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JUN 25 2008

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: C. Larson, Deputy

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LEXINGTON LAW GROUP, LLP
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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH,)
Plaintiff,)
v.)
AMERICAN-DE ROSA LAMPARTS, INC., et)
al.,)
Defendants.)

Case No. CV-081722
**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT LIVEX
LIGHTING, INC.**

1 **1. INTRODUCTION**

2 **1.1** On April 9, 2008, plaintiff Center for Environmental Health (“Plaintiff”),
3 acting in the public interest, filed a complaint in Marin County Superior Court, entitled *Center*
4 *for Environmental Health v. Livex Lighting, Inc., et al.*, Marin County Superior Court Case
5 Number CV081722 (the “Action”), for civil penalties and injunctive relief pursuant to the
6 provisions of California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”).

7 **1.2** Livex Lighting, Inc. (identified herein as “Livex”) is a corporation that
8 employs 10 or more persons and that manufactured, distributed and/or sold light fixtures in the
9 State of California. Plaintiff and Livex are referred to collectively herein as the “Parties.”

10 **1.3** For purposes of this Consent Judgment, the term “Covered Product” shall
11 mean any lighting fixture that contains lead solder or other lead-containing materials in a manner
12 such that the lead would be touched during ordinary installation, cleaning, maintenance, or use.
13 For purposes of this definition, a “fixture” is any piece of lighting equipment that has been
14 attached to the inside or outside of a building or otherwise attached to real estate.

15 **1.4** On or about January 8, 2008, Plaintiff served Livex and the appropriate
16 public enforcement agencies with the requisite 60-day notice that Livex was in violation of
17 Proposition 65. Plaintiff’s notice and the Complaint in this Action allege that Livex exposes
18 individuals who use or otherwise handle the Covered Products to lead and/or lead compounds
19 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to
20 cause cancer, birth defects and other reproductive harm, without first providing clear and
21 reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
22 Lead. The notice and Complaint allege that Livex’s conduct violates Health & Safety Code
23 §25249.6, the warning provision of Proposition 65.

24 **1.5** 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 the Complaint and
26 personal jurisdiction over Livex as to the acts alleged in the Complaint, that venue is proper in
27 the County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full
28 and final resolution of all claims which were or could have been raised in the Complaint against

1 Livex based on the facts alleged therein.

2 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
3 certain disputed claims between the Parties as alleged in the Complaint. By executing this
4 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
5 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
6 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
7 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
8 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
9 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
10 any other or future legal proceedings.

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Reformulation Standard.** Within sixty days of entry of this Consent
13 Judgment (the "Compliance Date"), and except as set forth in section 2.5 below, Livex shall not
14 manufacture, distribute, ship, or sell, or cause to be manufactured, distributed, shipped or sold,
15 any Covered Product that contains Lead in concentrations that exceed the Reformulation
16 Standard set forth herein. For purposes of this Consent Judgment only, the Reformulation
17 Standard means that: (a) the solder used on the Covered Products contains no more than 200
18 ppm Lead; and (b) any other component of the Covered Products that is likely to be touched,
19 contacted or handled by a Covered Product user during ordinary installation, cleaning,
20 maintenance, or use of the Covered Products, including but not limited to the glass plates and
21 metal frames of the Covered Products, contain no more than 600 parts per million ("ppm") Lead.

22 **2.2 Certification of level from suppliers.** Livex shall obtain written
23 certification with corresponding test results from its suppliers of the Covered Products certifying
24 that the Covered Products meet the Reformulation Standard. Within 60 days following the
25 Compliance Date, Livex shall not distribute, ship, or sell any Covered Product unless Livex has
26 obtained the certification for such Covered Product as required under this section.

27 **2.3 Plaintiff's Confirmatory Testing.** Plaintiff may, at its discretion,
28 conduct periodic testing of the Covered Products. Any such testing will be conducted pursuant

1 to the Test Protocol attached hereto as Exhibit A at an independent laboratory. In the event that
2 Plaintiff's testing demonstrates Lead levels in excess of the Reformulation Standard for one or
3 more Covered Products, Plaintiff shall inform Livex of the violation(s), including information
4 sufficient to permit Livex to identify the Covered Product(s). Plaintiff and Livex shall then meet
5 and confer in an attempt to informally resolve the alleged violation. Should the parties be unable
6 to informally resolve the alleged violation within 30 days, Plaintiff may thereafter file a motion
7 to enforce this Consent Judgment pursuant to Section 5.

8 **2.4 Stipulated Penalties.** In addition to any other remedies provided by law,
9 Livex shall be liable for stipulated penalties if it violates the Reformulation Standard. The
10 stipulated penalty shall be as follows for each unit of Covered Product for which Plaintiff
11 produces a test result with Lead levels exceeding the Reformulation Standard:

12 First Occurrence: \$250
13 Second Occurrence: \$500
14 Third Occurrence: \$750
15 Thereafter: \$1,000

16 **2.5 Interim Warnings For Existing Inventory.** With respect to any Covered
17 Product that is already in Livex's inventory as of the Compliance Date, Livex shall not
18 distribute, ship, or sell, or cause to be distributed, shipped or sold, any such Covered Product that
19 contains Lead in concentrations that exceed the Reformulation Standard unless such Covered
20 Product bears a label containing the following warning language:

21 **"WARNING! This lighting fixture contains lead, a chemical known to**
22 **cause cancer, birth defects and other reproductive**
23 **harm. Wash hands with soap and water after installing,**
24 **handling, cleaning or otherwise touching this light**
25 **fixture."**

26 The warning statement shall be prominently displayed in at least 14 point font on the front of the
27 outside of the packaging, and shall be displayed in a separate outlined box set apart from any
28 other print and that contains no other language. The warning must be displayed with such

1 conspicuousness, as compared with other words, statements, or designs as to render it likely to
2 be read and understood by an ordinary individual. The warning statement shall not be preceded,
3 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or
4 that introduces, modifies, qualifies, or explains the required text, such as "legal notice required
5 by law." The parties agree that the sample label attached hereto as Exhibit B satisfies this
6 requirement. Livex shall only be entitled to utilize this interim warning option with respect to
7 400 units of Covered Products. Livex shall maintain documentation demonstrating its
8 compliance with this section, which documentation shall be made available to CEH upon
9 request.

10 **3. SETTLEMENT PAYMENTS**

11 **3.1** Within 10 days of the Court's entry of this Consent Judgment, Livex shall
12 pay the sum of \$16,000 as a settlement payment. This total shall be paid in two separate checks
13 delivered to the offices of the Lexington Law Group, LLP at the address set forth in section 12
14 below and made payable and allocated as follows. Any failure by Livex to comply with the
15 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
16 after the delivery date the payment is received. The late fees required under this section shall be
17 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
18 pursuant to section 5 of this Consent Judgment.

19 **3.1.1 Monetary Payment in Lieu of Penalty:** \$5,250 shall be paid to
20 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
21 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
22 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
23 CEH intends to conduct periodic testing of the Products as set forth in section 2.3.

24 **3.1.2 Attorneys' Fees and Costs:** \$10,750 shall be used to reimburse
25 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
26 other costs incurred as a result of investigating, bringing this matter to Livex's attention,
27 litigating and negotiating a settlement in the public interest. This payment shall be made by
28 check payable to Lexington Law Group, LLP.

1 **4. MODIFICATION OF CONSENT JUDGMENT**

2 4.1 This Consent Judgment may be modified by written agreement of Plaintiff
3 and Livex, or upon motion of Plaintiff or Livex as provided by law.

4 **5. ENFORCEMENT OF CONSENT JUDGMENT**

5 5.1 Plaintiff may, by motion or application for an order to show cause before
6 the Superior Court of the County of Marin, enforce the terms and conditions contained in this
7 Consent Judgment. Should Plaintiff prevail on any motion or application under this section,
8 Plaintiff shall be entitled to its reasonable attorneys' fees and costs associated with such motion
9 or application.

10 **6. APPLICATION OF CONSENT JUDGMENT**

11 6.1 This Consent Judgment shall apply to and be binding upon the parties
12 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
13 them.

14 **7. CLAIMS COVERED**

15 7.1 This Consent Judgment is a full, final and binding resolution between
16 Plaintiff and Livex of any violation of Proposition 65 that could have been asserted against
17 Livex in the Complaint based on Livex's failure to warn about exposure to Lead contained in the
18 Covered Products, with respect to any Covered Products manufactured, distributed or sold by
19 Livex on or prior to the date of entry of this Consent Judgment. This release does not limit or
20 effect the obligations of any party created under this Consent Judgment.

21 **8. SEVERABILITY**

22 8.1 In the event that any of the provisions of this Consent Judgment are held
23 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
24 affected.

25 **9. SPECIFIC PERFORMANCE**

26 9.1 The parties expressly recognize that Livex's obligations under this
27 Consent Judgment are unique. In the event that Livex is found to be in breach of this Consent
28 Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree that it

1 would be extremely impracticable to measure the resulting damages and that such breach would
2 cause irreparable damage. Accordingly, Plaintiff, in addition to any other available rights or
3 remedies, may sue in equity for specific performance, and Livex expressly waives the defense
4 that a remedy in damages will be adequate.

5 **10. GOVERNING LAW**

6 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
7 State of California.

8 **11. RETENTION OF JURISDICTION**

9 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
10 the terms this Consent Judgment.

11 **12. PROVISION OF NOTICE**

12 **12.1** All notices required pursuant to this Consent Judgment and
13 correspondence shall be sent to the following:

14 For Plaintiff:

15 Howard Hirsch
16 Lexington Law Group, LLP
1627 Irving Street
17 San Francisco, CA 94122

18 For Livex:

19 Dan Adelberger
20 Livex Lighting, Inc.
1 Cory Road
21 Morristown, NJ 07960

22 **13. COURT APPROVAL**

23 **13.1** If this Consent Judgment is not approved by the Court, it shall be of no
24 further force or effect.

25 **14. EXECUTION AND COUNTERPARTS**

26 **14.1** The stipulations to this Consent Judgment may be executed in
27 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
28 document.

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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



Michael Green, Executive Director
Center for Environmental Health

Dated: 4/11/08

LIVEX LIGHTING, INC.

Dated: _____

Printed Name

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

LIVEX LIGHTING, INC.

Dated: Apr. 19, 2008

Daniel Adelberger

Printed Name

Vice President
Title

1 **Exhibit A**
2 (Test Methodology)

3 The following protocol shall be applied separately to each component of the Covered
4 Product:

- 5 a) Comminute a small, representative, and discreet portion of the material to be
6 analyzed.
- 7 b) Prepare the sample for analysis using microwave digestion. Microwave digestion
8 protocols from either of the following two methods may be used provided that the
9 samples are completely digested:
- 10 1. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper,
11 and Iron in Foods)
 - 12 2. NIOSH 7082 (Lead by Flame AAS) Appendix – Microwave
13 Digestion for Lead in Paint Chips (and other matrices)
- 14 c) Analyze the sample for total Lead (Pb) content using Graphite Furnace Atomic
15 Absorption Spectrophotometry (GFAAS) or Inductively Coupled Plasma Mass
16 Spectrometry (ICP-MS) using standard operating procedures.
- 17 d) Lead content shall be expressed in parts per million (ppm).
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Exhibit B
(Sample Interim Warning)

WARNING! This lighting fixture contains lead, a chemical known to cause cancer, birth defects and other reproductive harm. Wash hands with soap and water after installing, handling, cleaning or otherwise touching this light fixture.