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CENTER FOR ENVIRONMENTAL HEALTH
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ENDORSED
FILED
San Francisco County Superior Court

AUG 30 2006

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
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13 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

Case No. CGC-06-448593

14 Plaintiff,

15 v.

~~[PROPOSED]~~ CONSENT JUDGMENT

16
17 SILVER GOOSE, INC., and Defendant DOES 1)
through 200, inclusive,)

18
19 Defendants.
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1 **1. INTRODUCTION**

2 **1.1** On January 16, 2006, 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. Silver Goose, Inc., et al.*,
5 San Francisco County Superior Court Case Number CGC-06-448593 (the “CEH Action”), for
6 civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code
7 §25249.5 *et seq.* (“Proposition 65”).

8 **1.2** Defendant Silver Goose, Inc. (“Defendant”), as alleged in the Complaint,
9 is a corporation that employs 10 or more persons and manufactured, distributed and/or sold
10 children’s lunchboxes made of vinyl containing lead and/or lead compounds (the “Products”) in
11 the State of California. CEH and Defendant are together referred to herein as the “Parties.”

12 **1.3** Beginning or about November 4, 2005, CEH served Defendant and the
13 appropriate public enforcement agencies with the requisite 60-day notice that Defendant was in
14 violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that
15 Defendant exposes individuals who use or otherwise handle the Products to lead and/or lead
16 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
17 California to cause cancer, birth defects and other reproductive harm, without first providing
18 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
19 toxicity of Lead. The notice and Complaint allege that Defendant’s conduct violates Health &
20 Safety Code §25249.6, the warning provision of Proposition 65. Defendant denies these
21 allegations.

22 **1.4** Defendant does not presently manufacture, distribute or sell the Products
23 and sold very few Products in California. Defendant contends that it sold less than 800 Products
24 total. Defendant also contends that any lead contained in the vinyl of the Products did not exceed
25 the “safe harbor” Maximum Allowable Dose Level (“MADL”) for Lead as a reproductive toxin
26 or the No Significant Risk Level (“NSRL”) for Lead as a carcinogen pursuant to Title 22 of the
27 California Code of Regulations §12721.

1 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
2 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
3 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is
4 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
5 Judgment as a full and final resolution of all claims which were or could have been raised in the
6 Complaint based on the facts alleged therein.

7 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
8 certain disputed claims between the Parties as alleged in the Complaint. By executing this
9 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
10 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
11 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
12 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
14 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
15 any other or future legal proceedings.

16 **2. COMPLIANCE**

17 **2.1** Defendant will not manufacture, distribute and/or sell the Products on or
18 after the date of entry of this Consent Judgment.

19 **3. SETTLEMENT PAYMENTS**

20 **3.1 Monetary Payment in Lieu of Penalty:** Defendant shall pay \$5,000 to
21 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
22 such funds to continue its work protecting people from exposures to toxic chemicals.

23 **3.2 Attorneys' Fees and Costs:** Defendant shall pay \$10,000 to reimburse
24 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
25 other costs incurred as a result of investigating, bringing this matter to Defendant' attention,
26 litigating and negotiating a settlement in the public interest.

27 **3.3 Timing of payments.** The payments required under this section shall be
28 delivered to the address set forth in section 11 below within 30 days of mutual execution of this

1 Consent Judgment by the Parties. Any failure by Defendant to comply with the payment terms
2 herein shall be subject to a stipulated late fee in the amount of \$50 for each day after the delivery
3 date the payment is received.

4 **4. MODIFICATION OF CONSENT JUDGMENT**

5 4.1 This Consent Judgment may be modified by written agreement of CEH
6 and Defendant, or upon motion of CEH or Defendant as provided by law.

7 4.2 CEH intends to enter into agreements with other entities that manufacture,
8 distribute and/or sell Products. Should Defendant decide to begin selling Products again,
9 Defendant will contact CEH and CEH will make available copies of other agreements it has
10 entered into concerning Products: Defendant may then choose to comply with the injunctive
11 provisions of one of the other agreements, and the Parties will modify this Consent Judgment to
12 reflect such injunctive provisions.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 5.1 CEH may, by motion or application for an order to show cause before the
15 Superior Court of the County of San Francisco, enforce the terms and conditions contained in
16 this Consent Judgment.

17 **6. APPLICATION OF CONSENT JUDGMENT**

18 6.1 This Consent Judgment shall apply to and be binding upon the Parties
19 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
20 them.

21 **7. CLAIMS COVERED**

22 7.1 This Consent Judgment is a full, final and binding resolution between
23 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
24 the Complaint against Defendant, its affiliates, licensors and customers, based on Defendant's
25 failure to warn about exposure to Lead contained in the Products, with respect to any Products
26 manufactured, distributed or sold by Defendant on or prior to the date of entry of this Consent
27 Judgment. This release does not limit or effect the obligations of any party created under this
28 Consent Judgment.

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8. SEVERABILITY

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

9. GOVERNING LAW

9.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. RETENTION OF JURISDICTION

10.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment.

11. PROVISION OF NOTICE

11.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:

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

For Defendant:

Steven M. Gerber, Esq.
666 Fifth Avenue, 26th Floor
New York, NY 10103

12. NOTICE TO THE ATTORNEY GENERAL AND COURT APPROVAL

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

12.2 If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

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13. EXECUTION AND COUNTERPARTS


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

14. AUTHORIZATION

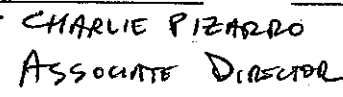
14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read,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

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



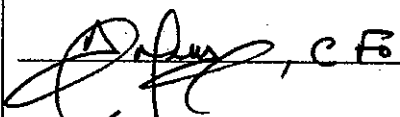
Michael Green, Executive Director
Center for Environmental Health



CHARLIE PIZARRO
ASSOCIATE DIRECTOR

Dated: 6/27/06

SILVER GOOSE, INC.



ARNOLD DUNN
Printed Name

Dated: 6/19/06

