

1 Mark N. Todzo, State Bar No. 168389  
2 Meredyth Merrow, State Bar No. 328337  
3 LEXINGTON LAW GROUP, LLP  
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

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,

14 Plaintiff,

15 v.

16 ATHLETA LLC, *et al.*,

17 Defendant.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CGC-23-604604

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

**[PROPOSED] CONSENT  
JUDGMENT AS TO DAVID PEYSER  
SPORTSWEAR, INC.**

1       **1.       INTRODUCTION**

2               1.1           The parties to this Consent Judgment (“Parties”) are the Center for  
3       Environmental Health (“CEH”) and Defendant David Peyser Sportswear, Inc. (“Settling  
4       Defendant”). CEH and Settling Defendant are referred to collectively as the “Parties.”

5               1.2           Settling Defendant manufactures, distributes, and/or sells leggings made  
6       primarily of polyester with spandex that contain Bisphenol A (“BPA”) in the State of California  
7       or have done so in the past.

8               1.3           On September 18, 2024, 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 Defendant, the California Attorney  
11      General, the District Attorneys of every County in the State of California, and the City Attorneys  
12      for every City in the State of California with a population greater than 750,000. The Notice  
13      alleges violations of Proposition 65 with respect to the presence of BPA in leggings made  
14      primarily of polyester with some spandex.

15              1.4           On February 9, 2023, CEH filed the original complaint in this matter. On  
16      October 13, 2023, CEH filed the first amended complaint (the “Complaint”). On February 14,  
17      2025, CEH filed a Doe Amendment naming Settling Defendant as a defendant in this action.

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 Defendant and personal jurisdiction over Settling Defendant as to the acts  
21      alleged in the Complaint; (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 in this Consent Judgment is or shall be construed as an admission by  
24      the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
25      with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
26      conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
27      prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
28      other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
2 this action.

## 3 **2. DEFINITIONS**

4 2.1 “Covered Products” means Outdoor Voices mid-rise leggings made primarily  
5 of polyester with some spandex that are sold by Settling Defendant.

6 2.2 “Effective Date” means the date on which this Consent Judgment is entered by  
7 the Court.

8 2.3 “Other Bisphenols” means Bisphenol AF (BPAF), Bisphenol AP (BPAP),  
9 Bisphenol B (BPB), Bisphenol E (BPE), Bisphenol F (BPF), Bisphenol P (BPP), Bisphenol S  
10 (BPS), and Bisphenol Z (BPZ).

11 2.4 “Test Protocol” means a standard method for measuring total BPA content as  
12 set forth in Exhibit A.

## 13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** Within six months following the  
15 Effective Date (the “Reformulation Date”), Settling Defendant shall not manufacture, distribute,  
16 license, sell, or offer for sale any Covered Product in California that contains BPA. For purposes  
17 of this Consent Judgment, a product “contains BPA” if BPA is an intentionally added ingredient  
18 in either the Covered Product or a component of the Covered Product, or contains in excess of 50  
19 parts per billion BPA as measured by the Test Protocol (the “Reformulation Level”).

20 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective  
21 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products that  
22 Covered Products shall not contain BPA in excess of the Reformulation Level.

23 3.3 **Sell-Through for Existing Inventory.** Notwithstanding anything else in this  
24 Consent Judgment, Covered Products that Settling Defendant has purchased prior to the Effective  
25 Date, including but not limited to Covered Products in distribution centers, in inventory, or at  
26 retail locations shall be subject to the release of liability pursuant to Section 7 of this Consent  
27 Judgment, without regard to when such Covered Products were, or are in the future, distributed or  
28 sold to California customers. Furthermore, notwithstanding anything else in this Consent

Judgment, Covered Products that Settling Defendant has purchased after the Effective Date but prior to the Reformulation Date, including but not limited to Covered Products in distribution centers, in inventory, or at retail locations shall be subject to the release of liability pursuant to Section 7 of this Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed or sold to California customers, provided that Settling Defendant's purchases of Covered Products between the Effective Date and the Reformulation Date remain consistent with Settling Defendant's purchases of Covered Products prior to the Effective Date.

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

**3.5 Alternative Compliance – Warnings.** To the extent Settling Defendant is unable to comply with the Reformulation Level by the Reformulation Date, or otherwise elects to warn, Settling Defendant must alternatively comply with the provisions of this section. Settling Defendant shall not manufacture, purchase, or import any Covered Product for sale in California that contains BPA, unless it provides a warning pursuant to Section 3.5.1. For purposes of this Consent Judgment, a product "contains BPA" if either (a) BPA is an intentionally added ingredient in either the Covered Product or a component of the Covered Product, or (b) the Covered Product contains in excess of 50 parts per billion BPA as measured by the Test Protocol.

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



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

The word "**WARNING**" shall be displayed in all capital letters and bold print and shall be preceded by the yellow warning triangle symbol depicted above, provided however, the symbol

1 may be printed in black and white if the Covered Product label is produced without using the  
2 color yellow. This warning statement shall be prominently displayed on the label or hangtag, or  
3 any outer packaging, of the Covered Product and shall be displayed with such conspicuousness,  
4 as compared with other words, statements or designs as to render it likely to be seen, read and  
5 understood by an ordinary individual prior to sale. For internet, catalog or any other sale where  
6 the consumer is not physically present, the warning statement shall be displayed in such a manner  
7 that it is likely to be read and understood by an ordinary individual prior to the authorization of or  
8 actual payment. If consumer information on the product is in a foreign language, the warning will  
9 also be given in the foreign language.

#### 10 **4. ENFORCEMENT**

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

#### 23 **5. PAYMENTS**

24 5.1 **Total Settlement Payment.** Within ten (10) days of the Effective Date,  
25 Settling Defendant shall pay the total settlement amount of \$17,500 and no cents as a settlement  
26 payment as further set forth in this Section. The payment obligations herein are joint and several  
27 between the Settling Defendant. Any payment by Settling Defendant shall be deemed to be timely  
28 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 shall be paid in five separate checks in the amounts specified below and delivered as set forth below. Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not received after the applicable payment due date set forth in Section 5.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. 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 \$2,600 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). Accordingly, the OEHHA portion of the civil penalty payment for \$1,950 shall be made payable to OEHAA 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 of \$650 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, LLP, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$1,800 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204 and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including BPA, in textiles and other products. CEH may also use a portion of such funds to monitor compliance with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance. 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 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, LLP 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$13,100 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) \$11,200 payable to the Lexington Law Group, LLP and associated with taxpayer identification number 88-4399775; and (b) \$1,900 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, LLP, 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	\$ 1,950	OEHHA per Section 5.2.1

Center For Environmental Health	Penalty	\$ 650	LLG
Center For Environmental Health	ASP	\$ 1,800	LLG
Lexington Law Group, LLP	Fee and Cost	\$ 11,200	LLG
Center For Environmental Health	Fee and Cost	\$1,900	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 Defendant does 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 Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding Settling Defendant in contempt of Court.

5.4 **Additional Payment for Warning.** If Settling Defendant avails itself of the permanent warning option provided for by Section 3.5, Settling Defendant shall make an additional payment of \$4,375 to be split between a civil penalty, ASP and attorneys' fees and costs as set forth herein, concurrently with its written notice as provided in Section 3.4. Of the additional payment, \$2,600 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 \$1,950 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.1.1 above. The CEH portion of the additional civil penalty payment of \$650 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. \$1,275 of the additional payment shall be made payable to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The remaining \$500 of the additional payment shall be made payable to the Center for Environmental Health and



1 associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section  
2 5.1.2. Both payments to CEH shall be delivered to Lexington Law Group, LLP, 503 Divisadero  
3 Street, San Francisco, CA 94117.

## 4 **6. MODIFICATION**

5 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
6 time by express written agreement of the Parties with the approval of the Court, or by an order of  
7 this Court upon motion and in accordance with law.

8 6.2 **Alternative Compliance Standards.** If either (i) CEH enters into a court-  
9 approved settlement or a court enters a final judgment in a Proposition 65 enforcement action  
10 over exposure to BPA from leggings made primarily of polyester with spandex that includes a  
11 different reformulation level than that set forth in Section 3.1; or (ii) the State of California adopts  
12 a different definition or method for determining exposure to BPA for purposes of Proposition 65,  
13 the Parties will meet and confer in good faith on conforming modifications to this Consent  
14 Judgment. If the Parties are unable to reach agreement, either Party may move the Court to  
15 modify the Consent Judgment.

16 6.3 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
18 modify the Consent Judgment.

## 19 **7. CLAIMS COVERED AND RELEASED**

20 7.1 Provided that Settling Defendant complies in full with its obligations under  
21 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of  
22 itself and the public interest and Settling Defendant, its parents, subsidiaries, affiliated entities  
23 that are under common ownership, directors, officers, employees, agents, shareholders,  
24 successors, assigns, and attorneys (“Defendant Releasees”), all entities to which Settling  
25 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,  
26 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), and New  
27 Outdoor Voices IP Holdings, LLC, New Outdoor Voices SPV, LLC, Consortium Brand Partners,  
28 LLC of any violation of Proposition 65 based on failure to warn about alleged exposure to BPA

1 contained in Covered Products that were sold by Settling Defendant prior to the Effective Date.

2           7.2           Provided that Settling Defendant complies in full with its obligations under  
3 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
4 discharges any and all claims against Settling Defendant, Defendant Releasees, Downstream  
5 Defendant Releasees, and Upstream Defendant Releasees arising from any violation of  
6 Proposition 65 or any other statutory or common law claims that have been or could have been  
7 asserted by CEH regarding the failure to warn about exposure to BPA contained in Covered  
8 Products sold by Settling Defendant prior to the Effective Date or thereafter provided such  
9 Covered Products are subject to the provisions of Sections 3.1-3.3 above.

10           7.3           Provided that Settling Defendant complies in full with its obligations under  
11 Section 5, compliance with the terms of this Consent Judgment by Settling Defendant and  
12 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
13 Defendant Releasees, Downstream Defendant Releasees and Upstream Defendant Releasees with  
14 respect to any alleged failure to warn about BPA in Covered Products manufactured, distributed,  
15 or sold by Settling Defendant after the Effective Date.

16           7.4           Nothing in this Section 7 affects CEH's right to commence or prosecute an  
17 action under Proposition 65 against any person other than Settling Defendant, Defendant  
18 Releasees, Downstream Defendant Releasees, or Upstream Defendant Releasees.

19 **8. NOTICE**

20           8.1           When CEH is entitled to receive any notice under this Consent Judgment, the  
21 notice shall be sent by first class and electronic mail to:

22                               Mark N. Todzo  
23                               Lexington Law Group  
24                               503 Divisadero Street  
25                               San Francisco, CA 94117  
26                               mtodzo@lexlawgroup.com

27           8.2           When Settling Defendant is entitled to receive any notice under this Consent  
28 Judgment, the notice shall be sent by first class and electronic mail to:

James Gross  
Foley Hoag LLP  
1301 Avenue of the Americas, 25<sup>th</sup> Floor  
New York, NY 10019  
jgross@foleyhoag.com

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

## **9. COURT APPROVAL**

9.1 This Consent Judgment shall become effective upon entry by the Court. Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and 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 Plaintiff prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should 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 against Plaintiff as a result of such motion or application upon a finding by the Court that Plaintiff'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, Code of Civil Procedure §§ 2016, *et seq.*

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

1           11.3       Nothing in this Section 10 shall preclude a Party from seeking an award of  
2 sanctions pursuant to law.

3       **12.    ENTIRE AGREEMENT**

4           12.1       This Consent Judgment contains the sole and entire agreement and  
5 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
6 discussions, negotiations, commitments or understandings related thereto, if any, are hereby  
7 merged herein and therein. There are no warranties, representations or other agreements between  
8 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
9 implied, other than those specifically referred to in this Consent Judgment have been made by any  
10 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
13 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
14 supplementation, modification, waiver or termination of this Consent Judgment shall be binding  
15 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
16 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
17 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

18       **13.    SUCCESSORS AND ASSIGNS**

19           13.1       This Consent Judgment shall apply to and be binding upon CEH and Settling  
20 Defendant, and its respective divisions, subdivisions and subsidiaries, and the successors or assigns  
21 of any of them.

22       **14.    RETENTION OF JURISDICTION**

23           14.1       This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

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

2 15.1 Each signatory to this Consent Judgment certifies that they are fully authorized  
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
4 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

6 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
7 against an entity other than Settling Defendant on terms that are different than those contained in  
8 this Consent Judgment.

9 **IT IS SO ORDERED:**

10  
11 Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Hon. Ethan P. Schulman

12  
13 **IT IS SO STIPULATED:**

14  
15 Dated: March 7, 2025

**CENTER FOR ENVIRONMENTAL HEALTH**

16  
17 

\_\_\_\_\_  
Kizzy Charles-Guzman  
Chief Executive Officer

18  
19  
20 Dated: March 25, 2025

**DAVID PEYSER SPORTSWEAR, INC.**

21  
22 

\_\_\_\_\_  
Signature

23  
24 David Peyser  
\_\_\_\_\_  
Printed Name

25  
26 VP Finance  
\_\_\_\_\_  
Title

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 leggings.
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.