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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
Plaintiff,)
v.)
DANARA INTERNATIONAL, LTD; CROWN)
CRAFTS, INC; HAMCO, INC, *et al.*)
Defendants.)

Case No. CGC-07-462991

~~[PROPOSED]~~ CONSENT JUDGMENT
RE: CROWN CRAFTS, INC. AND
HAMCO, INC.

**ENDORSED
FILED**
San Francisco County Superior Court

FEB 26 2008

GORDON PARK-LI, Clerk
BY: GINA GONZALES
Deputy Clerk

1 **1. INTRODUCTION**

2 **1.1** On March 2, 2007, plaintiff Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, served Crown Crafts, Inc.
4 (“Crown Crafts”), Hamco, Inc. (“Hamco”), and the appropriate public enforcement agencies
5 with the requisite 60-day Notice alleging that Crown Crafts and Hamco (together, “Defendants”)
6 were each in violation of Proposition 65.

7 **1.2** On May 2, 2007, CEH filed a complaint in the above-captioned action, for
8 civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code
9 §25249.5 *et seq.* (“Proposition 65”) naming defendants other than Crown Crafts and Hamco.

10 **1.3** On May 15, 2007, CEH filed its First Amended Complaint in the above-
11 captioned action, naming Crown Crafts and Hamco as defendants.

12 **1.4** Defendants are each a corporation that employs 10 or more persons and
13 manufactured, distributed and/or sold baby bibs made with vinyl (the “Products”) in the State of
14 California. The term “Products” encompasses only products designated for sale or distribution
15 within the United States.

16 **1.5** CEH’s Notice and First Amended Complaint in this action allege that
17 Defendants expose people who use or otherwise handle the Products to lead and/or lead
18 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
19 California to cause cancer, birth defects and other reproductive harm, without first providing
20 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
21 toxicity of Lead. The Notice and Complaint allege that Defendants’ conduct violates Health &
22 Safety Code §25249.6, the warning provision of Proposition 65. Defendants dispute such
23 allegations and assert that all of their products are safe and comply with all applicable laws.

24 **1.6** For purposes of this Consent Judgment only, the parties stipulate that this
25 Court has jurisdiction over the subject matter of the violations alleged in CEH’s First Amended
26 Complaint and personal jurisdiction over each of the Defendants as to the acts alleged in CEH’s
27 Complaint, that venue is proper in the County of San Francisco, and that this Court has
28

1 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
2 or could have been raised in the Complaint based on the facts alleged therein.

3 **1.7** CEH, Crown Crafts, and Hamco (together, the “Parties”) enter into this
4 Consent Judgment pursuant to a settlement of certain disputed claims between the Parties as
5 alleged in the First Amended Complaint. By executing this Consent Judgment, the Parties do not
6 admit any facts or conclusions of law. It is the Parties’ intent that nothing in this Consent
7 Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue
8 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
9 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation
10 of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
11 argument or defense the Parties may have in this or any other or future legal proceedings.

12 **2. COMPLIANCE - REFORMULATION AND RECALL**

13 **2.1** **Level.** After thirty days (30) following entry of this Consent Judgment
14 (the “Compliance Date”), Defendants shall not manufacture, distribute, ship, or sell or cause to
15 be manufactured, distributed or sold, any Product that is comprised of any material that contains
16 Lead in concentrations that exceed 200 parts per million (“ppm”).

17 **2.2** **Certification of level from suppliers.** Defendants shall issue
18 specifications to their suppliers requiring that any Product supplied to Defendants shall not
19 contain materials that contain Lead concentrations exceeding 200 ppm. Defendants shall obtain
20 written certification from their suppliers of the Products certifying that the Products supplied to
21 Defendants do not contain materials that contain Lead concentrations exceeding 200 ppm.

22 **2.3** **Testing.** In order to ensure compliance with the requirements of Section
23 2.1, Defendants shall conduct (or cause to be conducted) testing to confirm that Products it
24 manufactures, distributes, ships, or sells or causes to be manufactured, distributed or sold, is not
25 comprised of any material that contains Lead in concentrations that exceed 200 parts per million.
26 All testing pursuant to this Section shall be performed by an independent laboratory in
27 accordance with EPA Method ~~3050B~~ ³⁰⁵¹ (the “Test Protocol”). The results of the testing performed
28 pursuant to this Section shall be made available to CEH upon request.

1 **2.3.1 Testing Frequency.** For each of the first two orders of Products
2 purchased from each of Defendants' suppliers after the Compliance Date, Defendants shall
3 randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case
4 more than four, of the total Products purchased from each supplier of the Products intended for
5 sale in California. Following the first two orders, during each calendar year, Defendant shall at a
6 minimum randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in
7 no case more than four, of the total Products purchased from each supplier of the Products
8 intended for sale in California.

9 **2.3.2 Products that Exceed Stipulated Levels Pursuant to**
10 **Defendants' Testing.** If the results of the testing required pursuant to Section 2.3 show levels of
11 lead exceeding 200 ppm, Defendants shall: (1) refuse to accept all of the Products that were
12 purchased under the particular purchase order; (2) send a notice to the supplier explaining that
13 such Products do not comply with the suppliers' certification; and (3) apply the testing frequency
14 set forth in 2.3.1 as though the next shipment from the supplier were the first one following the
15 Compliance Date.

16 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing
17 of the Products. Any such testing will be conducted by CEH at an independent laboratory, in
18 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
19 excess of 200 ppm in violation of this section, CEH shall inform Defendants of the test results,
20 including information sufficient to permit Defendants to identify the Product(s). Defendants
21 shall, within 30 days following such notice, provide CEH, at the address listed in Section 12,
22 with the certification and testing information demonstrating its compliance with Sections 2.2 and
23 2.3 of this Consent Judgment. If Defendants fail to provide CEH with information
24 demonstrating that it complied with Sections 2.2 and/or 2.3, Defendants shall be liable for
25 stipulated payments in lieu of penalties for Products for which CEH produces tests
26 demonstrating Lead levels exceeding 200 ppm, as set forth below. In addition, Defendants shall
27 then apply the testing frequency set forth in 2.3 as though the next shipment from the supplier
28 were the first one following the Compliance Date. The payments shall be made to CEH and

1 used for the purposes described in Section 3.1.

2 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
3 payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount
4 shall be as follows for each unit of Product for which CEH produces a test result with Lead
5 levels exceeding 200 ppm:

6	First Occurrence:	\$1,250
7	Second Occurrence:	\$1,500
8	Third Occurrence:	\$1,750
9	Thereafter:	\$2,500

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

13 **2.5 Recall.** Within sixty days following the Compliance Date, Defendants shall recall
14 the Products identified below from their distribution facilities and retail outlets and destroy such
15 Products or return such Products to the supplier of the Product for destruction. Within 120 days
16 of the Compliance date, Defendants shall each provide CEH with documentation regarding the
17 recall including documentation the number of bibs recalled, destroyed, or returned to the supplier
18 for destruction. The Covered Products subject to recall under this Section are:

19	<u>Product</u>	<u>SKU or Style No.</u>
20	Baby Connection, Embroidered Train and Checkered Cotton Bottom	1468151077 (SKU)
21	Baby Connection, Hot Pink with Strawberries and Cupcakes	1468152705 (SKU)
22	Winnie the Pooh Bib	3512091 (Style No.)
23	Koala baby Sports Bib	3512005 (Style No.)
24	Especially for Baby Sports Bib	1512337 (Style No.)
25		

26 **3. SETTLEMENT PAYMENTS**

27 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
28 \$16,000 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use

1 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
2 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.
3 The payment required under this section shall be made payable to Center for Environmental
4 Health.

5 **3.2 Attorneys' Fees and Costs.** Defendants shall pay \$31,500 to reimburse
6 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
7 other costs incurred as a result of investigating, bringing this matter to Defendants' attention,
8 litigating and negotiating a settlement in the public interest. The payment required under this
9 section shall be made payable to Lexington Law Group, LLP.

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

14 **4. MODIFICATION OF CONSENT JUDGMENT**

15 **4.1** This Consent Judgment may be modified by written agreement of
16 the Parties, or upon motion of CEH or either of the Defendants as provided by law.

17 **4.2** Should any court enter a final judgment in a case brought by CEH or the
18 People of the State of California involving baby bibs that sets forth standards defining when
19 Proposition 65 warnings will or will not be required ("Alternative Standards"), Defendants shall
20 be entitled to seek a modification of this Consent Judgment on forty five (45) days notice to CEH
21 so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth in
22 section 2.1 of this Consent Judgment. CEH shall not unreasonably contest any proposed
23 application to effectuate such a modification.

24 **5. ENFORCEMENT OF CONSENT JUDGMENT**

25 **5.1** Either party may, by motion or application for an order to show cause,
26 enforce the terms and conditions contained in this Consent Judgment.
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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 Defendants of any violation of Proposition 65 that was or could have been asserted in the Notice of Complaint against Defendants (including any claims that could be asserted in connection with any of the Products covered by this Consent Judgment) or their parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, licensors, 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 Defendants ("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.

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 Defendants' obligations under this Consent Judgment are unique. In the event that any of the Defendants are 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 Defendants expressly waive the defense that a remedy in damages will be adequate.

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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.

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 Defendants:

Frederick Locker, Esq.
Locker Greenberg & Brainin PC
420 Fifth Avenue
New York, NY 10018

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

1 document.

2 **15. AUTHORIZATION**

3 **15.1** Each signatory to this Consent Judgment certifies that he or she is
4 fully authorized by the party he or she represents to stipulate to this Consent Judgment and to
5 enter into and execute the Consent Judgment on behalf of the party represented and legally bind
6 that party. The undersigned have read, understand and agree to all of the terms and conditions of
7 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
8 and costs.

9 **AGREED TO:**

10 CENTER FOR ENVIRONMENTAL HEALTH

11 
12 _____
13 Michael Green, Executive Director
14 Center for Environmental Health

Dated: 1/11/08

15 CROWN CRAFTS, INC.

16
17 _____ Dated: _____

18
19 [Name]

20 [Title]

21
22 HAMCO, INC.

23
24
25 _____ Dated: _____

26
27 [Name]

28 [Title]

1 document.

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5 enter into and execute the Consent Judgment on behalf of the party represented and legally bind
6 that party. The undersigned have read, understand and agree to all of the terms and conditions of
7 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
8 and costs.

9 **AGREED TO:**

10 CENTER FOR ENVIRONMENTAL HEALTH

11
12 _____ Dated: _____
13 Michael Green, Executive Director
14 Center for Environmental Health

15 CROWN CRAFTS, INC.

16 Olivia Elliott Dated: 12/20/07
17 _____

18 Olivia Elliott
19 [Name]
20 Secretary - Treasurer
21 [Title]

22 HAMCO, INC.

23
24 Olivia Elliott Dated: 12/20/07
25 _____

26 Olivia Elliott
27 [Name]
28 Secretary - Treasurer
[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH, Crown Crafts, Inc. and Hamco, Inc., the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: **FEB 26 2008**

PETER J. BUSCH

Judge, Superior Court of the State of California
PETER J. BUSCH