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10 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

AUG 13 2007

GORDON PARK-LI, Clerk
BY: FELICIA M. GREEN
Deputy Clerk

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO

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

15 Plaintiff,

16 v.

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

19 Defendants.

20 And consolidated actions.

Lead Case No. CGC-05-444522

~~PROPOSED~~ CONSENT JUDGMENT RE:
GLOBAL DESIGN CONCEPTS, INC.

~~PROPOSED~~ CONSENT JUDGMENT
RE: GLOBAL DESIGN CONCEPTS, INC. – CGC-
05-444522

1 **1. INTRODUCTION**

2 **1.1** On March 9, 2007, plaintiff the Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed an amendment to its complaint adding
4 Global Design Concepts, Inc. (“Defendant”) as a defendant to the San Francisco County Superior
5 Court case entitled *Center for Environmental Health v. Ross Stores, Inc. et al.*, San Francisco
6 County Superior Court Case Number CGC-06-444522 (the “CEH Action”), for civil penalties and
7 injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.*
8 (“Proposition 65”). For purposes of this Consent Judgment, CEH and Defendant are referred to as
9 the “Parties.”

10 **1.2** Defendant is a corporation that employs 10 or more persons and
11 manufactured, distributed and/or sold children’s soft food and beverage containers such as
12 lunchboxes, lunch totes and lunch coolers (the “Products”) in the State of California. For purposes
13 of this Consent Judgment, the term “Products” means products to be sold or distributed within the
14 State of California.

15 **1.3** Beginning or about August 31, 2006, CEH served Defendant and the appropriate
16 public enforcement agencies with the requisite 60-day notice alleging that Defendant was in
17 violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that Defendant
18 exposes people who use or otherwise handle the Products to lead and/or lead compounds (referred
19 to interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer,
20 birth defects and other reproductive harm, without first providing clear and reasonable warning to
21 such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notice and
22 Complaint allege that Defendant’s conduct violates Health & Safety Code §25249.6, the warning
23 provision of Proposition 65. Defendant disputes such allegations and asserts that all of its Products
24 are safe and comply with all applicable laws.

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

27 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
28 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and

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

5 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
6 certain disputed claims between the Parties as alleged in the Complaint. By executing this Consent
7 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that
8 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
9 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
10 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
11 law, or violation of law. Except as provided in this Consent Judgment, nothing in this Consent
12 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
13 have in this or any other or future legal proceedings.

14 **2. COMPLIANCE - REFORMULATION**

15 **2.1 Level.** Within ninety days of entry of this Consent Judgment (the
16 "Compliance Date"), Defendant shall not thereafter manufacture, distribute, ship, or sell or cause to
17 be manufactured, distributed or sold, any Product that is comprised of any interior food lining
18 material that contains total Lead in concentrations that exceed 200 parts per million ("ppm") or of
19 which the exterior of the Product contains total Lead in concentrations that exceed 600 ppm
20 (collectively the "PPM Levels").

21 **2.2 Phase Out of PVC Interior Lining.** Within six (6) months from the
22 Compliance Date, Defendant will begin to phase out the use of PVC interior food lining in the
23 Products to be replaced by a non-PVC material. Defendant will complete its phase out of Products
24 containing PVC lining within twenty-four (24) months of the Compliance Date ("Phase Out").

25 **2.3 Specifications.** Defendant shall issue specifications to its suppliers requiring
26 that the interior food lining of the Products and that PVC used for the exterior surface and any
27 exterior surface-coating of the Products do not contain materials which contain Lead concentrations
28 exceeding the PPM Levels. Defendant shall use reasonable commercial efforts to obtain written

1 confirmation from its suppliers of the Products stating that the Products will be manufactured in
2 accordance with the Product specifications.

3 **2.4 Testing.** In order to ensure compliance with the requirements of Section
4 2.1, Defendant shall conduct (or cause to be conducted) testing to confirm Products sold in
5 California made with any PVC or Lead materials comply with the PPM Levels. Defendant shall
6 provide that the testing pursuant to this Section 2.4 shall be performed by an independent laboratory
7 in accordance with EPA Method 3050B for any PVC interior lining and either EPA Method 3050B
8 or ASTM F-963 (scrape test for Lead) for the exterior of the Product, or such other equivalent
9 testing as may be approved by the independent laboratory or otherwise required by Defendant's
10 customers (so that Defendant does not have to undertake duplicate testing) (the "Test Protocol").
11 At the reasonable request of CEH, the results of the testing performed pursuant to Sections 2.4.1 or
12 2.4.1 shall be made available to CEH.

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

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

24 **2.4.3 Products that Exceed Stipulated Levels Pursuant to Defendant's**
25 **Testing.** If the results of the testing required pursuant to Section 2.4.1 or 2.4.2 show levels of Lead
26 exceeding the PPM Levels, Defendant shall: (1) refuse to accept for sale in California all of the
27 Products that were purchased from that supplier under the particular purchase order for the same
28 Products (unless further testing shows compliance with the PPM Levels); (2) send a notice to the

1 supplier explaining that such Products for sale in California do not comply with the suppliers'
2 certification; and (3) apply the testing frequency set forth in 2.4.1 and 2.4.2 as though the next
3 shipment from the supplier were the first one following the Compliance Date.

4 **2.5 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
5 the Products. Any such testing will be conducted by CEH at an independent laboratory, in
6 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
7 excess of the PPM Levels in two or more Products, CEH shall inform Defendant of the test results,
8 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,
9 within 30 days following such notice, provide CEH, at the address listed in Section 12, with the
10 specification and testing information demonstrating its compliance with Sections 2.3 and 2.4 of this
11 Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it
12 complied with Sections 2.3 and/or 2.4, Defendant shall be liable for stipulated payments as set forth
13 in Section 2.5.1 in lieu of penalties for Products for which CEH produces tests demonstrating Lead
14 exceeding the PPM Levels. In addition, Defendant shall then apply the testing frequency set forth in
15 2.4 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 3.1.

17 **2.5.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in
18 lieu of penalties are warranted under section 2.5, the stipulated payment amount shall be as follows
19 for each unit of Product for which CEH produces a test result with Lead levels exceeding the PPM
20 Levels:

21	First Occurrence:	\$ 1,250
22	Second Occurrence:	\$ 1,500
23	Third Occurrence:	\$ 1,750
24	Thereafter:	\$ 2,500

25 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,
26 regardless of the number of units of Defendant's Products tested by CEH with exceedances of the
27 PPM Levels set forth in this Consent Judgment, shall be \$5,000.

28 **2.5.2 Products in the stream of commerce.** Defendant's Products that have been

1 manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the
2 Compliance Date shall be released from any claims that were brought or that could have been
3 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of
4 Section 7.1, below. As a result, the stipulated payments in section 2.5.1 above do not apply to these
5 Products.

6 **3. SETTLEMENT PAYMENTS**

7 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH five
8 thousand dollars (\$5,000) in lieu of any penalty pursuant to Health and Safety Code §25249.7(b).
9 CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals.
10 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in section
11 2.4. The Parties acknowledge that the payment in lieu of penalty provided for in this section has
12 been greatly reduced due to Defendant's prompt agreement to take the actions set forth in this
13 Consent Judgment. The payment required under this section shall be made payable to CEH.

14 **3.2 Attorneys' Fees and Costs.** Ten thousand dollars (\$10,000) shall be paid
15 to CEH to reimburse CEH and its attorneys for their reasonable investigation fees and costs,
16 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
17 Defendant' attention, litigating and negotiating a settlement in the public interest. The payment
18 required under this section shall be made payable to Lexington Law Group, LLP.

19 **3.3 Timing of payments.** The payments required under Sections 3.1 and 3.2
20 shall be made payable within 10 days of entry of judgment. All of the payments made pursuant to
21 this Section 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in section
22 12.1.

23 **4. MODIFICATION OF CONSENT JUDGMENT**

24 **4.1** This Consent Judgment may be modified by written agreement of CEH and
25 Defendant, or upon motion of CEH or Defendant as provided by law.

26 **4.2** CEH intends to enter into agreements (including Consent Judgments) with
27 other entities that manufacture, distribute and/or sell products similar to the Products. Should
28 Defendant determine that the provisions of any such agreement (or Consent Judgments entered into

1 by other parties involving the same or similar Products) with a similarly situated manufacturer or
2 distributor of products are less stringent, Defendant shall, after 30 days prior written notice to CEH,
3 be entitled to assert as compliance with this Consent Judgment its compliance with such less
4 stringent terms. In the event either Party has a dispute regarding such terms, either may move the
5 Court to request a modification of this Consent Judgment to conform with the terms of the later
6 entered Consent Judgment.

7 **5. ENFORCEMENT OF CONSENT JUDGMENT**

8 **5.1** Either Party may, by motion or application for an order to show cause,
9 enforce the terms and conditions contained in this Consent Judgment.

10 **6. APPLICATION OF CONSENT JUDGMENT**

11 **6.1** This Consent Judgment shall apply to and be binding upon the Parties hereto,
12 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

13 **7. CLAIMS COVERED**

14 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
15 and Defendant of any violation of Proposition 65 that was or could have been asserted in the
16 Complaint and 60-day Notice against Defendant (including any claims that could be asserted in
17 connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries,
18 affiliates, directors, officers, employees, agents, attorneys, distributors, or customers collectively,
19 "Defendant Releasees") based on the alleged violation or failure to warn about alleged Proposition
20 65 exposures to Lead with respect to any Products manufactured, distributed or sold by Defendant
21 ("Covered Claims") on or prior to the Compliance Date. Compliance with the terms of this Consent
22 Judgment constitutes compliance with Proposition 65 for purposes of Lead exposures from the
23 Products.

24 **7.2** Further, CEH hereby releases all Defendant Releasees and the retailers,
25 distributors, resellers and licensors of Defendant's products from any claims related to the Notice,
26 the Complaint and this Judgment and CEH agrees to dismiss any such claims that it has asserted or
27 could assert against any retailers, distributors or licensors of Defendant's Products. If CEH has filed
28 a complaint against a retailer, distributor or licensor of Defendant's Products, then CEH shall,

1 within 10 days of entry of this Consent Judgment file a dismissal, with prejudice, as to those claims
2 relating to Defendant's Products. CEH shall provide Defendant with a conformed copy of the
3 dismissal. As to each of Defendant's retailers, distributors or licensors which have not been served
4 with a 60-day notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said
5 retailer, distributor, or licensor which includes within its scope, whether directly or indirectly, any
6 of Defendant's products. For purposes of the release provided in this Section, the term "retailer,
7 distributor or licensor" shall include their respective related entities, predecessors, successors,
8 assigns, parents, subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders,
9 attorneys, representatives, agents and employees, past, present and future.

10 **7.3 Waiver of Cal. Civ. Code § 1542.** It is CEH's intention in executing this
11 Agreement and receiving the consideration called for herein, that this Agreement shall be and is
12 effective as a full and final accord, satisfaction and release of CEH's claims and defenses against
13 Defendant, including without limitation, those relating to or arising out of the Lawsuit, which have
14 or could have been asserted in the Lawsuit or any other forum. In furtherance of this intention,
15 CEH hereby acknowledge that it is familiar with §1542 of the California Civil Code, and,
16 consequently, in addition to the foregoing provisions of this Section 7, CEH hereby expressly
17 waives and releases any and all provisions, rights and benefits conferred by §1542 of the California
18 Civil Code, which reads: Section 1542. Certain Claims Not Affected by General Release. A
19 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
20 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
21 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

23 **8. SEVERABILITY**

24 **8.1** In the event that any of the provisions of this Consent Judgment are held by a
25 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

26 **9. SPECIFIC PERFORMANCE**

27 **9.1** The Parties expressly recognize that Defendant's obligations under this
28 Consent Judgment are unique. In the event that any Defendant is found to be in breach of this

1 Consent Judgment for failure to comply with the provisions of Section 2 hereof, the Parties agree
2 that it would be extremely impracticable to measure the resulting damages and that such breach
3 would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or
4 remedies, may sue in equity for specific performance, and Defendant expressly waive the defense
5 that a remedy in damages will be adequate.

6 **10. GOVERNING LAW**

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

9 **11. RETENTION OF JURISDICTION**

10 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
11 the terms this Consent Judgment while it is in effect.

12 **11.2** This Consent Judgment will automatically terminate and be of no further
13 force, validity or affect as of August 1, 2011, provided that the provisions of Sections 7.2 and 7.3
14 shall remain in full force and effect.

15 **12. PROVISION OF NOTICE**

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

18 For CEH:

19 Mark N. Todzo
20 Lexington Law Group, LLP
21 1627 Irving Street
San Francisco, CA 94122

22 For Defendant:

23 Mark R. Kaster
24 Dorsey & Whitney, LLP
50 South Sixth Street, Suite 1500
25 Minneapolis, MN 55402-1498

26 **13. COURT APPROVAL**

27 **13.1** CEH will comply with the settlement notice provisions of Health and Safety
28 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

1 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
2 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive
3 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
4 effective and has no force or effect until all issues on appeal are resolved.

5 **14. EXECUTION AND COUNTERPARTS**

6 **14.1** The stipulations to this Consent Judgment may be executed in counterparts
7 and by means of facsimile, which taken together shall be deemed to constitute one document.

8 **15. AUTHORIZATION**

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

14 **AGREED TO:**

15 CENTER FOR ENVIRONMENTAL HEALTH

16 
17 _____
18 Michael Green, Executive Director
19 Center for Environmental Health

Dated: 5/25/07

20
21 GLOBAL DESIGN CONCEPTS, INC.

22
23 _____ Dated: _____
24 Printed Name

1 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
2 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive
3 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
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12 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
13 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

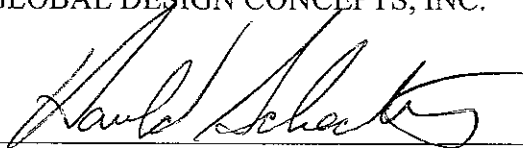
14 **AGREED TO:**

15 CENTER FOR ENVIRONMENTAL HEALTH

16
17 _____
18 Michael Green, Executive Director
19 Center for Environmental Health

Dated: _____

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21 GLOBAL DESIGN CONCEPTS, INC.

22
23 
24 _____
25 Printed Name

HAROLD SCHECHTER

Dated: May 17, 2007

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Global Design Concepts, Inc. the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: 8-13-07

RS **RICHARD A. KRAMER** RS
Judge, Superior Court of the State of California