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CENTER FOR ENVIRONMENTAL HEALTH
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO
10

11 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation
12

13 Plaintiff,
14

15 v.
16

ROSS STORES, INC. and Defendant DOES 1
through 200, inclusive
17

18 Defendants.
19

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation
20

21 Plaintiff,
22

23 v.
24

FAST FORWARD, LLC and Defendant DOES
1 through 200, inclusive
25

26 Defendants.
27

28 And consolidated actions.

ENDORSED
FILED
San Francisco County Superior Court

SEP 21 2006

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

Lead Case No. CGC-05-444522

(Consolidated with Case Nos. 05-445712, 05-447187, 05-447915, 05-444523, 06-448593, 06-448596 and 06-448597)

**[PROPOSED] CONSENT JUDGMENT RE:
FAST FORWARD, LLC**

CASE NO. CGC-05-445712

**[PROPOSED] CONSENT JUDGMENT RE: FAST
FORWARD, LLC - CGC-05-444522
(CONSOLIDATED WITH CGC-05-445712)**

1 **1. INTRODUCTION**

2 **1.1** On October 13, 2005, plaintiff the Center for Environmental Health (“CEH”),
3 a non-profit corporation acting in the public interest, filed a complaint in San Francisco County
4 Superior Court, entitled *Center for Environmental Health v. Fast Forward, LLC, et al.*, San
5 Francisco County Superior Court Case Number CGC-05-445712 (the “CEH Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5
7 *et seq.* (“Proposition 65”).

8 **1.2** Defendant Fast Forward, LLC (“Defendant”) is a corporation that employs 10
9 or more persons and manufactured, distributed and/or sold soft food and beverage containers such
10 as lunch boxes, water bottles, coolers and similar products in the State of California (the
11 “Products”). Defendant contends that the Products are not packaging and, for the purposes of the
12 CEH Action and this Consent Judgment, CEH does not dispute this contention.

13 **1.3** On or about July 26, 2005, CEH served Defendant and public enforcement
14 agencies with the requisite 60-day notice alleging that Defendant was in violation of Proposition 65
15 (“Notice”). CEH’s Notice and the Complaint in this Action allege that Defendant exposes
16 individuals who use or otherwise handle the Products to lead and/or lead compounds (referred to
17 interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer, birth
18 defects and other reproductive harm, without first providing clear and reasonable warning to such
19 persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notice and Complaint
20 allege that Defendant’s conduct violates Proposition 65, including Cal. Health & Safety Code
21 §25249.6. Defendant disputes such allegations and asserts that all its products are safe and comply
22 with all applicable laws, including Consumer Product Safety Commission and Federal Food and
23 Drug Administration standards.

24 **1.4** Upon receipt of CEH’s Notice, Defendant took immediate measures to
25 address the allegations set forth therein and to investigate the substance of CEH’s allegations.

26 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
27 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
28 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is proper

1 in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment
2 as a full and final resolution of all claims which were or could have been raised in the Complaint
3 and Notice based on the facts alleged therein.

4 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
5 certain disputed claims between the Parties as alleged in the Notice and/or Complaint. By
6 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the
7 Parties' intent that nothing in this Consent Judgment shall be construed as an admission by the
8 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
9 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion
10 of law, issue of law, or violation of law.

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Level.** Within one-hundred eighty (180) days of entry of this Consent
13 Judgment (the "Compliance Date"), Defendant shall not manufacture, distribute, ship, or sell, or
14 cause to be manufactured, distributed, or sold, any Product that is comprised of any interior lining
15 material or PVC material used for the exterior of the Product that contains Lead in concentrations
16 that exceed 200 parts per million ("ppm") or in which the exterior surface-coating contains Lead
17 concentrations exceeding 600 ppm.

18 **2.2 [RESERVED.]**

19 **2.3 Certification of level from suppliers.** Defendant shall issue specifications
20 to its suppliers requiring that the interior lining of the Products and exterior surface-coating of the
21 Products do not contain materials which contain Lead concentrations exceeding 200 ppm and 600
22 ppm, respectively, and that the exterior of the Products do not contain PVC material with Lead
23 concentrations exceeding 200 ppm. Defendant shall obtain written certification from its suppliers
24 of the Products certifying that the interior lining does not contain Lead concentrations exceeding
25 200 ppm, that the exterior surface-coating does not contain Lead exceeding 600 ppm, and that the
26 exterior of the Product does not contain PVC material with Lead concentrations exceeding 200
27 ppm.

1 **2.4 Testing.** In order to ensure compliance with the requirements of Section 2.1,
2 Defendant shall conduct (or cause to be conducted) testing to confirm that the interior lining of the
3 Products contains less than 200 ppm Lead, that the exterior surface-coating of the Products contains
4 less than 600 ppm Lead, and that the exterior of the Products do not contain PVC material with
5 Lead concentrations exceeding 200 ppm. At all times that Defendant uses PVC for the interior
6 lining of its Products, testing shall be conducted in compliance with Section 2.4.1. At any time that
7 Defendant uses a material other than PVC for the interior lining of its Products, testing shall be
8 conducted in accordance with Section 2.4.2. All testing pursuant to this Section shall be performed
9 by an independent laboratory in accordance with EPA Method 3050B for the interior lining and for
10 any PVC material used in the exterior of the Product, and either EPA Method 3050B or ASTM F-
11 963 for the exterior surface coating (the "Test Protocol"). The results of all testing performed
12 pursuant to this Section 2 shall be made available to both Parties on a confidential basis.

13 **2.4.1 Testing Where Interior Lining Contains PVC.** For each of the first two
14 orders of Products purchased from Defendant's suppliers after the Compliance Date, Defendant
15 shall randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case
16 more than four, of the total Products purchased from each supplier of the Products intended for sale
17 in California. Following the first two orders, Defendant shall test the Products in accordance with
18 2.4.2.

19 **2.4.2 Random Testing.** Testing pursuant to this Section 2 shall be performed on
20 randomly selected units in accordance with Defendant's usual testing practices. Defendant's usual
21 testing practices include testing as required by its various retailers. At a minimum, during each
22 calendar year, Defendant shall randomly select and test the greater of 0.1% (one-tenth of one
23 percent) or two, but in no case more than four, of the total Products purchased from each supplier of
24 the Products intended for sale in California.

25 **2.4.3 Products that exceed stipulated levels pursuant to Defendant's Testing.**
26 If the results of the testing required pursuant to Section 2.4 show levels of lead exceeding 200 ppm
27 for the interior lining of a Product, 600 ppm for the exterior surface-coating of a Product, or 200
28 ppm for PVC material used for the exterior of a Product, Defendant shall: (1) refuse to accept all of

1 the Products that were purchased under the particular purchase order; (2) send a notice to the
2 supplier explaining that such Products do not comply with the supplier's certification; and (3) apply
3 the testing frequency set forth in 2.4 as though the next shipment from the supplier were the first
4 one following the Compliance Date.

5 **2.4.3.1 Products Which Cannot Be Returned.** Notwithstanding the provisions of Section
6 2.4.3, if Products, after being delivered to Defendant, are found to not meet the reformulation
7 specifications in Section 2.3 and such Products cannot be returned to the manufacturer, then
8 Defendant may distribute and/or sell the Products in California so long as a hang tag with the
9 following language is attached to the Product: "Warning: This product contains chemicals known to
10 the State of California to cause cancer and birth defects or other reproductive harm." The print shall
11 be at least a 12 point black font.

12 **2.5 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
13 the Products. Any such testing will be conducted by CEH at an independent laboratory, in
14 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
15 excess of 200 ppm for the interior lining, 600 ppm for the exterior surface-coating, or 200 ppm for
16 exterior PVC material of two or more Products, CEH shall inform Defendant of the test results,
17 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,
18 within 30 days following such notice, provide CEH, at the address listed in Section 12, with the
19 certification and testing information demonstrating its compliance with Sections 2.3 and 2.4 of this
20 Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it
21 complied with Sections 2.3 and/or 2.4, Defendant shall be liable for stipulated payments in lieu of
22 penalties for Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm
23 for the interior lining, 600 ppm for exterior surface-coating, or 200 ppm for exterior PVC material,
24 as set forth below. In addition, Defendant shall then apply the testing frequency set forth in 2.4 as
25 though the next shipment from the supplier were the first one following the Compliance Date. The
26 payments shall be made to CEH and used for the purposes described in Section 3.1.

27 **2.5.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in
28 lieu of penalties are warranted under Section 2.5, the stipulated payment amount shall be as follows:

1	First Occurrence:	\$ 1,250
2	Second Occurrence:	\$ 1,500
3	Third Occurrence:	\$ 1,750
4	Thereafter:	\$ 2,500

5 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,
6 regardless of the number of units of Defendant's Products tested by CEH with exceedances of the
7 Lead levels set forth in this Consent Judgment, shall be \$ 3,500.

8 **2.5.2 Products in the stream of commerce.** Defendant's Products that
9 have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the
10 Compliance Date shall be released from any claims that were brought or that could have been
11 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of
12 Section 7, below.

13 **3. SETTLEMENT PAYMENTS**

14 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH twenty
15 thousand dollars (\$20,000) in lieu of any penalty pursuant to Health and Safety Code §25249.7(b).
16 Five thousand dollars (\$5,000) of this amount is an added payment in consideration of Section
17 2.4.3.1. CEH shall use such funds to continue its work protecting people from exposures to toxic
18 chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as set
19 forth in Section 2.5.

20 **3.2 Attorneys' Fees and Costs.** Thirty-five thousand dollars (\$35,000) shall be
21 paid to The Lexington Law Group to reimburse The Lexington Law Group and its attorneys for
22 their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result
23 of investigating, bringing this matter to Defendant' attention, litigating and negotiating a settlement
24 in the public interest.

25 **3.3 Timing of payments.** Fifty percent of the payments required under Sections
26 3.1 and 3.2 above, shall be paid into a Lexington Law Group, LLP interest bearing Client Funds
27 Account within five (5) days after execution of this proposed Consent Judgment by the Parties and
28 submission of it to the court. The payments deposited, including interest, may not be withdrawn

1 from the Client Funds Account or otherwise utilized until after this Consent Judgment is final
2 including all appeals, if any. The balance of the payments required under Sections 3.1 and 3.2
3 above, shall be paid into a Lexington Law Group, LLP interest bearing Client Funds Account within
4 90 days from the date the first payment is made by Defendant. The payments deposited, including
5 interest, may not be withdrawn from the Client Funds Account or otherwise utilized until after this
6 Consent Judgment is final including all appeals, if any.

7 **4. MODIFICATION OF CONSENT JUDGMENT**

8 **4.1** This Consent Judgment may be modified by written agreement of CEH and
9 Defendant, or upon motion of CEH or Defendant as provided by law.

10 **4.2** CEH intends to enter into agreements with other entities that manufacture,
11 distribute and/or sell Products. Should Defendant determine that the provisions of any such
12 Consent Judgment with a similarly situated manufacturer or distributor of products are less
13 stringent, Defendant may request a modification of this Consent Judgment to conform with the
14 terms of the later entered Consent Judgment. Upon 30 days prior written notice of Defendant's
15 request for a modification, CEH shall inform Defendant whether it will agree to such modification.
16 If CEH does not agree, Defendant may move the Court for a modification pursuant to this Section.

17 **5. ENFORCEMENT OF CONSENT JUDGMENT**

18 **5.1** Either Party may, by motion or application for an order to show cause,
19 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on any
20 motion or application shall be entitled to its reasonable attorneys' fees and costs associated with
21 such motion or application.

22 **6. APPLICATION OF CONSENT JUDGMENT**

23 **6.1** This Consent Judgment shall apply to and be binding upon the Parties hereto,
24 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

25 **7. CLAIMS COVERED**

26 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
27 and Defendant of any violation of Proposition 65 that was or could have been asserted in the Notice
28 or Complaint against Defendant (including any claims that could be asserted in connection with any

1 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,
2 officers, employees, agents, attorneys, distributors, or customers (collectively, "Defendant
3 Releasees") based on failure to warn about alleged Proposition 65 exposures with respect to any
4 Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date
5 of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment constitutes
6 compliance with Proposition 65 for purposes of Lead exposures from the Products.

7 7.2 Further, CEH hereby releases all retailers, distributors, and licensors of
8 Defendant's products from any claims related to the Notice, the Complaint and this Judgment and
9 CEH agrees to dismiss any such claims that it has asserted or could assert against any retailers,
10 distributors, or licensors of Defendant's Products. If CEH has filed a complaint against a retailer,
11 distributor, or licensor of Defendant's Products, then CEH shall, within 10 days of entry of this
12 Consent Judgment file a dismissal, with prejudice, as to those claims relating to Defendant's
13 Products. CEH shall provide Defendant with a conformed copy of the dismissal. CEH further
14 agrees to provide Defendant with a letter substantially similar to the one attached hereto as Exhibit
15 A, stating that it has released all of Defendant's distributors, retailers, and licensors from any
16 liability relating to sales of Products manufactured and/or sold by Defendant. As to each of
17 Defendant's retailers, distributors, or licensors which have not been served with a 60-day notice
18 letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said retailer, distributor,
19 or licensor which includes within its scope, whether directly or indirectly, any of Defendant's
20 products. For purposes of the release provided in this Section, the term "retailer, distributor, or
21 licensor" shall include their respective related entities, predecessors, successors, assigns, parents,
22 subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders, attorneys,
23 representatives, agents and employees, past, present and future.

24 8. [RESERVED.]

25 9. **SPECIFIC PERFORMANCE**

26 9.1 The Parties expressly recognize that Defendant's obligations under this
27 Consent Judgment are unique. In the event that Defendant is found to be in breach of this Consent
28 Judgment for failure to comply with the provisions of Section 2 hereof, the Parties agree that it

1 would be extremely impracticable to measure the resulting damages and that such breach would
2 cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies,
3 may sue in equity for specific performance, and Defendant expressly waives the defense that a
4 remedy in damages will be adequate.

5 **10. GOVERNING LAW**

6 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
7 State of California.

8 **11. CONSENT JUDGMENT TERMINATION AND RETENTION OF**
9 **JURISDICTION**

10 **11.1** This Consent Judgment will automatically terminate and be of no further
11 force, validity or affect as of August 1, 2011.

12 **11.2** This Court shall retain jurisdiction of this matter to implement and enforce
13 the terms this Consent Judgment while it is in effect.

14 **12. PROVISION OF NOTICE**

15 **12.1** All notices required pursuant to this Consent Judgment and correspondence
16 shall be sent to the following:

17 For CEH:

18 Mark N. Todzo
19 Lexington Law Group, LLP
20 1627 Irving Street
San Francisco, CA 94122

21 For Defendant:

22 Malcolm Weiss, Esq.
23 Jeffer, Mangels, Butler Marmaro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

24 **13. COURT APPROVAL**

25 **13.1** CEH will comply with the settlement notice provisions of Health and Safety
26 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

27 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
28 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive

1 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
2 effective and has no force or effect until all issues on appeal are resolved.

3 **14. EXECUTION AND COUNTERPARTS**

4 14.1 The stipulations to this Consent Judgment may be executed in counterparts
5 and by means of facsimile, which taken together shall be deemed to constitute one document.

6 **15. AUTHORIZATION**

7 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
8 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
9 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
10 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
11 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

12 **AGREED TO:**

13 CENTER FOR ENVIRONMENTAL HEALTH

14 

15 _____
16 Michael Green, Executive Director
Center for Environmental Health

Dated: 7/20/06

17
18
19 FAST FORWARD, LLC

20
21 _____
22 Printed Name

Dated: _____

1 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
2 effective and has no force or effect until all issues on appeal are resolved.

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10 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
11 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

12 **AGREED TO:**

13 **CENTER FOR ENVIRONMENTAL HEALTH**

14
15 _____ Dated: _____
16 Michael Green, Executive Director
Center for Environmental Health

19 **FAST FORWARD, LLC**

20
21 Evan Hedaya Dated: 7/19/07
22 Printed Name

23 **EVAN HEDAYA**

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Exhibit A
(Release Letter)

[Lexington Law Group Letterhead]

Malcolm Weiss, Esq.
Jeffer, Mangels, Butler & Marmaro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

Re: Center for Environmental Health v. Fast Forward, LLC, et al.,
San Francisco County Superior Court Case Number CGC-05-445712

Mr. Weiss:

Pursuant to Section 7.2 of the consent judgment ("Consent Judgment") entered into in the above-referenced matter between the Center for Environmental Health ("CEH") and Fast Forward, LLC ("Fast Forward"), CEH hereby confirms that it has released all of Fast Forward's distributors, retailers, and licensors from any liability relating to sales of soft food and beverage containers such as lunch boxes, water bottles, coolers, and similar products manufactured and/or sold by Fast Forward ("Products") and from any claims related to the Products referenced in the 60-day Notice or the Consent Judgment (collectively, "Claims") and any 60-day notices issued to Fast Forward or any of its retailers, distributors or licensors. For purposes of the release contained in the Consent Judgment and this letter, the term "retailers, distributors, and licensors" shall include their respective related entities, predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders, attorneys, representatives, agents and employees, past, present and future.

This letter acts as a retraction and rescission of all 60-day notices related to Fast Forward's Products in lieu of sending separate letters to each enforcement agency. If CEH has filed a complaint against any retailer, distributor, or licensor of Fast Forward's Products, then CEH shall within 10 days of the entry of the Consent Judgment file a dismissal, with prejudice, as to those Claims relating to Fast Forward's Products.

Mark N. Todzo, Esq. for
Center for Environmental Health

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Fast Forward, LLC,
the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: SEP 21 2006

RONALD E. QUIDACHAY

Judge, Superior Court of the State of California

RONALD E. QUIDACHAY