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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

FEB 26 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:
A.D. SUTTON & SONS, INC.

1 **1.IN TRODUCTION**

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").

8 **1.2** Defendant A.D. Sutton & Sons, Inc. ("Defendant") is an entity that employs
9 10 or more persons and manufactured, distributed and/or sold (directly or indirectly) personal
10 carrying products, such as, without limitation, bags, backpacks, tote bags, satchels, purses, sacks,
11 wallets, handbags, coin purses, luggage, duffels, messenger bags, totes, plush backpacks, cosmetic
12 bags, toiletry cases, and /or train cases for all ages (the "Products") in the State of California.

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13 **1.3** On or about December 5, 2007 and July 2, 2008, CEH served Defendant and
14 public enforcement agencies with the requisite 60-day notices alleging that Defendant was in
15 violation of Proposition 65 (the "Notices"). CEH's Notices and the Complaint in this Action allege
16 that Defendant exposes people who use or otherwise handle the Products to lead and/or lead
17 compounds (referred to interchangeably herein as "Lead"), chemicals known to the State of
18 California to cause cancer, birth defects and other reproductive harm, without first providing clear
19 and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
20 Lead. The Notices and Complaint allege that Defendant's conduct violates Proposition 65,
21 including Cal. Health & Safety Code §25249.6. Defendant disputes such allegations and asserts
22 that all of its Products are safe and comply with all applicable laws, including Consumer Product
23 Safety Commission and Federal Food and Drug Administration standards.

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

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

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

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

11 **2. COMPLIANCE – REFORMULATION**

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

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

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

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

26 **2.2 Certification of level from suppliers.** As of the Compliance Date,
27 Defendant shall obtain written certification from its suppliers certifying that the Products do not
28 contain Lead concentrations exceeding the Reformulation Standard. Such supplier certifications

1 shall be obtained annually for three successive years. If Defendant begins purchasing Products
2 from a new supplier, certifications shall be obtained annually from that supplier for three
3 consecutive years after the Settling Defendant's initial purchase order from that supplier.

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

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

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

26 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
27 the Products. Any such testing will be conducted by CEH at an independent laboratory, in
28 accordance with the Test Protocol. In the event that CEH's testing in accord with the Test Protocol

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

13 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in
14 lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows:

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

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

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

27 **3. SETTLEMENT PAYMENTS**

28 **3.1. Monetary Payment in Lieu of Penalty:** Defendant shall pay to CEH \$5,000

1 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use such funds
2 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
3 CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

4 **3.2 Attorneys' Fees and Costs:** Defendant shall pay \$10,000 to reimburse CEH
5 and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other
6 costs incurred as a result of investigating, bringing this matter to Defendant' attention, litigating and
7 negotiating a settlement in the public interest. The payment required under this section shall be
8 made payable to the Lexington Law Group, LLP.

9 **3.3 Timing of payments.** All payments required under Sections 3.1 and 3.2
10 above, shall be delivered to the Lexington Law Group at the address set forth in section 12 below
11 within ten (10) days after this Consent Judgment is entered by the Court unless the Consent
12 Judgment is entered over an objection filed with the Court in advance of the hearing on Court
13 approval of the Consent Judgment. Should the Court enter the Consent Judgment over such an
14 objection, the payments required under Sections 3.1 and 3.2 shall be due within 5 days after the
15 judgment becomes final, including any appeal. However, should the parties revise the Consent
16 Judgment prior to its entry by the Court in response to an objection such that the objection is
17 withdrawn prior to entry of the Consent Judgment, the timing of the payments shall be due as if no
18 objection had been filed.

19 **4. MODIFICATION OF CONSENT JUDGMENT**

20 **4.1** This Consent Judgment may be modified by written agreement of CEH and
21 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

22 **4.2** CEH intends to enter into agreements with other entities that manufacture,
23 distribute and/or sell Products. Should Settling Defendant determine that the provisions of any such
24 Consent Judgment with a similarly situated manufacturer or distributor of Products are less
25 stringent, Settling Defendant may request a modification of this Consent Judgment to conform with
26 the terms of the later entered Consent Judgment. Upon 30 days prior written notice of a Settling
27 Defendant's request for a modification, CEH shall inform the Settling Defendant whether it will
28 agree to such modification. If CEH does not agree, the Settling Defendant may move the Court for

1 a modification pursuant to this Section.

2 **4.3** In the event that new legislation relating to lead content of the Products is
3 enacted on either the federal or California state level, either party may seek a modification to
4 conform the requirements of this Consent Judgment to such new requirements, provided that such
5 requirements are either: (a) at least as restrictive as those set forth herein; or (b) completely
6 preemptive of Proposition 65 as adjudged by final order of an appellate court. Should either party
7 reasonably determine that a modification pursuant to this section is warranted, such party shall
8 request a modification from the non-requesting party. Upon 30 days prior written notice of a
9 request for a modification, the non-requesting party shall inform the requesting party whether it will
10 agree to such modification. If the non-requesting party does not agree, the requesting party may
11 move the Court for a modification pursuant to this Section.

12 **5. ENFORCEMENT OF CONSENT JUDGMENT**

13 **5.1** CEH or Defendant may, by motion or application for an order to show cause,
14 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on any
15 motion or application shall be entitled to its reasonable investigation fees and costs, attorneys' fees,
16 and any other costs associated with such motion or application.

17 **6. APPLICATION OF CONSENT JUDGMENT**

18 **6.1** This Consent Judgment shall apply to and be binding upon the Parties hereto,
19 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

20 **7. CLAIMS COVERED**

21 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
22 and Settling Defendant of any violation of Proposition 65 that was or could have been asserted in
23 the Notices or Complaint against Defendant (including any claims that could be asserted in
24 connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries,
25 affiliates, directors, officers, employees, agents, attorneys, manufacturers, licensors distributors,
26 retailers, or customers (collectively, "Defendant Releasees") based on failure to warn about alleged
27 Proposition 65 exposures, with respect to any Products manufactured, distributed or sold by
28 Defendant ("Covered Claims") on or prior to the Compliance Date. Compliance with the terms of

1 this Consent Judgment constitutes compliance with Proposition 65 for purposes of Lead exposures
2 from the Products.

3 **7.2** CEH hereby releases all manufacturers, retailers, distributors, and licensors
4 of Defendant's Products from any claims related to the Notices, the Complaint and this Judgment
5 and CEH agrees to dismiss any such claims that it has asserted or could assert against any
6 manufacturers, retailers, distributors, or licensors of Defendant's Products. As to each of
7 Defendant's manufacturers, retailers, distributors, or licensors which have not been served with a
8 60-day Notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said
9 manufacturers, retailer, distributor, or licensor which includes within its scope, whether directly or
10 indirectly, any of Defendant's Products provided that such Products are in compliance with the
11 terms of this Consent Judgment. For purposes of the release provided in this Section, the term
12 "manufacturer, retailer, distributor, or licensor" shall include their respective related entities,
13 predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, partners, directors,
14 stockholders, shareholders, attorneys, representatives, agents and employees, past, present and
15 future.

16 **8. SEVERABILITY**

17 **8.1** In the event that any of the provisions of this Consent Judgment are held by a
18 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

19 **9. GOVERNING LAW**

20 **9.1** The terms of this Consent Judgment shall be governed by the laws of the State of
21 California.

22 **10. CONSENT JUDGMENT TERMINATION AND RETENTION OF**
23 **JURISDICTION**

24 **10.1** This Consent Judgment will automatically terminate and be of no further
25 force, validity or affect as of August 1, 2013.

26 **10.2** This Court shall retain jurisdiction of this matter to implement and enforce
27 the terms this Consent Judgment, while it is in effect.

28 **11. PROVISION OF NOTICE**

1 **11.1** All notices required pursuant to this Consent Judgment and correspondence
2 shall be sent to the following:

3 For CEH:

4 Mark N. Todzo
5 Lexington Law Group, LLP
6 1627 Irving Street
7 San Francisco, CA 94122

8 For Defendant:

9 Malcolm Weiss, Esq.
10 Hunton & Williams LLP
11 550 South Hope, 20th Floor
12 Los Angeles, CA 90071

13 **12. COURT APPROVAL**

14 **12.1** CEH will comply with the settlement notice provisions of Health and Safety
15 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

16 **12.2** If this Consent Judgment is not approved by the Court, it shall be of no
17 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive
18 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
19 effective and has no force or effect until all issues on appeal are resolved.

20 **13. EXECUTION AND COUNTERPARTS**

21 **13.1** The stipulations to this Consent Judgment may be executed in counterparts
22 and by means of facsimile, which taken together shall be deemed to constitute one document.

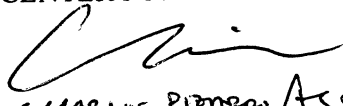
23 **14. AUTHORIZATION**

24 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
26 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
27 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
28 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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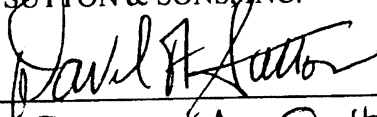
AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH


Michael Green, Executive Director
Center for Environmental Health

Dated: 12/18/08

A.D. SUTTON & SONS, INC.


DAVID A Sutton
Printed Name

Dated: 12/18/08

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and A.D. Sutton & Sons, Inc., the settlement is approved and the clerk is hereby directed to enter the Consent Judgment in accordance with the terms herein.

Dated: FEB 26 2009

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