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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

AUG 13 2007

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, v. ROSS STORES, INC., et al; and DEFENDANT DOES 1 through 200, inclusive, Defendants. And consolidated actions.	Lead Case No. CGC-05-444522 **~~[PROPOSED]~~ CONSENT JUDGMENT RE: HADDAD ACCESSORIES, LLC**

1. INTRODUCTION

1.1 On December 22, 2006, plaintiff the Center for Environmental Health ("CEH"), a non-profit corporation acting in the public interest, filed an amendment to its complaint adding Haddad Accessories, LLC ("Defendant") as a defendant to the San Francisco County Superior Court case entitled *Center for Environmental Health v. Ross Stores, Inc. et al.*, San Francisco County Superior Court Case Number CGC-06-444522 (the "CEH Action"), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq*. ("Proposition 65").

1.2 Defendant is a corporation that employs 10 or more persons and manufactured, distributed and/or sold soft food and beverage containers such as lunchboxes and coolers (the "Products") in the State of California. The term "Products" encompasses only products designated for sale or distribution within the United States.

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

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

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

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

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

2. COMPLIANCE - REFORMULATION

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

2.2 Certification of level from suppliers. Defendant shall issue specifications to its suppliers requiring that the interior lining of the Products and exterior surface-coating of the Products do not contain materials which contain Lead concentrations exceeding 200 ppm and 600 ppm, respectively, and that the exterior of the Products do not contain PVC material with Lead concentrations exceeding 200 ppm. Defendant shall obtain written certification from its suppliers of the Products certifying that the interior lining does not contain Lead concentrations exceeding 200 ppm, that the exterior surface-coating does not contain Lead exceeding 600 ppm, and that the exterior of the Product does not contain PVC material with Lead concentrations exceeding 200 ppm.

2.3 Testing. In order to ensure compliance with the requirements of Section 2.1, Defendant shall conduct (or cause to be conducted) testing to confirm that the interior lining of the Products contains less than 200 ppm Lead, that the exterior surface-coating of the Products contains less than 600 ppm Lead, and that the exterior of the Products do not contain PVC material with Lead concentrations exceeding 200 ppm. All testing pursuant to this Section shall be performed by an independent laboratory in accordance with EPA Method 3050B for the interior lining and for any PVC material used in the exterior of the Product, and either EPA Method 3050B or ASTM F-963 for the exterior surface coating (the "Test Protocol"). At the request of CEH, the results of the testing performed pursuant to this Section shall be made available to CEH.

2.3.1 Testing Frequency. For each of the first two orders of Products purchased from Defendant's suppliers after the Compliance Date, Defendant shall randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total Products purchased from each supplier of the Products intended for sale in California. Following the first two orders, Defendant shall perform testing of the Products on randomly selected units in accordance with Defendant's usual testing practices. Defendant's usual testing practices include testing as required by its various retailers. At a minimum, during each calendar year, Defendant shall randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total Products purchased from each supplier of the Products intended for sale in California.

2.3.2 Products that Exceed Stipulated Levels Pursuant to Defendant's Testing. If the results of the testing required pursuant to Section 2.3 show levels of lead exceeding 200 ppm for the interior lining of a Product, 600 ppm for the exterior surface-coating of a Product, or 200 ppm for PVC material used for the exterior of a Product, Defendant shall: (1) refuse to accept all of the Products that were purchased under the particular purchase order; (2) send a notice to the supplier explaining that such Products do not comply with the suppliers' certification; and (3) apply the testing frequency set forth in 2.3.1 as though the next shipment from the supplier were the first one following the Compliance Date.

2.4 Confirmatory Testing by CEH. CEH intends to conduct periodic testing of the Products. Any such testing will be conducted by CEH at an independent laboratory, in accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in excess of 200 ppm for the interior lining, 600 ppm for the exterior surface-coating, or 200 ppm for exterior PVC material of two or more Products, CEH shall inform Defendant of the test results, including information sufficient to permit Defendant to identify the Product(s). Defendant shall, within 30 days following such notice, provide CEH, at the address listed in Section 12, with the certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it complied with Sections 2.2 and/or 2.3, Defendant shall be liable for stipulated payments in lieu of penalties for Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm for the interior lining, 600 ppm for exterior surface-coating, or 200 ppm for exterior PVC material, as set forth below. In addition, Defendant shall then apply the testing frequency set forth in 2.3 as though the next shipment from the supplier were the first one following the Compliance Date. The payments shall be made to CEH and used for the purposes described in Section 3.1.

2.4.1 Stipulated Payments In Lieu of Penalties. If stipulated payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as follows for each unit of Product for which CEH produces a test result with Lead levels exceeding 200 ppm for the lining or 600 ppm for exterior surfaces:

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

Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year, regardless of the number of units of Product tested by CEH with exceedances of the Lead levels set forth in this Consent Judgment, shall be $5,000.

2.4.2 Products in the stream of commerce. Defendant's

Products that have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the Compliance Date shall be released from any claims that were brought or that could have been brought by CEH in its Complaint, as though they were Covered Claims within the meaning of Section 7.1, below. As a result, the stipulated payments in section 2.4.1 above do not apply to these Products.

3. SETTLEMENT PAYMENTS

3.1 Monetary Payment in Lieu of Penalty. Defendant shall pay to CEH eight thousand five hundred dollars ($8,500) in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4. The parties acknowledge that the payment in lieu of penalty provided for in this section has been greatly reduced due to Defendant's prompt agreement to eliminate PVC from the Products. The payment required under this section shall be made payable to CEH.

3.2 Attorneys' Fees and Costs. Sixteen thousand five hundred dollars ($16,500) shall be paid to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Defendant' attention, litigating and negotiating a settlement in the public interest. The payment required under this section shall be made payable to Lexington Law Group, LLP.

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

4. MODIFICATION OF CONSENT JUDGMENT

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

4.2 CEH intends to enter into agreements with other entities that

manufacture, distribute and/or sell Products. Should Defendant determine that the provisions of any such Consent Judgment with a similarly situated manufacturer or distributor of products are less stringent, Defendant may request a modification of this Consent Judgment to conform with the terms of the later entered Consent Judgment. Upon 30 days prior written notice of Defendant's request for a modification, CEH shall inform Defendant whether it will agree to such modification. If CEH does not agree, Defendant may move the Court for a modification pursuant to this section.

5. ENFORCEMENT OF CONSENT JUDGMENT

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

6. APPLICATION OF CONSENT JUDGMENT

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

7. CLAIMS COVERED

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

7.2 Further, CEH hereby releases all retailers, distributors, and licensors of Defendant's products from any claims related to the Notice, the Complaint and this Judgment and CEH agrees to dismiss any such claims that it has asserted or could assert against any

retailers, distributors or licensors of Defendant's Products. If CEH has filed a complaint against a retailer, distributor or licensor of Defendant's Products, then CEH shall, within 10 days of entry of this Consent Judgment file a dismissal, with prejudice, as to those claims relating to Defendant's Products. CEH shall provide Defendant with a conformed copy of the dismissal. As to each of Defendant's retailers, distributors or licensors which have not been served with a 60-day notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said retailer, distributor, or licensor which includes within its scope, whether directly or indirectly, any of Defendant's products. For purposes of the release provided in this Section, the term "retailer, distributor or licensor" 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.

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. SPECIFIC PERFORMANCE

9.1 The parties expressly recognize that Defendant's obligations under this Consent Judgment are unique. In the event that any Defendant is found to be in breach of this Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree that it would be extremely impracticable to measure the resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Defendant expressly waive the defense that a remedy in damages will be adequate.

10. GOVERNING LAW

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

11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement and

enforce the terms this Consent Judgment.

11.2. This Consent Judgment shall automatically terminate and be of no further force, validity or effect as of August 1, 2011.

12. PROVISION OF NOTICE

12.1 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:

Robert Schachter, Esq.
Robinson Brog Leinwand Greene Genovese & Gluck, P.C.
1345 Avenue of the Americas
New York, New York 10105

13. COURT APPROVAL

13.1 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.

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

14. EXECUTION AND COUNTERPARTS

14.1 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.

15. AUTHORIZATION

15.1 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

_____ Dated: 5/23/07

~~Michael Green, Executive Director~~
Center for Environmental Health
CHARLIE PIZARRO, ACTING EXEC. DIR.

HADDADACCESSORIES, LLC

_____ Dated: _____

_____
[Name]

_____
[Title]

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

_____ Dated: _____

Michael Green, Executive Director
Center for Environmental Health

HADDADACCESSORIES, LLC

_____ Dated: 5/17/07

D. Steinberg
[Name]

CD - President
[Title]

ORDER AND JUDGMENT

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

Dated: 8-13-07

/s/ RICHARD A. KRAMER

Judge, Superior Court of the State of California