail.

23 **9. COURT APPROVAL**

24 9.1 This Consent Judgment shall become effective upon entry by the Court.
25 Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Settling
26 Defendants shall support entry of this Consent Judgment.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 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

1 of California.

2 **11. ATTORNEYS' FEES**

3 11.1 Should Plaintiff prevail on any motion, application for an order to show cause,
4 or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to
5 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
6 a Settling Defendant prevail on any motion application for an order to show cause or other
7 proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees and costs
8 against Plaintiff as a result of such motion or application upon a finding by the Court that
9 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes
10 of this Consent Judgment, the term "substantial justification" shall carry the same meaning as
11 used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

12 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
13 its own attorneys' fees and costs.

14 11.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
15 sanctions pursuant to law.

16 **12. ENTIRE AGREEMENT**

17 12.1 This Consent Judgment contains the sole and entire agreement and
18 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
19 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
20 merged herein and therein. There are no warranties, representations or other agreements between
21 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
22 implied, other than those specifically referred to in this Consent Judgment have been made by any
23 Party hereto. No other agreements not specifically contained or referenced herein, oral or
24 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
25 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
26 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
27 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
28 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions

1 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
2 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

3 **13. SUCCESSORS AND ASSIGNS**

4 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
5 Defendants, and their respective divisions, subdivisions and subsidiaries, and the successors or
6 assigns of any of them.

7 **14. RETENTION OF JURISDICTION**

8 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

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

11 15.1 Each signatory to this Consent Judgment certifies that they are fully authorized
12 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
13 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

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

18 **17. EXECUTION IN COUNTERPARTS**

19 17.1 The stipulations to this Consent Judgment may be executed in counterparts and
20 by means of portable document format (pdf), which taken together shall be deemed to constitute
21 one document.

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23 **IT IS SO ORDERED:**

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25 Dated: _____, 2024

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27 Hon. Ethan P. Schulman

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IT IS SO STIPULATED:

Dated: October 31, 2024

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: _____, 2024

DOLLAR TREE STORES, INC.

Signature

Printed Name

Title

Dated: _____, 2024

FAMILY DOLLAR, LLC

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2024

CENTER FOR ENVIRONMENTAL HEALTH

Kizzy Charles-Guzman
Chief Executive Officer

Dated: November 13, 2024

DOLLAR TREE STORES, INC.

Alvin Liu

Signature

Alvin Liu

Printed Name

Assistant General Counsel, Merchandise & Operations

Title

Dated: November 13, 2024

FAMILY DOLLAR, LLC

Alvin Liu

Signature

Alvin Liu

Printed Name

Assistant General Counsel, Merchandise & Operations

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EXHIBIT A

“Test Protocol” as defined in Section 2.4 of the Consent Judgment means the following test method:

1. Homogenized sample of minimum 1 gram, cut in a manner to include materials from each region and color of the sports bra.
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.