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9 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

SEP 21 2006

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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12
13
14 CENTER FOR ENVIRONMENTAL HEALTH, a
non-profit corporation

15 Plaintiff,

16 v.

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

19 Defendants.

20 CENTER FOR ENVIRONMENTAL HEALTH, a
non-profit corporation

21 Plaintiff

22 v.

23 ACCESSORY NETWORK GROUP, INC., and
24 Defendant DOES 1 through 200, inclusive

25 Defendants.

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:
ACCESSORY NETWORK GROUP LLC**

Case No. CGC-447187

**[PROPOSED] CONSENT JUDGMENT RE:
ACCESSORY NETWORK GROUP - CGC-05-444522 (CONSOLIDATED WITHGCC 05-447187)**

1 **1. INTRODUCTION**

2 **1.1** On September 25, 2005, plaintiff the Center for Environmental Health
3 ("CEH"), a non-profit corporation acting in the public interest, filed a complaint in San Francisco
4 County Superior Court, entitled *Center for Environmental Health v. Accessory Network Group,*
5 *Inc., et al.*, San Francisco County Superior Court Case Number CGC-05-447187 (the "CEH
6 Action"), for civil penalties and injunctive relief pursuant to the provisions of California Health &
7 Safety Code §25249.5 et seq. ("Proposition 65").

8 **1.2** Defendant Accessory Network Group LLC (erroneously sued as Accessory
9 Network Group, Inc.; "Defendant") is a corporation that employs 10 or more persons and
10 manufactured, distributed and/or sold soft food and beverage containers such as lunch boxes, water
11 bottles, coolers, and similar products in the State of California (the "Products").

12 **1.3** On or about July 26, 2005, CEH served Defendant and public enforcement
13 agencies with the requisite 60-day notice alleging that Defendant was in violation of Proposition 65
14 (the "Notice"). CEH's Notice and the Complaint in this Action allege that Defendant exposes
15 people who use or otherwise handle the Products to lead and/or lead compounds (referred to
16 interchangeably herein as "Lead"), chemicals known to the State of California to cause cancer, birth
17 defects and other reproductive harm, without first providing clear and reasonable warning to such
18 persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notice and Complaint
19 allege that Defendant's conduct violates Proposition 65, including Cal. Health & Safety Code
20 §25249.6. Defendant disputes such allegations and asserts that all its products are safe and comply
21 with all applicable laws, including Consumer Product Safety Commission and Federal Food and
22 Drug Administration standards.

23 **1.4** Upon receipt of CEH's Notice, Defendant took immediate measures to
24 address the allegations set forth therein and to investigate the substance of CEH's allegations.

25 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
26 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
27 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is proper
28

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 of any fact, conclusion of law, issue
10 of law, or violation of law.

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Level.** Within one hundred and 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 in which the interior lining of the
15 Product or exterior surface coating contains Lead concentrations exceeding 200 parts per million
16 ("ppm") or 600 ppm, respectively, or with PVC material used for the exterior of the Product with
17 Lead concentrations exceeding 200 ppm.

18 **2.2 Certification of level from suppliers.** Defendant shall obtain written
19 certification from its suppliers of the Products certifying that the interior lining does not contain
20 Lead concentrations exceeding 200 ppm, that the exterior surface-coating does not contain Lead
21 exceeding 600 ppm, and that any material used for the exterior of the Products does not contain
22 PVC with Lead concentrations exceeding 200 ppm. Such supplier certifications shall be obtained
23 annually for three successive years.

24 **2.3 Testing.** In order to ensure compliance with the requirements of Section 2.1,
25 Defendant shall conduct (or cause to be conducted) testing to confirm that the interior lining of the
26 Products contains less than 200 ppm Lead, that the exterior surface-coating does not contain Lead
27 exceeding 600 ppm, and that any material used for the exterior of the Products does not contain
28 PVC with Lead concentrations exceeding 200 ppm. At all times that Defendant uses PVC for the

1 interior lining of its Products, testing shall be conducted in compliance with Section 2.3.1. At any
2 time that Defendant uses a material other than PVC for the interior lining of its Products, testing
3 shall be conducted in accordance with Section 2.3.2. All testing pursuant to this Section shall be
4 performed by an independent laboratory in accordance with EPA Method 3050B for the interior
5 lining and for any PVC material used in the exterior of the Products, and either EPA Method 3050B
6 or ASTM F963 for the exterior surface coating (the "Test Protocol"). The results of all testing
7 performed pursuant to this Section 2 shall be made available to both Parties on a confidential basis.

8 **2.3.1 Testing Where Interior Lining Contains PVC.** For each of the first
9 two orders of Products purchased from Defendant's suppliers after the Compliance Date, Defendant
10 shall randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case
11 more than four, of the total Products purchased from each supplier of the Products intended for sale
12 in California. Following the first two orders, Defendant shall test the Products in accordance with
13 Section 2.3.2.

14 **2.3.2 Random Testing.** Testing pursuant to this Section 2 shall be
15 performed on randomly selected units in accordance with Defendant's usual testing practices.
16 Defendant's usual testing practices include testing as required by its various retailers. At a
17 minimum, during each calendar year, Defendant shall randomly select and test the greater of 0.1%
18 (one-tenth of one percent) or two, but in no case more than four, of the total Products purchased
19 from each supplier of the Products intended for sale in California.

20 **2.3.3 Products that exceed stipulated levels pursuant to Defendant's**
21 **Testing.** If the results of the testing required pursuant to Section 2.3 show levels of lead exceeding
22 200 ppm for the interior lining of a Product, 600 ppm for the exterior surface-coating of a Product,
23 or 200 ppm for PVC material used for the exterior, Defendant shall: (1) refuse to accept all of the
24 Products that were purchased under the particular purchase order; (2) send a notice to the supplier
25 explaining that such Products do not comply with the supplier's certification; and (3) apply the
26 testing frequency set forth in Section 2.3 as though the next shipment from the supplier were the
27 first one following the Compliance Date.

1 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
2 the Products. Any such testing will be conducted by CEH at an independent laboratory, in
3 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
4 excess of 200 ppm for the interior lining of two or more Products, 600 ppm for the exterior surface-
5 coating of two or more Products, or 200 ppm for PVC material used for the exterior of two or more
6 Products, CEH shall inform Defendant of the test results, including information sufficient to permit
7 Defendant to identify the Product(s). Defendant shall, within thirty (30) days following such notice
8 provide CEH, at the address listed in Section 12, with the certification and testing information
9 demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If Defendant
10 fails to provide CEH with certification and testing information demonstrating that it complied with
11 Sections 2.2 and/or 2.3, Defendant shall be liable for stipulated payments in lieu of penalties for
12 Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm for the
13 interior lining, 600 ppm for the exterior surface-coating, or 200 ppm for exterior PVC material, as
14 set forth below. In addition, Defendant shall then apply the testing frequency set forth in Section
15 2.3 as though the next shipment from the supplier were the first one following the Compliance Date.
16 The payments shall be made to CEH and used for the purposes described in Section 4.1.

17 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in
18 lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows:

| | |
|-----------------------------------------|---------|
| 19 First Occurrence: | \$1,250 |
| 20 Second Occurrence: | \$1,500 |
| 21 Third Occurrence: | \$1,750 |
| 22 Thereafter: | \$2,500 |

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

26 **2.4.2 Products in the stream of commerce.** Defendant's Products that
27 have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the
28 Compliance Date shall be released from any claims that were brought or that could have been

1 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of
2 Section 8, below.

3 3. [RESERVED.]

4 4. SETTLEMENT PAYMENTS

5 4.1 Monetary Payment in Lieu of Penalty: Defendant shall pay to CEH
6 sixteen thousand dollars (\$16,000) in lieu of any penalty pursuant to Health and Safety Code
7 § 25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to
8 toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as
9 set forth in Section 2.4.

10 4.2 Attorneys' Fees and Costs: Thirty five thousand (\$35,000) shall be paid to
11 the Lexington Law Group to reimburse the Lexington Law Group and its attorneys for their
12 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
13 investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement in
14 the public interest.

15 4.3 Timing of payments. Fifty percent of the payments required under Sections
16 4.1 and 4.2 above, shall be paid into a Lexington Law Group, LLP interest bearing Client Funds
17 Account within five (5) days after execution of this proposed Consent Judgment by the Parties and
18 submission of it to the court. The payments deposited, including interest, may not be withdrawn
19 from the Client Funds Account or otherwise utilized until after this Consent Judgment is final
20 including all appeals, if any. The balance of the payments required under Sections 4.1 and 4.2
21 above, shall be paid into a Lexington Law Group, LLP interest bearing Client Funds Account within
22 90 days from the date the first payment is made by Defendant. The payments deposited, including
23 interest, may not be withdrawn from the Client Funds Account or otherwise utilized until after this
24 Consent Judgment is final including all appeals, if any.

25 5. MODIFICATION OF CONSENT JUDGMENT

26 5.1 This Consent Judgment may be modified by written agreement of CEH and
27 Defendant, or upon motion of CEH or Defendant as provided by law.

1 5.2 CEH intends to enter into agreements with other entities that manufacture,
2 distribute and/or sell Products. Should Defendant determine that the provisions of any such
3 Consent Judgment with a similarly situated manufacturer or distributor of products are less
4 stringent, Defendant may request a modification of this Consent Judgment to conform with the
5 terms of the later entered Consent Judgment. Upon 30 days prior written notice of Defendant's
6 request for a modification, CEH shall inform Defendant whether it will agree to such modification.
7 If CEH does not agree, Defendant may move the Court for a modification pursuant to this Section.

8 **6. ENFORCEMENT OF CONSENT JUDGMENT**

9 6.1 Either Party may, by motion or application for an order to show cause,
10 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on any
11 motion or application shall be entitled to its reasonable attorneys' fees and costs associated with
12 such motion or application.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 7.1 This Consent Judgment shall apply to and be binding upon the Parties hereto,
15 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

16 **8. CLAIMS COVERED**

17 8.1 This Consent Judgment is a full, final and binding resolution between CEH
18 and Defendant of any violation of Proposition 65 that was or could have been asserted in the Notice
19 or Complaint against Defendant (including any claims that could be asserted in connection with any
20 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,
21 officers, employees, agents, attorneys, distributors, or customers (collectively, "Defendant
22 Releasees") based on failure to warn about alleged Proposition 65 exposures, with respect to any
23 Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date
24 of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment constitutes
25 compliance with Proposition 65 for purposes of Lead exposures from the Products.

26 8.2 Further, CEH hereby releases all retailers, distributors, and licensors of
27 Defendant's Products from any claims related to the Products set forth in the Notice, the Complaint
28 and this Judgment and CEH agrees to dismiss any such claims that it has asserted or could assert

1 against any retailers, distributors, or licensors of Defendant's Products. If CEH has filed a
2 complaint against a retailer, distributor, or licensor of Defendant's Products, then CEH shall, within
3 10 days of entry of this Consent Judgment, file a dismissal, with prejudice, as to those claims
4 relating to Defendant's Products. CEH shall provide Defendant with a conformed copy of the
5 dismissal. CEH further agrees to provide Defendant with a letter substantially similar to the one
6 attached hereto as Exhibit A, stating that it has released all of Defendant's distributors, retailers, and
7 licensors from any liability relating to sales of Products manufactured and/or sold by Defendant. As
8 to each of Defendant's retailers, distributors, or licensors which have not been served with a 60-day
9 Notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said retailer,
10 distributor, or licensor which includes within its scope, whether directly or indirectly, any of
11 Defendant's Products. For purposes of the release provided in this Section, the term "retailers,
12 distributors, or licensors" shall include their respective related entities, predecessors, successors,
13 assigns, parents, subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders,
14 attorneys, representatives, agents and employees, past, present and future.

15 **9. SEVERABILITY**

16 **9.1** In the event that any of the provisions of this Consent Judgment are held by a
17 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

18 **10. GOVERNING LAW**

19 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
20 State of California.

21 **11. CONSENT JUDGMENT TERMINATION AND RETENTION OF**
22 **JURISDICTION**

23 **11.1** This Consent Judgment will automatically terminate and be of no further
24 force, validity or affect as of August 1, 2011.

25 **11.2** This Court shall retain jurisdiction of this matter to implement and enforce
26 the terms this Consent Judgment, while it is in effect.

1 **12. PROVISION OF NOTICE**

2 **12.1** All notices required pursuant to this Consent Judgment and correspondence
3 shall be sent to the following:

4 For CEH:

5 Mark N. Todzo
6 Lexington Law Group, LLP
7 1627 Irving Street
8 San Francisco, CA 94122

9 For Defendant:

10 Malcolm Weiss, Esq.
11 Jeffer, Mangels, Butler & Marmaro, LLP
12 1900 Avenue of the Stars, 7th Floor
13 Los Angeles, CA 90067

14 **13. COURT APPROVAL**

15 **13.1** CEH will comply with the settlement notice provisions of Health and Safety
16 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

17 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
18 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive
19 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
20 effective and has no force or effect until all issues on appeal are resolved.

21 **14. EXECUTION AND COUNTERPARTS**

22 **14.1** The stipulations to this Consent Judgment may be executed in counterparts
23 and by means of facsimile, which taken together shall be deemed to constitute one document.

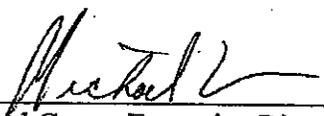
24 **15. AUTHORIZATION**

25 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
27 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
28

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

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4
5 **AGREED TO:**

6 CENTER FOR ENVIRONMENTAL HEALTH

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8 
9 Michael Green, Executive Director
Center for Environmental Health

Dated: 9/25/06

10
11 ACCESSORY NETWORK GROUP LLC

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Dated: _____

14 Printed Name

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

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5 **AGREED TO:**

6 CENTER FOR ENVIRONMENTAL HEALTH

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8 _____
9 Michael Green, Executive Director
Center for Environmental Health

Dated: _____

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11 ACCESSORY NETWORK GROUP LLC

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13 _____
14 Abe Chehebar, CEO
15 Printed Name

Dated: 7/27/06

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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. Accessory Network Group, Inc., et al.*,
San Francisco County Superior Court Case Number CGC-05-447187

Mr. Weiss:

Pursuant to Section 8.2 of the consent judgment ("Consent Judgment") entered into in the above-referenced matter between the Center for Environmental Health ("CEH") and Accessory Network Group LLC ("ANG"), CEH hereby confirms that it has released all of ANG'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 ANG ("Products") and from any claims related to or referenced in the 60-day Notice or the Consent Judgment (collectively, "Claims") and any 60-day notices issued to ANG 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 ANG's products in lieu of sending separate letters to each enforcement agency should CEH not release the claims or dismiss the suits within 30 days of entry. If CEH has filed a complaint against any retailer, distributor, or licensor of ANG'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 ANG'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 Accessory Network Group LLC, the settlement is approved and judgment is hereby entered according to the terms herein.

SEP 21 2006

Dated: _____

RONALD E. QUIDACHAY
Judge, Superior Court of the State of California

RONALD E. QUIDACHAY