

1 LEXINGTON LAW GROUP
2 Mark N. Todzo, State Bar No. 168389
3 Eric S. Somers, State Bar No. 139050
4 Howard Hirsch, State Bar No. 213209
5 1627 Irving Street
6 San Francisco, CA 94122
7 Telephone: (415) 759-4111
8 Facsimile: (415) 759-4112
9 Attorneys for Plaintiff
10 CENTER FOR ENVIRONMENTAL
11 HEALTH

FILED

DEC 08 2009

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: S. Hendryx, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF MARIN**

10 CENTER FOR ENVIRONMENTAL
11 HEALTH,
12 Plaintiff,

Case No. CV-081722

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT R.A.M. LIGHTING LTD.**

13 v.

14 AMERICAN-DE ROSA LAMPARTS,
15 INC., *et al.*,
16 Defendants.

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 for
4 *Environmental Health v. American-De Rosa Lamparts, Inc., et al.*, Marin County Superior Court
5 Case 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”). Plaintiff’s
7 Complaint named R.A.M. Lighting, Ltd. (“RAM”) and others as Defendants. Plaintiff and RAM
8 are referred to collectively as the “Parties.”

9 **1.2** RAM is a corporation that employs 10 or more persons and that
10 manufactured, distributed and/or sold light fixtures in the State of California.

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

16 **1.4** On or about January 11, 2008, Plaintiff served RAM and the appropriate
17 public enforcement agencies with the requisite 60-day notice that RAM is in violation of
18 Proposition 65. CEH’s notice and its Complaint in this Action allege that RAM exposes
19 individuals who use or otherwise handle the Covered Products to lead and/or lead compounds
20 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to
21 cause cancer, birth defects and other reproductive harm, without first providing clear and
22 reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
23 Lead. The notice and Complaint allege that RAM’s conduct violates Health & Safety Code
24 §25249.6, the warning provision of Proposition 65.

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 the Complaint and
27 personal jurisdiction over RAM as to the acts alleged in the Complaint, that venue is proper in the
28 County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full and

1 final resolution of all claims which were or could have been raised in the Complaint against RAM
2 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 Complaint. By executing this
5 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
6 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
7 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
8 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
9 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
10 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
11 any other or future legal proceedings.

12 **2. COMPLIANCE**

13 **2.1 Reformulation Standard.** For purposes of this Consent Judgment only,
14 the Reformulation Standard means that: (a) the solder used on the Covered Products contains no
15 more than 600 parts per million ("ppm") Lead; and (b) any other component of the Covered
16 Products that is likely to be touched, contacted or handled by a Covered Product user during
17 ordinary installation, cleaning, maintenance, or use of the Covered Products, including but not
18 limited to the glass plates and metal frames of the Covered Products, contain no more than 600
19 ppm Lead.

20 **2.2 Warnings.** Within 30 days of Court approval (the "Compliance Date"),
21 RAM shall use its best efforts to comply with the Reformulation Standard. However, RAM shall
22 not be under any obligation to meet the Reformulation Standard with respect to the Covered
23 Products, so long as RAM complies with the requirements in Sections 2.2.1, 2.2.1, and 2.2.3.

24 **2.2.1** RAM shall not sell or distribute for sale in California any Covered
25 Product on or after the Compliance Date that contains Lead in concentrations that exceed the
26 Reformulation Standard unless such Covered Product bears a label containing the Proposition 65
27 Warning Statement. For purposes of this Consent Judgment, the term "Proposition 65 Warning
28 Statement" shall mean a label which contains the following language or language that meets the

1 requirements of Proposition 65's safe-harbor provisions of 22 Cal. Code Regs. §12601(b):
2 "WARNING: This lighting fixture contains chemicals known to the State of California to cause
3 cancer, birth defects and/or other reproductive harm. Wash hands after installing, handling,
4 cleaning or otherwise touching this light fixture."

5 **2.2.2** The warning statement required by section 2.2.1 shall be
6 prominently displayed on the front of the outside of the packaging, and shall be displayed
7 separate and apart from any other print. The warning must be displayed with such
8 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
9 read and understood by an ordinary individual. The warning statement shall not be preceded,
10 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or
11 that introduces, modifies, qualifies, or explains the required text, such as "legal notice required by
12 law."

13 **2.3 Certification of level from suppliers.** For any Covered Products for
14 which RAM is not providing the warning statement required by section 2.2, RAM shall obtain
15 written certification with corresponding test results from its suppliers of the Covered Products
16 certifying that the Covered Products meet the Reformulation Standard.

17 **2.4 Plaintiff's Confirmatory Testing.** Plaintiff may, at its discretion, conduct
18 periodic testing of the Covered Products. Any such testing will be conducted pursuant to the Test
19 Protocol attached hereto as Exhibit A at an independent laboratory. In the event that Plaintiff's
20 testing demonstrates Lead levels in excess of the Reformulation Standard for one or more
21 Covered Products that are not labeled with the warning required by section 2.2, Plaintiff shall
22 inform RAM of the violation(s), including information sufficient to permit RAM to identify the
23 Covered Product(s). Plaintiff and RAM shall then meet and confer in an attempt to informally
24 resolve the alleged violation. Should the parties be unable to informally resolve the alleged
25 violation within 30 days, Plaintiff may thereafter file a motion to enforce this Consent Judgment
26 pursuant to Section 5.

27 **2.5 Stipulated Penalties.** In addition to any other remedies provided by law,
28 RAM shall be liable for stipulated penalties if it fails to provide a warning for a Covered Product

1 that exceeds the Reformulation Standard. The stipulated penalty shall be as follows for each unit
2 of Covered Product for which Plaintiff produces a test result with Lead levels exceeding the
3 Reformulation Standard and evidence that the Covered Product did not include a warning
4 statement:

5 First Occurrence: \$250
6 Second Occurrence: \$500
7 Third Occurrence: \$750
8 Thereafter: \$1,000

9 **3. SETTLEMENT PAYMENTS**

10 **3.1** Within 10 days of the Court's entry of this Consent Judgment, RAM shall
11 pay the sum of \$32,500 as a settlement payment. This total shall be paid in two separate checks
12 delivered to the offices of the Lexington Law Group at the address set forth in section 11 below
13 and made payable and allocated as follows. Any failure by RAM to comply with the payment
14 terms herein shall be subject to a stipulated late fee in the amount of \$50 for each day after the
15 delivery date the payment is received. The late fees required under this section shall be
16 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
17 pursuant to section 5 of this Consent Judgment.

18 **3.1.1 Monetary Payment in Lieu of Penalty.** The sum of \$10,700 shall
19 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This
20 payment shall be made by check payable to Center for Environmental Health. CEH shall use
21 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
22 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

23 **3.1.2 Attorneys' Fees and Costs.** The sum of \$21,800 as reimbursement
24 of a portion of CEH's reasonable investigation fees and costs, attorneys' fees, and any other costs
25 incurred as a result of investigating, bringing this matter to RAM's attention, litigating and
26 negotiating a settlement in the public interest. This payment shall be made by check payable to
27 Lexington Law Group.
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4. MODIFICATION OF CONSENT JUDGMENT

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

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 Plaintiff may, by motion or application for an order to show cause before the Superior Court of the County of Marin, enforce the terms and conditions contained in this Consent Judgment. Should Plaintiff prevail on any motion or application to enforce a material violation of this Consent Judgment under this section, Plaintiff shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should RAM prevail on any motion or application under this section, RAM may be awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the court that Plaintiff's prosecution of the motion or application was not in good faith.

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 Plaintiff and RAM of any violation of Proposition 65 that could have been asserted against RAM in the Complaint based on RAM's failure to warn about exposure to Lead contained in the Covered Products, with respect to any Covered Products manufactured, distributed or sold by RAM on or prior to the date of entry of this Consent Judgment. This release does not limit or effect the obligations of any party created under this Consent Judgment.

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.

1 **9. GOVERNING LAW**

2 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
3 State of California.

4 **10. RETENTION OF JURISDICTION**

5 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
6 the terms this Consent Judgment.

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 persons:

10 For Plaintiff:

11 Howard Hirsch
12 Lexington Law Group
13 1627 Irving Street
14 San Francisco, CA 94122

14 For RAM:

15 Daniela Moffatt
16 R.A.M. Lighting, Ltd.
17 300 Bronte St. S.
18 Milton, Ontario
19 Canada L9T 2X6

19 **12. COURT APPROVAL**

20 **12.1** If this Consent Judgment is not approved by the Court, it shall be of no
21 further force or effect.

22 **13. EXECUTION AND COUNTERPARTS**

23 **13.1** The stipulations to this Consent Judgment may be executed in counterparts
24 and by means of facsimile, which taken together shall be deemed to constitute one document.


25 **14. AUTHORIZATION**

26 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into
28 and execute the Consent Judgment on behalf of the party represented and legally bind that party.

1 The undersigned have read, understand and agree to all of the terms and conditions of this
2 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
3 costs.
4
5

6 **AGREED TO:**

7 **CENTER FOR ENVIRONMENTAL HEALTH**

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9 
10 _____
11 Michael Green, Executive Director
12 Center for Environmental Health

Dated: 10/6/09

13 **R.A.M. LIGHTING LTD.**

14 _____ Dated: _____
15

16 _____
17 Printed Name

18 _____
19 Title

1 The undersigned have read, understand and agree to all of the terms and conditions of this
2 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
3 costs.
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6 AGREED TO:
7 CENTER FOR ENVIRONMENTAL HEALTH
8

9 _____ Dated: _____
10 Michael Green, Executive Director
11 Center for Environmental Health

12 R.A.M. LIGHTING LTD.

13 *Daniela Moffatt* _____ Dated: Sep 28/09
14

15 Daniela Moffatt
16 Printed Name

17 Chief Operating Officer
18 Title

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Plaintiff and RAM, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: DEC 08 2009

VERNA ADAMS

Judge, Superior Court of the State of California

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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 samples are
9 completely digested:

- 10 1. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in Foods)
11 2. NIOSH 7082 (Lead by Flame AAS) Appendix – Microwave Digestion for Lead in

12 Paint Chips (and other matrices)

13 c) Analyze the sample for total Lead (Pb) content using Graphite Furnace Atomic
14 Absorption Spectrophotometry (GFAAS) or Inductively Coupled Plasma Mass Spectrometry
15 (ICP-MS) using standard operating procedures.

16 d) Lead content shall be expressed in parts per million (ppm).
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