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17 SUPERIOR COURT OF CALIFORNIA

18 FOR THE COUNTY OF ALAMEDA

19
20 **PEOPLE OF THE STATE OF**
CALIFORNIA, ex rel. EDMUND G.
BROWN JR., Attorney General, et al.

21 Plaintiffs,

22 v.

23 **MATTEL, INC., et al.**

24 Defendants
25
26

Case No. RG07356892

ASSIGNED FOR ALL PRETRIAL PURPOSES
TO: JUDGE STEVEN A. BRICK
DEPARTMENT 17

**STIPULATED [PROPOSED] CONSENT
JUDGMENT AS TO A & A GLOBAL
INDUSTRIES, INC.; AMSCAN, INC.;
CRANIUM INC.; EVEREADY BATTERY CO.;
KIDS II, INC.; MARVEL ENTERTAINMENT,
INC.; RC2 CORPORATION; and TOY
INVESTMENTS, INC.**

27 Complaint filed: November 19, 2007
28 Trial date: None

1 This Stipulated Consent Judgment (the "Consent Judgment") is between Plaintiffs, the
2 People of the State of California, *ex rel.* Edmund G. Brown Jr., California Attorney General
3 "Attorney General") and A&A Global Industries, Inc., Amscan, Inc., Cranium, Inc., Eveready
4 Battery Co., Kids II, Inc., Marvel Entertainment, Inc., RC2 Corporation, and Toy Investments,
5 Inc. ("Manufacturer Defendant(s)").

6 **1.0 INTRODUCTION**

7 1.1 On November 19, 2007, following the receipt of several sixty-day notices of
8 intent to file suit on behalf of the general public pursuant to Health and Safety Code Section
9 25249.7(d), the People filed their complaint, captioned *People of the State of California v.*
10 *Mattel, Inc. et al.*, RG07356892 in the Alameda County Superior Court. The People allege that
11 the defendants violated the California Safe Drinking Water and Toxic Enforcement Act,
12 California Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"), and Business &
13 Professions Code Sections 17200 *et seq.* ("Unfair Competition Law"), by exposing California
14 consumers to lead through the manufacture, distribution and sale of toys made of materials that
15 contain lead or lead compounds, without first providing "clear and reasonable" warnings. Lead
16 and lead compounds are listed under Proposition 65 as "chemical[s] known to the State of
17 California to cause cancer and birth defects or other reproductive harm."

18 1.2 For purposes of the Consent Judgment only, the Parties stipulate that (a) each
19 Manufacturer Defendant employs more than 10 persons, and has employed ten or more persons
20 at some time relevant to the allegations of the Complaint, (b) the Court has jurisdiction over the
21 allegations of violations contained in the Complaint, (c) the Court has personal jurisdiction over
22 the Manufacturer Defendants for the purposes of enforcing the terms of the Consent Judgment,
23 (d) venue is proper in the County of Alameda, and (d) the Court has jurisdiction to enter the
24 Consent Judgment as a full settlement and resolution of the allegations contained in the
25 Complaint.

26 1.3 The Manufacturer Defendants agree not to challenge or object to entry of the
27 Consent Judgment by the Court unless the People have notified the Manufacturer Defendants in
28 writing that the People no longer support entry of the Consent Judgment or that the People seek

1 to modify or support modification of the Consent Judgment, in which case the Manufacturer
2 Defendants may, at their option, withdraw from the Consent Judgment. The Manufacturer
3 Defendants agree not to challenge the Court's jurisdiction to enforce the terms of the Consent
4 Judgment once it has been entered.

5 1.4 The Manufacturer Defendants dispute the allegations of the Complaint, and
6 contends that the Manufacturer Defendants' conduct and all of their products sold in California
7 have complied with and comply with all applicable State laws, including Proposition 65 and the
8 Unfair Competition Law. However, the Parties enter into the Consent Judgment pursuant to a
9 settlement of certain disputed claims between the Parties as alleged in the Complaint, for the
10 purpose of avoiding prolonged and costly litigation, and to resolve all claims arising from the
11 facts alleged in the Complaint. By execution of the Consent Judgment, the Manufacturer
12 Defendants do not admit any fact, conclusion of law, or violation of law, including, but not
13 limited to, any violations of Proposition 65, the Unfair Competition Law or any other statutory,
14 regulatory, common law or equitable requirements. Neither the Consent Judgment, nor the
15 Parties' compliance with the Consent Judgment, shall be construed as an admission by the
16 Manufacturer Defendants of any fact, conclusion of law, issue of law or violation of law.

17 1.5 Except as explicitly set forth herein, nothing in the Consent Judgment shall
18 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
19 any other pending or future legal and/or administrative proceedings; nor shall anything in the
20 Consent Judgment preclude the Parties from opposing any such defense, claim, or argument.

21 **2.0 DEFINITIONS**

22 2.1 For Children's Products manufactured before February 10, 2009, "Accessible"
23 shall mean a material that is physically exposed to a child at the time of purchase or that will
24 become physically exposed to a child through normal and reasonably foreseeable use and abuse
25 of the Covered Product as determined pursuant to ASTM F963-07, and only to the extent use and
26 abuse is specified by ASTM F 963-07.

27 2.2 For Children's Products manufactured on or after February 10, 2009,
28 "Accessible" shall have the same meaning as set forth in Section 2.1 above, provided that any

1 material that is not or does not become physically exposed to a child through normal and
2 reasonably foreseeable use and abuse of a children's product, as use and abuse is specified by
3 ASTM F963-07, solely by reason of paint, electroplating, or other surface coating, shall also be
4 deemed "Accessible." The Parties further agree that, in the event that the Consumer Product
5 Safety Commission ("CPSC") by final rule, guidance rule, exclusion, or exception pursuant to
6 Section 101(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") determines
7 that the Federal Lead Standards apply to any material that is not "Accessible" under the
8 definition in the immediately preceding sentences, then any such material shall also be deemed
9 "Accessible" under the Consent Judgment. The foregoing definition of "Accessible" was
10 adopted solely for purposes of the Consent Judgment and shall not affect the ability of the People
11 to argue in any other context that materials that are not "Accessible" under the Consent
12 Judgment nonetheless are or ought to be subject to the Federal Lead Standards.

13 2.3 "Children's Product" has the same meaning as that given in Section 3(a) of the
14 Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2052 (a) and is manufactured by a
15 Manufacturer Defendant or for a Manufacturer Defendant by a Vendor and is sold or offered for
16 sale to consumers in California.

17 2.4 "Court" shall mean the Alameda County Superior Court.

18 2.5 "Covered Product" shall mean a finished Children's Product that is manufactured
19 by a Manufacturer Defendant or for a Manufacturer Defendant by a Vendor on or after the
20 Effective Date, is sold or offered for sale to consumers in California, and is designed or intended
21 primarily for use by a child when the child plays.

22 2.6 "Effective Date" shall mean November 30, 2008, provided that the Parties to this
23 agreement have executed it.

24 2.7 "Federal Lead Standards" shall mean any standards set or promulgated, before or
25 after the Effective Date, by the CPSIA or by the Consumer Product Safety Commission (the
26 "CPSC") relating to the maximum permissible levels of lead in Substrates and Surface Coatings,
27 including the products or components to which the standards apply and any exemptions from the
28 application of those standards.

1 2.8 “Government Disclosure Restrictions” shall mean all U.S. federal and foreign
2 government restrictions or requirements existing before or after the Effective Date, including but
3 not limited to CPSC reporting, disclosure and publication obligations, instructions or practices,
4 that prohibit or restrict the publication or disclosure or the timing of the publication or disclosure
5 of information by a Manufacturer Defendant. Nothing in the Consent Judgment shall be
6 construed as preventing a Manufacturer Defendant from arguing that it is prohibited from
7 disclosing information, and nothing in the Consent Judgment shall be construed to restrict any
8 power of the People or of any Manufacturer Defendant to seek, through court or administrative
9 process, any information from the other Party, subject to whatever defenses that other Party may
10 otherwise have.

11 2.9 “Impermissible Lead” shall mean lead in excess of the Lead Standards.

12 2.10 “Lead Standards” shall mean the standards contained in Section 3.1 of the
13 Consent Judgment that set the maximum permissible levels of lead in Substrates and Surface
14 Coatings used on or in an Accessible part of a finished Covered Product. For Children’s
15 Products that were manufactured before the Effective Date, and are therefore not Covered
16 Products, Lead Standards shall mean those Federal Lead Standards that were in effect at the time
17 of manufacture.

18 2.11 “Parties” shall mean the Manufacturer Defendants and the People.

19 2.12 “Quality Assurance System” shall mean the totality of a Manufacturer
20 Defendant’s quality assurance procedures, including but not limited to inspection, auditing
21 and/or testing procedures, designed as a system, even where individual tests or procedures may
22 fail, to identify Impermissible Lead and to prevent the sale of Covered Products with
23 Impermissible Lead in California.

24 2.13 “Substrates” shall mean any Accessible materials used in finished Covered
25 Products that are not Surface Coatings.

26 2.14 “Surface Coatings” shall mean those Accessible paints and other similar surface
27 coating materials used on finished Children’s Products as defined and limited by 16 C.F.R. §
28 1303.2(b)(1).

1 2.15 “Toy Testing and Outreach Fund” shall mean a fund established within the
2 California-based Public Health Institute and administered by the Public Health Trust, a project of
3 the Public Health Institute, for the purposes of monitoring compliance with limitations on lead in
4 children’s products in California, and identifying and implementing outreach measures with
5 respect to recalls of children’s products, including reasonable efforts to communicate
6 information about such recalls to consumers who do not have internet access and/or who do not
7 speak English.

8 2.16 “Vendor” shall mean a third party that manufactures for a Manufacturer
9 Defendant finished Covered Products sold at wholesale by the Manufacturer Defendant.

10 **3.0 COMPLIANCE PROVISION / PERMANENT INJUNCTIONS**

11 3.1 COMPLIANCE WITH LEAD STANDARDS: COVERED PRODUCTS

12 The Manufacturer Defendants shall not manufacture, distribute, donate, offer for sale or
13 sell in California, Covered Products with a concentration of lead in or on Accessible parts in
14 excess of the following standards.

15 3.1.1 For the Manufacturing Defendants except Amscan, Inc. and Kids II, Inc.,
16 for each Accessible Surface Coating on a finished Covered Product, 90 parts per million
17 (“ppm”) total lead for finished Covered Products manufactured after the Effective Date.

18 3.1.2 For the Manufacturing Defendants except Amscan, Inc. and Kids II, Inc.,
19 for each Accessible Substrate in or on a finished product:

20 3.1.2.1 300 ppm total lead for finished Covered Products manufactured
21 after the Effective Date; and

22 3.1.2.2 100 ppm total lead for finished Covered Products manufactured
23 on or after August 14, 2011, unless the CPSC determines that a standard of 100
24 ppm total lead for finished Covered Products is not technologically feasible, in
25 which case the Manufacturer Defendants shall be obligated to comply with the
26 standard established by the CPSC.

27 3.1.3 For Amscan, Inc. and Kids II, Inc., for Covered Products manufactured
28 after the Effective Date, the Federal Lead Standards that will be operative under the

1 CPSIA on February 10, 2009, and for Covered Products manufactured after February 10,
2 2009, the Federal Lead Standards.

3 3.1.4 The Lead Standards shall not apply to electronic components or electronic
4 accessories that are not Accessible “small objects” as described in ASTM F 963-07
5 § 4.6.1. Notwithstanding the foregoing sentence, if the CPSC (i) issues requirements to
6 eliminate or minimize the potential for exposure to and accessibility of lead in electronic
7 devices, (ii) establishes a schedule by which such electronic devices shall be in full
8 compliance with the limits described in this subsection, and/or (iii) determines that full
9 compliance will not be technologically feasible, pursuant to Section 101(b)(4) of the
10 CPSIA, and such requirements, schedules or determinations are in effect, then the CPSC
11 rules, exceptions or exclusions pertaining to electronic components or electronic
12 accessories shall be considered Lead Standards under the Consent Judgment. In the event
13 that CPSC does not act pursuant to Section 101(b)(4) of the CPSIA before the third
14 anniversary of the Effective Date, the exception provided by the first sentence of this
15 subsection shall be deemed to expire at that time.

16 3.1.5 The Lead Standards shall not apply to any Children’s Product or
17 constituent components or materials that the CPSC excludes pursuant to Section 101(b)
18 of the CPSIA from the application of Federal Lead Standards.

19 3.2 QUALITY ASSURANCE SYSTEM

20 3.2.1 Each Manufacturer Defendant shall implement a Quality Assurance
21 System that is designed to identify and to segregate Covered Products that contain
22 Impermissible Lead during and subsequent to the manufacturing process in order to
23 prevent distributing, donating, offering for sale or selling Covered Products containing
24 Impermissible Lead in California. The Manufacturer Defendants’ commitments under
25 this Section 3.2, including with respect to its Quality Assurance System and with respect
26 to Vendors, shall apply only to Covered Products manufactured by the Manufacturer
27 Defendants or for the Manufacturer Defendants by Vendors. It is expressly understood
28 that individual tests or procedures may be modified, changed or revised by a

1 Manufacturer Defendant over time and that no claim can or will be made that this Section
2 of the Consent Judgment has been violated: (i) absent a substantial failure to implement
3 a Quality Assurance System, or (ii) because a specific test or procedure is not followed or
4 performed, as long as the modified Quality Assurance System is designed to perform the
5 same function as described herein.

6 3.3 RECALLS

7 3.3.1 Upon request, the Manufacturer Defendant shall provide to the Attorney
8 General the information it provides in any written reports to the CPSC concerning any
9 recall of Covered Products manufactured by the Manufacturer Defendant because of lead
10 content, as soon as possible, once any such recall is approved and announced by the
11 CPSC, as permitted by and consistent with Government Disclosure Restrictions, and any
12 and all follow-up reports, including information contained in its progress reports on the
13 efficacy of product recalls, subject to confidentiality as permitted by law.

14 3.3.2 The Manufacturer Defendant shall provide direct notice of a recall because
15 of lead content involving Covered Products to all consumers of the affected Covered
16 Product for whom the Manufacturer Defendants possesses address or e-mail information.
17 The notice shall include, at a minimum, information that is equivalent to the information
18 in the recall notice approved by the CPSC.

19 3.4 INTERIM MEASURES FOR CHILDREN'S PRODUCTS THAT ARE NOT 20 COVERED PRODUCTS

21 If the Attorney General or a Manufacturer Defendant obtains reliable information that a
22 Children's Product manufactured by the Manufacturer Defendant or by a Vendor for the
23 Manufacturer Defendant before the Effective Date, that has been offered for retail sale in
24 California after the Effective Date and prior to February 10, 2009, contains more than: (A) 600
25 ppm lead: (i) in or on an Accessible Surface Coating, or (ii) in or on an Accessible Substrate that
26 is plastic, rubber or polyvinyl chloride ("PVC"), or (B) more than 90 ppm of soluble lead in
27 leachate from unplated metal components which are "small objects" and are accessible to a child
28 following assembly as tested and determined pursuant to EN-71, then upon notice thereof, the

1 Manufacturer Defendant shall immediately investigate, and upon confirmation but in no event
2 longer than 10 business days, shall: (a) stop distributing the Children's Product(s) for sale in
3 California, (b) promptly notify customers selling in California of the potentially non-conforming
4 Children's Product(s), and (c) within three business days, inform the Attorney General of what
5 action or actions it has taken and will take to investigate and, if applicable, to prevent the
6 Children' Product from being sold by the Manufacturer Defendant in California, including which
7 customers it has notified and/or will notify. The use of the word "obtains" in the preceding
8 sentence shall not be deemed to create or impose any affirmative duty or obligation to seek out
9 any Children's Products that are subject to this paragraph. This Section 3.4 does not apply to
10 electronic components or electronic accessories that are not Accessible "small objects" as
11 described in ASTM F 963-07 § 4.6.1. This Section 3.4 shall also not be applicable if, after
12 meeting and conferring, the Manufacturer Defendant and the Attorney General agree that any
13 lead exposure arising from a Children's Product otherwise subject to this Section is less than 0.5
14 micrograms per day based on an assessment conducted pursuant to Section 25821 of Proposition
15 65's regulations. In the event the Manufacturer Defendant undertakes a recall pursuant to CPSC
16 regulations, it shall be deemed to satisfy the Manufacturer Defendant's obligations under this
17 Section 3.4. The timing and content of any disclosures of information required under this
18 Section shall be subject to any Government Disclosure Restrictions.

19 **4.0 FUTURE ENFORCEMENT**

20 **4.1 GENERAL ENFORCEMENT FRAMEWORK**

21 Under the circumstances set forth herein, and after having provided the Manufacturer
22 Defendant with at least fifteen (15) business days written notice during which the Parties will
23 meet and confer, and, on request, at least fifteen (15) additional business days in the event the
24 Manufacturer Defendant wishes to exercise subsection 4.1.1, the People may enforce violations
25 of the Consent Judgment or enforce violations of applicable State law regarding the presence of
26 lead or lead compounds in a Covered Product by application to a court of competent jurisdiction
27 for appropriate relief.
28

1 4.1.1 The People may elect to enforce a violation of applicable State law
2 regarding the presence of lead or lead compounds in a Covered Product, or the Lead
3 Standards in the Consent Judgment, but not both, in accordance with either Sections 4.1
4 or 4.2. However, if the Manufacturer Defendant demonstrates to the satisfaction of the
5 Attorney General, which satisfaction shall not unreasonably be withheld, within thirty
6 (30) days following receipt of notice pursuant to Section 4.1 that any lead exposure
7 arising from a Covered Product is less than 0.5 micrograms per day based on an
8 assessment conducted by a qualified expert pursuant to Section 25821 of the Proposition
9 65 regulations, then the Attorney General, if he elects to pursue enforcement of the
10 alleged violation at issue, shall do so pursuant to Section 4.2 below; provided that if the
11 Attorney General obtains the opinion of a qualified expert that refutes the assessment
12 conducted by the Manufacturer Defendant's expert, which opinion the Attorney General
13 shall make available to the Manufacturer Defendant, the Attorney General may proceed
14 pursuant to Section 4.1.

15 4.1.2 Wherever the alleged violation asserted under Section 4.1 or 4.2 concerns
16 a violation of the Lead Standards, then the notice shall include information sufficient to
17 identify the Covered Product at issue, including, at a minimum, if available, its stock
18 keeping unit number and date code. The Manufacturer Defendant shall be permitted to
19 inspect the Covered Product at issue upon request.

20 4.2 NOTICES OF VIOLATION AND ELECTION; STIPULATED PENALTIES

21 4.2.1 Notice of Violation: Within 60 days after the Attorney General learns facts
22 providing a reasonable basis to conclude that a Covered Product that contains
23 Impermissible Lead was sold in California, the Attorney General shall provide the
24 Manufacturer Defendant written notice of the alleged violation ("Notice of Violation").
25 If the Attorney General has information about the alleged violation that is not public or
26 that the Manufacturer Defendant does not already have in its possession, including test
27 results, the Notice of Violation shall include such information, except any evidence that
28 has been submitted in support of a certificate of merit pursuant to Health and Safety Code

1 Section 25249.7(d) need not be provided. In any event, the Attorney General shall make
2 available to the Manufacturer Defendant for inspection and copying, upon its request, all
3 information in the possession of the Attorney General pertaining to the alleged violation
4 that is not privileged or subject to confidentiality under State law.

5 4.2.2 Notice of Election: Within 15 business days after the Manufacturer
6 Defendant receives the Notice of Violation, and all materials in the possession of the
7 Attorney General relevant to the alleged violation as set forth in subsection 4.2.1, the
8 Manufacturer Defendant shall provide written notice to the Attorney General whether it
9 elects to contest the allegations contained in the Notice of Violation (“Notice of
10 Election”).

11 4.2.3 Contents of Notice of Election Not to Contest: If the Manufacturer
12 Defendant does not contest the allegations in the Notice of Violation, then the Notice of
13 Election shall include: (i) a description of the Quality Assurance System that was in
14 place to prevent the violation from occurring and the corrective action that the
15 Manufacturer Defendant has undertaken or proposes to undertake pursuant to subsection
16 4.2.5; (ii) the name and contact information of the facility or facilities where the Covered
17 Product was manufactured; and (iii) an explanation of why the violation occurred.
18 Within 10 business days after sending the Notice of Election, and if the Manufacturer
19 Defendant does not contest the violation, the Manufacturer Defendant shall make the
20 payment required under subsection 4.2.7.

21 4.2.3.1 The Manufacturer Defendant may also send the Attorney
22 General a Notice of Election under subsection 4.2.3 in response to a 60-day notice
23 of violation pursuant to Health and Safety Code Section 25249.7(d)(1) where the
24 Attorney General has not issued a Notice of Violation, provided that (a) the
25 Manufacturer Defendant waits at least 45 days after receipt of the 60-day notice,
26 (b) the Attorney General has not provided notice of the same, or a substantially
27 similar violation, under Section 4.1 or Section 4.2.1, and (c) the Manufacturer
28

1 Defendant serves a copy of the Notice of Election on the person that sent the 60-
2 day notice.

3 4.2.4 Contents of Notice of Election to Contest: If the Manufacturer Defendant
4 contests the Notice of Violation, then the Notice of Election shall include all then-
5 available documentary evidence in the Manufacturer Defendant's possession regarding
6 the alleged violation, including all test data, if any, as permitted by and consistent with
7 Government Disclosure Restrictions. Within 15 business days after serving a Notice of
8 Election contesting a Notice of Violation, the Manufacturer Defendant and the Attorney
9 General shall meet and confer in good faith to attempt to resolve the dispute. At the
10 conclusion of the meet and confer, one or more of the following may take place: (i) the
11 Attorney General may withdraw the Notice of Violation; (ii) the Manufacturer Defendant
12 may issue an amended Notice of Election that does not contest the violations, pursuant to
13 subsections 4.2.2 and 4.2.3, above; or (iii) the Manufacturer Defendant may continue to
14 contest the Notice of Violation.

15 4.2.5 Action Upon Election: Upon election by the Manufacturer Defendant not
16 to contest the Notice of Violation, the Manufacturer Defendant shall: (i) take corrective
17 action designed to encourage the removal of the Covered Product from sale in California;
18 (ii) if there is no recall in conjunction with the CPSC, inform consumers in California that
19 they may return the affected products for a full refund, replacement toy, repair and/or
20 voucher for replacement toys, at the Manufacturer Defendant's option; and (iii) pay to the
21 Attorney General within ten (10) business days the stipulated payments specified in
22 subsection 4.2.7. A Notice of Election that does not contest an alleged violation of the
23 Consent Judgment or of applicable State law shall be considered an offer of compromise
24 under California Evidence Code § 1152 and Federal Rule of Evidence 408 and shall not
25 otherwise constitute an admission of any fact or issue by the Manufacturer Defendant.
26 Such Notice of Election shall also not be admissible in any proceeding for any purpose
27 other than a proceeding brought pursuant to Section 4 of the Consent Judgment.
28

1 4.2.6 Upon election by the Manufacturer Defendant to contest the Notice of
2 Violation, the People may, by motion or order to show cause before the Superior Court of
3 Alameda, seek to enforce the terms and conditions contained in the Consent Judgment.
4 In any such proceeding, the People may seek whatever fines, costs, penalties, or remedies
5 are provided by law for failure to comply with the Consent Judgment and the
6 Manufacturer Defendant shall retain the right to present all evidence, arguments, and
7 defenses concerning compliance with the Consent Judgment that it wishes to raise to the
8 Court.

9 4.2.7 Payments for Non-Contested Matters: Unless the Manufacturer Defendant
10 contests a Notice of Violation under subsection 4.2.4 and maintains that election
11 following the process set forth in subsection 4.2.4, then it shall tender payment as further
12 specified in Section 5.4 below, the following stipulated payments: \$10,000 for the first
13 occurrence, \$35,000 for the second occurrence within six months, and \$50,000 for the
14 third or subsequent occurrence within a year. For purposes of this Section, an
15 "Occurrence" shall refer to an event with a duration of less than three weeks at the
16 Manufacturer Defendant or Vendor facility that has resulted in Impermissible Lead in
17 finished Covered Products. The Manufacturer Defendant's liability under subsection
18 4.2.7 of the Consent Judgment for manufacturing, distributing, selling, or offering for
19 sale in California a Covered Product containing Impermissible Lead shall be limited such
20 that the Manufacturer Defendant shall be liable for no more than one required payment
21 for each Occurrence that results in Covered Products containing Impermissible Lead
22 being distributed, sold, or offered for sale in California regardless of the number of
23 retailers to whom such Covered Products have been distributed.

24 4.2.8 After the Manufacturer Defendant has served a Notice of Election on the
25 Attorney General as provided in this Consent Judgment, compliance by the Manufacturer
26 Defendant with subsection 4.2.5 and payment by the Manufacturer Defendant pursuant
27 subsection 4.2.7 shall be a full, final and binding resolution of the alleged violation at
28

1 issue and shall render the alleged violation a Covered Claim under and as defined in
2 Section 6.

3 **4.3 RESERVATIONS REGARDING FUTURE ENFORCEMENT**

4 Nothing in the Consent Judgment shall restrict the Attorney General from exercising his
5 enforcement authority under the CPSIA with respect to future violations of Federal Lead
6 Standards. In addition, except as provided in Sections 4.1 and 4.2, nothing in the Consent
7 Judgment waives an authorized public prosecutor's right to take future enforcement action
8 regarding any violations of applicable State law regarding the presence of lead and lead
9 compounds in Covered Products not covered by the Complaint or addressed by Section 6 of the
10 Consent Judgment, and to seek in such actions whatever fines, costs, attorneys' fees, penalties or
11 remedies are provided by law. The rights of the Manufacturer Defendant to defend itself and its
12 actions in law or equity shall not be abrogated or reduced in any fashion by the terms of this
13 Section. The Manufacturer Defendant shall be entitled to raise any and all applicable defenses,
14 arising in law or equity, except that the Manufacturer Defendant shall not contest its obligation to
15 comply with the terms of the Consent Judgment as long as the Consent Judgment remains in
16 effect. Nothing in the Consent Judgment shall be construed as diminishing the Manufacturer
17 Defendant's continuing obligation to comply with Proposition 65 or the UCL in its future
18 activities, to the extent these statutes are applicable.

19 **5.0 PAYMENTS**

20 5.1 The total settlement amount shall be \$790,726. This total amount shall be
21 allocated as set for this Section 5.2. Each Settling Defendant shall pay the specific amounts as
22 set forth in Section 5.3 within ten business days of the date of entry of judgment.

23 5.2 The aggregate settlement payments shall be allocated as follows:

24 5.2.1 \$248,500 as a civil penalty pursuant to California Health & Safety Code
25 section § 25249.7, subdivision (b)(1). The 25 percent portion of the civil penalty
26 allocated pursuant to Health and Safety Code section 25249.12, subdivision (d), shall be
27 divided as follows: \$41,415 to the Attorney General, and \$20,710 to the Los Angeles
28 City Attorney's Office.

1 5.2.2 \$251,727 to the Public Health Institute. These funds, and any interest on
2 the funds, shall be placed in the Toy Testing and Outreach Fund, and administered by the
3 Public Health Trust in a manner consistent with Section 2.15 of this Consent Judgment

4 5.2.3 \$125,864 to the Attorney General to be used for the enforcement of
5 Proposition 65.

6 5.2.4 \$83,909 to the Los Angeles City Attorney to be used for the enforcement
7 of Proposition 65.

8 5.2.5 \$52,000 to reimburse the Attorney General's attorney's fees and costs
9 incurred in investigating, bringing, and resolving the case against the Manufacturing
10 Defendants.

11 5.2.6 \$24,000 to Center for Environmental Health as reimbursement of
12 attorney's fees and costs pursuant to Health and Safety Code, § 25249,7, subdivision (j).

13 5.2.7 \$4,726 to As You Sow as reimbursement of attorney's fees and costs
14 pursuant to Health and Safety Code, § 25249,7, subdivision (j).

15 5.3 Each Manufacturer Defendant shall make the payments as set forth in the
16 following table:

17

18 Company	19 Civil Penalty (\$ 5.2.1)	20 Toy Testing & Outreach Fund (\$ 5.2.2)	21 Attorney General Enforcement (\$ 5.2.3)	22 Los Angeles City Attorney Enforcement (\$ 5.2.4)	23 Attorney General Fees & Costs (\$ 5.2.5)	24 Private Party Fees & Costs (\$§ 5.2.6, 5.2.7)
25 A & A	\$8,750	\$8,864	\$4,432	\$2,955	\$6,000	n/a
26 Amscan	\$10,500	\$10,636	\$5,318	\$3,545	\$6,000	n/a
27 Cranium	\$17,500	\$17,727	\$8,864	\$5,909	\$6,000	\$12,000
28 Eveready	\$8,750	\$8,864	\$4,432	\$2,955	\$6,000	n/a
Kids II	\$10,500	\$10,636	\$5,318	\$3,545	\$6,000	n/a
Marvel	\$8,750	\$8,864	\$4,432	\$2,955	\$6,000	\$12,000
RC2	\$171,500	\$173,727	\$86,864	\$57,909	\$10,000	n/a
Toy Investments	\$12,250	\$12,409	\$6,205	\$4,136	\$6,000	\$4,726

1 5.4 Stipulated Payments. Any Stipulated payments pursuant to subsections 4.2.5 and
2 4.2.7 shall be paid within ten (10) business days after the Settling Manufacturer's election not to
3 contest the Notice of Violations, and shall be allocated as follows:

4 5.4.1 25 percent shall be a civil penalty, pursuant to Health and Safety Code
5 Section 25249.7, subdivision (b)(1).

6 5.4.2 75 percent shall be placed in the Toy Testing and Outreach Fund.

7 5.5 Payments to the Attorney General shall be made by check payable to "Office of
8 the California Attorney General," and shall be sent to:

9 Robert Thomas
10 Legal Analyst
11 Office of the Attorney General
12 1515 Clay St., 20th Floor
13 Post Office Box 70559
14 Oakland, California 94612

15 5.6 Payments to the Los Angeles City Attorney shall be made by check payable to the
16 Los Angeles City Attorney, and shall be sent to:

17 Patricia Bilgin
18 Supervising Attorney, Environmental Justice Unit
19 200 North Main Street, 500 City Hall East
20 Los Angeles, CA 90012

21 5.7 Payments to the Center for Environmental Health shall be made by check payable
22 to the Center for Environmental Health, and shall be sent to:

23 Eric S. Somers
24 Lexington Law Group, LLP
25 1627 Irving Street
26 San Francisco, CA 94122

27 With a copy of the check sent to:

28 Harrison M. Pollak
 Office of the Attorney General
 1515 Clay St., 20th Floor
 Post Office Box 70559
 Oakland, California 94612

 5.8 Payments to As You Sow shall be made by check payable to As You Sow, and
shall be sent to:

1 Ellison Folk
2 Shute, Mihaly & Weinberger LLP
3 396 Hayes Street
4 San Francisco, CA 94102

5 With a copy of the check sent to:

6 Harrison M. Pollak
7 Office of the Attorney General
8 1515 Clay St., 20th Floor
9 Post Office Box 70559
10 Oakland, California 94612

11 5.8.1 Funds paid to the Attorney General pursuant to subsections 5.2.3 or 5.2.5
12 shall be placed in an interest-bearing Special Deposit Fund established by the Attorney
13 General. Those funds, including any interest derived therefrom, shall be used by the
14 Attorney General, until all funds are exhausted, for the costs and expenses associated
15 with the enforcement and implementation of Proposition 65, including investigations,
16 enforcement actions, other litigation or activities as determined by the Attorney General
17 to be reasonably necessary to carry out his duties and authority under Proposition 65.
18 Such funding may be used for the costs of the Attorney General's investigation, filing
19 fees and other court costs, payment to expert witnesses and technical consultants,
20 purchase of equipment, travel, purchase of written materials, laboratory testing, sample
21 collection or any other cost associated with the Attorney General's duties or authority
22 under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this
23 Section, and any interest derived therefrom, shall solely and exclusively augment the
24 budget of the Attorney General's Office and in no manner shall supplant or cause any
25 reduction of any portion of the Attorney General's budget.

26 **6.0 COVERED CLAIMS**

27 The Consent Judgment is a full, final, and binding resolution between the People and the
28 Manufacturer Defendants, their parents, shareholders, divisions, subdivisions, subsidiaries,
affiliates, partners, sister companies, employees, shareholders, directors, insurers, and attorneys
and their successors and assigns ("Defendant Releasees"), and all entities to whom they have
distributed or sold Children's Products manufactured by or for the Manufacturer Defendants and

1 designed or intended primarily for use by a child when the child plays, including but not limited
2 to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
3 (“Downstream Defendant Releasees”), of any violation of Proposition 65, the UCL, CPSA,
4 FHSA, or any other statutory or common law claims that have been or could have been asserted
5 in the public interest or by or on behalf of the people of the State of California against the
6 Manufacturer Defendants, Defendant Releasees, and Downstream Defendant Releasees,
7 regarding the presence of lead and lead compounds in Children’s Products manufactured by or
8 for the Manufacturer Defendant, and designed or intended primarily for use by a child when the
9 child plays, prior to the Effective Date, or the failure to warn about exposure to, lead or lead
10 compounds, in Children’s Products manufactured by or for the Manufacturer Defendant, and
11 designed or intended primarily for use by a child when the child plays, prior to the Effective Date
12 (“Covered Claim”). Compliance with the Lead Standards in Sections 3.1.1, 3.1.2, or 3.1.3 of the
13 Consent Judgment by the Manufacturer Defendant after the Effective Date constitutes
14 compliance with Proposition 65 and the UCL by the Manufacturer Defendant, Defendant
15 Releasees, and Downstream Defendant Releasees regarding the presence of lead and lead
16 compounds in Covered Products manufactured by or for the Manufacturer Defendant, and the
17 failure to warn about exposure to, lead or lead compounds, in Covered Products manufactured by
18 or for the Manufacturer Defendant. This Consent Judgment does not create or give rise to any
19 private right of action of any kind.

20 **7.0 PRESERVATION OF INDUSTRY COMPETITIVENESS.**

21 In the event the People enter into an agreement or consent judgment with any other
22 person manufacturing Covered Products addressing alleged violations of Proposition 65 or the
23 UCL with respect to lead and Children’s Products that provides for less stringent standards than
24 the Lead Standards set forth in Section 3.1.3 above, eliminating or curtailing the Quality
25 Assurance System related-requirements set forth in Section 3.2, eliminating or changing the
26 criteria governing the Interim Measures requirements set forth in Section 3.4, or providing for a
27 lower level of stipulated payments than those set forth in subsection 4.2.7, then the Consent
28 Judgment shall be deemed to have been amended to provide the Manufacturer Defendant with

1 the option of exercising those provisions rather than those specified herein. The Manufacturer
2 Defendant shall provide the Attorney General with prior written notice of any election made
3 pursuant to this Section.

4 **8.0 GOVERNMENT DISCLOSURE RESTRICTIONS**

5 8.1 The Manufacturer Defendant shall immediately notify the Attorney General if,
6 due to a Government Disclosure Restriction, the Manufacturer Defendant is unable to publish or
7 disclose any information otherwise required under the Consent Judgment, and at that time the
8 Manufacturer Defendant shall specify the Government, Government Entity, and/or Government
9 Disclosure Restriction(s) that the Manufacturer Defendant believes prevents the disclosure.

10 **9.0 REPRESENTATIONS AND WARRANTIES**

11 9.1 The Parties represent that they are the proper Parties to the Consent Judgment.
12 the Manufacturer Defendant warrants and represents that the individuals signing the Consent
13 Judgment on its behalf do so in their official capacities and are fully authorized by the
14 Manufacturer Defendant to enter into the Consent Judgment and to legally bind the Manufacturer
15 Defendant to all of the terms and conditions of the Consent Judgment.

16 9.2 The Consent Judgment contains the complete agreement between the Parties. No
17 promises, representations, or warranties other than those set forth in the Consent Judgment have
18 been made by any Party.

19 **10.0 MISCELLANEOUS PROVISIONS**

20 10.1 The terms of the Consent Judgment will be governed by California law.

21 10.2 Any headings or subheadings used herein are for reference purposes only and do
22 not affect the substantive provisions of the Consent Judgment.

23 10.3 The failure of any Party to exercise any rights under the Consent Judgment shall
24 not be deemed a waiver of any right or future rights. If any part of the Consent Judgment shall
25 for any reason be found or held invalid or unenforceable by any Court of competent jurisdiction,
26 such invalidity or unenforceability shall not affect the remainder of the Consent Judgment, which
27 shall survive and be construed as if such invalid or unenforceable part had not been contained
28 herein.

1 10.4 The Court may modify or terminate the Consent Judgment pursuant to the
2 agreement of the parties or for good cause shown, including, but not limited to, repeated
3 substantial violations by the Manufacturer Defendant of this Consent Judgment. After making a
4 good faith effort to obtain the concurrence of the other party for the requested relief, which
5 concurrence shall not be unreasonably withheld, the Party seeking modification or termination
6 may petition the Court for such relief. In addition to the above, the Consent Judgment shall be
7 terminable by the Manufacturer Defendant or the Attorney General at any time following the
8 fifth anniversary of the Effective Date, upon the provision of thirty (30) days advanced written
9 notice; such termination shall be effective upon the subsequent filing of a notice of termination
10 with Superior Court of Alameda County.

11 10.5 The Parties, including their counsel, have participated in the preparation of this
12 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
13 Consent Judgment was subject to revision and modification by the Parties and has been accepted
14 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
15 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
16 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
17 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
18 resolved against the drafting Party should not be employed in the interpretation of this Consent
19 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

20 10.6 It is the mutual intent of the Parties to seek and to obtain Court approval of this
21 Consent Judgment without undue delay.

22 10.7 This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any Party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
27 deemed to exist or to bind any of the Parties.

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