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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

APR 28 2009

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

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

16 Plaintiff,

17 v.

18 A.D. SUTTON & SONS, INC.; ACCESSORY
NETWORK GROUP, INC.; E.S. ORIGINALS,
19 INC.; GLOBAL DESIGNS CONCEPTS, INC.;
LEGENT INTERNATIONAL LTD.; and
20 Defendant DOES 1 through 200, inclusive,

21 Defendants.
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Case No. CGC-08-476552

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

1 **1. INTRODUCTION**

2 **1.1** On June 19, 2008, plaintiff the 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. A.D. Sutton & Sons, Inc., et al.*, San
5 Francisco County Superior Court Case Number CGC-08-476552 (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”). The CEH Action names Global Design Concepts, Inc. as a
8 defendant.

9 **1.2** Defendant Global Design Concepts, Inc. (“Defendant”) is a corporation that
10 employs 10 or more persons and manufactured, distributed and/or sold backpacks (the “Products”)
11 in the State of California..

12 **1.3** On or about November 12, 2007, CEH served Defendant and public
13 enforcement agencies with the requisite 60-day notices alleging that Defendant was in violation of
14 Proposition 65 (the “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 compounds
16 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to cause
17 cancer, birth defects and other reproductive harm, without first providing clear and reasonable
18 warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The
19 Notice and Complaint allege that Defendant’s conduct violates Proposition 65, including Cal.
20 Health & Safety Code §25249.6. Defendant disputes such allegations and asserts that all of its
21 Products are safe and comply with all applicable laws, including Consumer Product Safety
22 Commission and Federal Food and Drug Administration standards.

23 **1.4** Upon receipt of CEH’s Notice, Defendant took immediate measures to
24 address the allegations set forth therein and to investigate the substance of CEH’s allegations.

25 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
26 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
27 personal jurisdiction over Settling Defendant as to the acts alleged in CEH’s Complaint, that venue
28 is proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent

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

3 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
4 certain disputed claims between the Parties as alleged in the Notice and/or Complaint. By
5 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. Nothing
6 in this Consent Judgment is or shall be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law or violation of law, nor shall any act or omission related to this
8 Consent Judgment constitute or be construed as an admission of any fact, conclusion of law, issue
9 of law, or violation of law.

10 **2. COMPLIANCE – REFORMULATION**

11 **2.1 Level.** After one hundred eighty (180) days of entry of this Consent
12 Judgment (the “Compliance Date”), Defendant shall not manufacture, distribute, ship, or sell, or
13 cause to be manufactured, distributed, or sold:

14 A) any Product that is comprised of any fabric with Lead concentrations exceeding 200 parts
15 per million (“ppm”) or for which the exterior surface coating contains Lead
16 concentrations exceeding 600 ppm, and

17 B) in addition to A above, for any Children’s Product as defined in the Consumer Products
18 Safety Improvement Act of 2008 (the “Act”) with lead concentrations exceeding any
19 more stringent levels required by the Act, as may from time to time be modified.

20 These standards are individually and collectively referred to herein as the “Reformulation
21 Standard”. The Reformulation Standard shall only apply to materials that are accessible
22 (“Materials”) and not to those materials that are not accessible through reasonably foreseeable use
23 and abuse (“Non-Accessible Materials”). Consequently, the Reformulation Standard excludes Non-
24 Accessible Materials.

25 **2.2 Specifications.** Within 60 days following entry of this Consent Judgment,
26 Defendant shall issue specifications to its suppliers requiring that the Products do not contain Lead
27 concentrations exceeding the Reformulation Standard. Defendant shall use reasonable commercial
28 efforts to obtain written confirmation from its suppliers of the Products stating that the Products will

1 be manufactured in accordance with the Product specifications.

2 **2.3 Testing.** In order to ensure compliance with the requirements of Section 2.1,
3 each Settling Defendant shall conduct (or cause to be conducted) testing to confirm that the
4 Products do not contain Lead concentrations exceeding the Reformulation Standard. All testing
5 pursuant to this Section shall be performed by an independent laboratory in accordance with either
6 EPA Method 3050B for fabric or ASTM F963 for exterior surface coatings, or such other
7 equivalent testing as may be approved by the independent laboratory or otherwise required by
8 Defendant's customers (the "Test Protocol"). The results of all testing performed pursuant to this
9 Section 2 shall be made available to CEH on a confidential basis, upon request.

10 **2.3.1 Random Testing.** Testing pursuant to this Section 2 shall be
11 performed on randomly selected units in accordance with Defendant's usual testing practices.
12 Defendant's usual testing practices include testing as required by their various retailers. At a
13 minimum, during each calendar year, Defendant shall randomly select and test the greater of 0.1%
14 (one-tenth of one percent) or two, but in no case more than four, of the total Products purchased
15 from each supplier of the Products intended for sale in California.

16 **2.3.2 Products that exceed stipulated levels pursuant to Settling**
17 **Defendants' Testing.** If the results of the testing required pursuant to Section 2.3 show levels of
18 lead exceeding the Reformulation Standard, Defendant shall: (1) refuse to accept all of the Products
19 that were purchased under the particular purchase order; (2) send a notice to the supplier explaining
20 that such Products do not comply with the supplier's certification; and (3) for the next two orders of
21 Products intended for sale in California that are purchased from that supplier, randomly select and
22 test the greater of 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total
23 Products purchased in each purchase order. Following those two orders, the Settling Defendant
24 shall apply the testing frequency set forth in Section 2.3.1.

25 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
26 the Products. Any such testing will be conducted by CEH at an independent laboratory, in
27 accordance with the Test Protocol. In the event that CEH's testing in accord with the Test Protocol
28 demonstrates Lead levels in excess of the Reformulation Standard for two or more Products, CEH

1 shall inform Defendant at issue of the test results, including information sufficient to permit
2 Defendant to identify the Product(s). Within thirty (30) days following such notice, Defendant shall
3 provide CEH, at the address listed in Section 12, with the certification and testing information
4 demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If Defendant
5 fails to provide CEH with certification and testing information demonstrating that it complied with
6 Sections 2.2 and/or 2.3, Defendant shall be liable for stipulated payments in lieu of penalties for
7 Products for which CEH produces tests demonstrating Lead levels exceeding the Reformulation
8 Standard, as set forth below. In addition, Defendant shall then apply the testing frequency set forth
9 in Section 2.3.2 for the next two orders of Products from the supplier(s) of the Products at issue.
10 The payments shall be made to CEH and used for the purposes described in Section 4.1.

11 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in
12 lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows:

13	First Occurrence:	\$1,250
14	Second Occurrence:	\$1,500
15	Third Occurrence:	\$1,750
16	Thereafter:	\$2,500

17 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,
18 regardless of the number of units Defendant's Products tested by CEH with exceedances of the
19 Lead levels set forth in this Consent Judgment, shall be \$3,500.

20 **2.4.2 Products in the stream of commerce.** Defendant's Products that
21 have been manufactured, shipped, sold, or that are otherwise in the stream of commerce prior to the
22 Compliance Date shall be released from any claims that were brought or that could have been
23 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of
24 Section 8, below.

25 3. SETTLEMENT PAYMENTS

26 **3.1. Monetary Payment in Lieu of Penalty:** Defendant shall pay to CEH \$9,000
27 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use such funds
28 to continue its work protecting people from exposures to toxic chemicals. As part of this work,

1 CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

2 **3.2 Attorneys' Fees and Costs:** Defendant shall pay \$18,500 to reimburse CEH
3 and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other
4 costs incurred as a result of investigating, bringing this matter to Defendant' attention, litigating and
5 negotiating a settlement in the public interest. The payment required under this section shall be
6 made payable to the Lexington Law Group, LLP.

7 **3.3 Timing of payments.** All payments required under Sections 3.1 and 3.2
8 above, shall be delivered to the Lexington Law Group at the address set forth in section 12 below
9 within ten (10) days after this Consent Judgment is entered by the Court.

10 **4. MODIFICATION OF CONSENT JUDGMENT**

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

13 **4.2** CEH intends to enter into agreements with other entities that manufacture,
14 distribute and/or sell Products. Should Defendant determine that the provisions of any such
15 Consent Judgment with a similarly situated manufacturer or distributor of Products are less
16 stringent, Settling Defendant may request a modification of this Consent Judgment to conform with
17 the terms of the later entered Consent Judgment. Upon 30 days prior written notice of a Settling
18 Defendant's request for a modification, CEH shall inform the Defendant whether it will agree to
19 such modification. If CEH does not agree, the Settling Defendant may move the Court for a
20 modification pursuant to this Section.

21 **4.3** In the event that new legislation relating to lead content of the Products is
22 enacted on either the federal or California state level, either party may seek a modification to
23 conform the requirements of this Consent Judgment to such new requirements, provided that such
24 requirements are either: (a) at least as restrictive as those set forth herein; or (b) completely
25 preemptive of Proposition 65 as adjudged by final order of an appellate court. Should either party
26 reasonably determine that a modification pursuant to this section is warranted, such party shall
27 request a modification from the non-requesting party. Upon 30 days prior written notice of a
28 request for a modification, the non-requesting party shall inform the requesting party whether it will

1 agree to such modification. If the non-requesting party does not agree, the requesting party may
2 move the Court for a modification pursuant to this Section.

3 **5. ENFORCEMENT OF CONSENT JUDGMENT**

4 **5.1** CEH or Defendant may, by motion or application for an order to show cause,
5 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on any
6 motion or application shall be entitled to its reasonable investigation fees and costs, attorneys' fees,
7 and any other costs associated with such motion or application.

8 **6. APPLICATION OF CONSENT JUDGMENT**

9 **6.1** This Consent Judgment shall apply to and be binding upon the Parties hereto.
10 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

11 **7. CLAIMS COVERED**

12 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
13 and Settling Defendant of any violation of Proposition 65 that was or could have been asserted in
14 the Notice or Complaint against Defendant (including any claims that could be asserted in
15 connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries,
16 affiliates, directors, officers, employees, agents, attorneys, manufacturers, licensors distributors,
17 retailers, or customers (collectively, "Defendant Releasees") based on failure to warn about alleged
18 Proposition 65 exposures, with respect to any Products manufactured, distributed or sold by
19 Defendant ("Covered Claims") on or prior to the Compliance Date. Compliance with the terms of
20 this Consent Judgment constitutes compliance with Proposition 65 for purposes of Lead exposures
21 from the Products.

22 **8. SEVERABILITY**

23 **8.1** In the event that any of the provisions of this Consent Judgment are held by a
24 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

25 **9. GOVERNING LAW**

26 **9.1** The terms of this Consent Judgment shall be governed by the laws of the State of
27 California.

1 **10. CONSENT JUDGMENT TERMINATION AND RETENTION OF**
2 **JURISDICTION**

3 **10.1** This Consent Judgment will automatically terminate and be of no further
4 force, validity or affect as of August 1, 2013.

5 **10.2** This Court shall retain jurisdiction of this matter to implement and enforce
6 the terms this Consent Judgment, while it is in effect.

7 **11. PROVISION OF NOTICE**

8 **11.1** All notices required pursuant to this Consent Judgment and correspondence
9 shall be sent to the following:

10 For CEH:

11 Mark N. Todzo
12 Lexington Law Group, LLP
13 1627 Irving Street
14 San Francisco, CA 94122

15 For Defendant:

16 Mark R. Kaster, Esq.
17 Dorsey & Whitney, LLP
18 Suite 1500, 50 South Sixth Street
19 Minneapolis, MN 55402-1498

20 **12. COURT APPROVAL**

21 **12.1** CEH will comply with the settlement notice provisions of Health and Safety
22 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

23 **12.2** If this Consent Judgment is not approved by the Court, it shall be of no
24 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive
25 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
26 effective and has no force or effect until all issues on appeal are resolved.

27 **13. EXECUTION AND COUNTERPARTS**

28 **13.1** The stipulations to this Consent Judgment may be executed in counterparts

1 and by means of facsimile, which taken together shall be deemed to constitute one document.

2 **14. AUTHORIZATION**


3 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
5 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.

6 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
7 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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9

10 **AGREED TO:**

11 CENTER FOR ENVIRONMENTAL HEALTH

12 
13 _____

Dated: 3/5/09

14 ~~Michael Green, Executive Director~~
15 Center for Environmental Health

16 *CHARLIE PRANO, ASSOCIATE*

17
18

19 GLOBAL DESIGN CONCEPTS, INC.

20 _____

Dated: _____

21 _____
22 Printed Name

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10 **AGREED TO:**

11 CENTER FOR ENVIRONMENTAL HEALTH

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

Dated: _____

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17 GLOBAL DESIGN CONCEPTS, INC.

18 
19 _____
20 Dan Sabbah
Printed Name

Dated: March 4, 2009

1 ORDER AND JUDGMENT

2 Based upon the stipulated Consent Judgment between CEH and Global Design
3 Concepts, Inc., the settlement is approved and the clerk is hereby directed to enter the Consent
4 Judgment in accordance with the terms herein.

5
6 Dated: APR 28 2009 CHARLOTTE WALTER WOOLARD
7 Judge, Superior Court of the State of California