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2 Eric S. Somers, State Bar No. 139050
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5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

APR 29 2009

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)
14 Plaintiff,)
15 v.)
16 SASSAFRAS ENTERPRISES, INC.; and)
17 Defendant DOES 1 through 200, inclusive,)
18 Defendants.)
19 _____)

Case No. CGC-08-475982

~~PROPOSED~~ CONSENT JUDGMENT
AS TO SASSAFRAS ENTERPRISES,
INC.

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1 **1. INTRODUCTION**

2 **1.1** On June 4, 2008, plaintiff Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint in San Francisco County
4 Superior Court, entitled *Center for Environmental Health v. Sassafras Enterprises, Inc.*, San
5 Francisco County Superior Court Case Number CGC-08-475982 (the “CEH Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code
7 §25249.5, *et seq.* (“Proposition 65”).

8 **1.2** Defendant Sassafras Enterprises, Inc. (“Defendant”) is a corporation that
9 employed 10 or more persons during the relevant statute of limitations period and manufactured,
10 distributed and/or sold soft vinyl bags, including but not limited to lunch boxes, lunch bags,
11 coolers, and backpacks (the “Products”) in the State of California.

12 **1.3** On or about October 10, 2007, CEH served Defendant and public
13 enforcement agencies with the requisite 60-day notice alleging that Defendant was in violation
14 of Proposition 65 (“Notice”). CEH’s Notice and the Complaint in this Action allege that
15 Defendant exposes people 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 Proposition
20 65, including Cal. Health & Safety Code §25249.6. Defendant disputes such allegations and
21 asserts that all of its Products are safe and comply with all applicable laws.

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
23 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
24 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
25 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
26 Judgment as a full and final resolution of all claims which were or could have been raised in the
27 Complaint and Notice based on the facts alleged therein.

28 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of

1 certain disputed claims between the Parties as alleged in the Notice and/or Complaint. By
2 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is
3 the Parties' intent that nothing in this Consent Judgment shall be construed as an admission by
4 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
5 with the Consent Judgment constitute or be construed as an admission of any fact, conclusion of
6 law, issue of law, or violation of law.

7 **2. COMPLIANCE - REFORMULATION**

8 **2.1 Level.** Upon entry of this Consent Judgment (the "Compliance Date"),
9 Defendant shall not manufacture, distribute, ship, or sell, or cause to be manufactured,
10 distributed, or sold, any Product with Lead concentrations exceeding 200 parts per million
11 ("ppm") (the "Reformulation Standard"). Effective August 14, 2011, the Reformulation
12 Standard shall be 100 ppm unless the Consumer Product Safety Commission determines that
13 such standard is technologically infeasible.

14 **2.2 Certification of Level From Suppliers.** After the Compliance Date,
15 Defendant shall obtain written certification from its suppliers of the Products certifying that the
16 Products do not contain Lead concentrations exceeding the Reformulation Standard. Such
17 supplier certifications shall be obtained annually for three successive years. If Defendant begins
18 purchasing Products from a new supplier, certifications shall be obtained annually from that
19 supplier for three consecutive years after the Defendant's initial purchase order from that
20 supplier.

21 **2.3 Testing.** In order to ensure compliance with the requirements of Section
22 2.1, after the Compliance Date Defendant shall conduct (or cause to be conducted) testing to
23 confirm that the Products do not contain Lead concentrations exceeding the Reformulation
24 Standard. All testing pursuant to this Section shall be performed by an independent laboratory in
25 accordance with EPA Method 3050B for the fabric of the Products, and either EPA Method
26 3050B or ASTM F963 for the exterior surface coating, or other method approved by the
27 Consumer Product Safety Commission for such products (the "Test Protocol"). The results of all
28 testing performed pursuant to this Section 2 shall be made available to both CEH and Defendant

1 on a confidential basis.

2 **2.3.1 Random Testing.** Testing pursuant to this Section 2 shall be
3 performed on randomly selected units in accordance with Defendant's usual testing practices.
4 Defendant's usual testing practices include testing as required by their various retailers. At a
5 minimum, during each calendar year, Defendant shall randomly select and test the greater of
6 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total Products
7 purchased from each supplier of the Products intended for sale in California.

8 **2.3.2 Products that Exceed Stipulated Levels Pursuant to**
9 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3.1 show levels
10 of lead exceeding the Reformulation Standard, Defendant shall: (1) refuse to accept all of the
11 Products that were purchased under the particular purchase order; (2) send a notice to the
12 supplier explaining that such Products do not comply with the supplier's certification; and (3) for
13 the next two orders of Products intended for sale in California that are purchased from that
14 supplier, randomly select and test the greater of 0.2% (two-tenth of one percent) or four, but in
15 no case more than eight, of the total Products purchased in each purchase order. Following those
16 two orders, Defendant shall apply the testing frequency set forth in Section 2.3.1.

17 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing
18 of the Products. Any such testing will be conducted by CEH at an independent laboratory, in
19 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
20 excess of the Reformulation Standard for two or more Products, CEH shall inform Defendant of
21 the test results, including information sufficient to permit Defendant to identify the Product(s).
22 Within thirty (30) days following such notice, Defendant shall provide CEH, at the address listed
23 in Section 11, with the certification and testing information demonstrating its compliance with
24 Sections 2.2 and 2.3 of this Consent Judgment. In addition, Defendant shall thereafter apply the
25 testing frequency set forth in Section 2.3.2 for the next two orders of Products from the
26 supplier(s) of the Products at issue.

27 **2.5 Products in the Stream of Commerce.** Defendant's Products that have
28 been manufactured, shipped, sold, or that are otherwise in the stream of commerce prior to the

1 CEH \$4,000 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). This
2 payment shall be made by check payable to Center for Environmental Health. CEH shall use
3 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
4 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.

5 **3.1.2 Attorneys' Fees and Costs.** Defendant shall pay \$8,500 to the
6 Lexington Law Group, LLP to reimburse CEH for its reasonable investigation fees and costs,
7 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
8 Defendant's attention, litigating, and negotiating a settlement in the public interest. This
9 payment shall be made by check payable to Lexington Law Group, LLP.

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 **4.1** This Consent Judgment may be modified by written agreement of CEH
12 and Defendant, or upon motion of CEH or Defendant as provided by law.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 **5.1** Any Party may, by motion or application for an order to show cause,
15 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on
16 any motion or application shall be entitled to its reasonable investigation fees and costs,
17 attorneys' fees, and any other costs associated with such motion or application.

18 **6. APPLICATION OF CONSENT JUDGMENT**

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

22 **7. CLAIMS COVERED**

23 **7.1** This Consent Judgment is a full, final and binding resolution between
24 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
25 the Notice or Complaint against Defendant (including any claims that could be asserted in
26 connection with any of the Products covered by this Consent Judgment) or its parents,
27 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or
28 customers (collectively, "Defendant Releasees") based on failure to warn about alleged

1 Proposition 65 exposures, with respect to any Products manufactured, distributed or sold by
2 Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment.
3 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
4 for purposes of Lead exposures from the Products.

5 **8. SEVERABILITY**

6 **8.1** In the event that any of the provisions of this Consent Judgment are held
7 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
8 affected.

9 **9. GOVERNING LAW**

10 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
11 State of California.

12 **10. RETENTION OF JURISDICTION**

13 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
14 the terms this Consent Judgment, while it is in effect.

15 **11. PROVISION OF NOTICE**

16 **11.1** All notices required pursuant to this Consent Judgment and
17 correspondence shall be sent to the following:

18 For CEH:

19 Howard Hirsch
20 Lexington Law Group, LLP
21 1627 Irving Street
22 San Francisco, CA 94122

23 For Defendant:

24 Carol Brophy
25 Sedgwick, Detert, Moran & Arnold LLP
26 One Market Plaza
27 Steuart Tower, 8th Floor
28 San Francisco, CA 94105

12. 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.

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

13. EXECUTION AND COUNTERPARTS

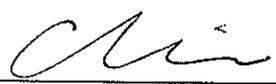
13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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



Charlie Pizarro, Associate Director
Center for Environmental Health

Dated: 2/4/9

SASSAFRAS ENTERPRISES, INC.

Nancy Schwab, Vice President
Sassafras Enterprises, Inc.

Dated: _____

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2 further force or effect. If this Consent Judgment is appealed, with the exception of the
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15 costs.

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17 **AGREED TO:**

18 CENTER FOR ENVIRONMENTAL HEALTH

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20 _____
21 Charlie Pizarro, Associate Director
22 Center for Environmental Health

Dated: _____

23 SASSAFRAS ENTERPRISES, INC.

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27 Nancy Schwab, Vice President
28 Sassafras Enterprises, Inc.

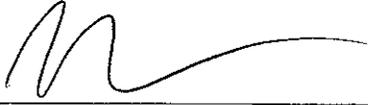
Dated: 1/30/09

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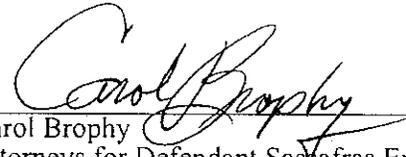
Dated: 1/26/09

LEXINGTON LAW GROUP, LLP

By: 
Howard Hirsch
Attorneys for Plaintiff Center for Environmental Health

Dated: January 26, 2009

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 
Carol Brophy
Attorneys for Defendant Sassafras Enterprises, Inc.

1 APPROVED AS TO FORM:

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3 Dated: _____

LEXINGTON LAW GROUP, LLP

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By: _____

Howard Hirsch
Attorneys for Plaintiff Center for Environmental Health

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8 Dated: *January 26, 2009*

SEDGWICK, DETERT, MORAN & ARNOLD LLP

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By: _____

Carol Brophy
Carol Brophy
Attorneys for Defendant Sassafras Enterprises, Inc.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Sassafras Enterprises, Inc., the settlement is approved and the clerk is hereby directed to enter judgment according to the terms herein.

Dated: APR 29 2009

CHARLOTTE WALTER WOOLARD
Judge, Superior Court of the State of California