LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
Eric S. Somers, State Bar No. 139050
Howard Hirsch, State Bar No. 213209
1627 Irving Street
San Francisco, CA 94122
Telephone: (415) 759-4111
Facsimile: (415) 759-4112

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation,

Plaintiff,

v.

BABY BOOM CONSUMER PRODUCTS, INC.; BETESH GROUP HOLDING CORPORATION; DOLLY, INC.; EASTSPORT, INC.; THE FIRST YEARS, INC.; INFANTINO, LLC; KALENCOM CORPORATION; LEARNING CURVE BRANDS, INC.; RC2 BRANDS, INC.; STEP2 COMPANY, LLC; WILLIAM CARTER COMPANY; and Defendant DOES 1 through 200, inclusive,

Defendants.

Case No. CV-08-83678

~~[PROPOSED]~~ **CONSENT JUDGMENT RE: LEARNING CURVE BRANDS, INC. FKA RC2 BRANDS, INC.**

1. INTRODUCTION

1.1 On July 29, 2008, Center for Environmental Health ("CEH"), a non-profit corporation acting in the public interest, filed a complaint in Marin County Superior Court entitled *Center for Environmental Health v. Baby Boom Consumer Products, Inc., et al.*, Marin County Superior Court Case Number CV-08-83678 (the "Action"), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §§ 25249.5, *et seq.* ("Proposition 65"). Learning Curve Brands, Inc., RC2 Brands, Inc. and The First Years, Inc. are named defendants in the Action.

1.2 Learning Curve Brands, Inc. formerly known as ("fka") RC2 Brands, Inc. ("Defendant") is a corporation that employs 10 or more persons and manufactures, distributes and/or sells infant accessory bags, including but not limited to bags for breast pumps and baby bottles (the "Products"), in California. The First Years, Inc. is not an existing corporate entity.

1.3 On January 31, 2008, CEH served Defendant and the appropriate public enforcement agencies with a 60-day notice (the "Notice") alleging that Defendant is in violation of Proposition 65. CEH's Notice and the Complaint in this Action allege that Defendant distributes and/or sells the Products made of material that contain lead and/or lead compounds (referred to interchangeably herein as "Lead"), chemicals known to the State of California to cause cancer and birth defects or other reproductive toxicity, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notice and the Complaint allege that Defendant's conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.4 The Parties enter into this Consent Judgment for the purpose of avoiding prolonged and costly litigation regarding Products manufactured, distributed and/or sold by Defendant. By executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment

shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein.

2. COMPLIANCE - REFORMULATION

2.1 Level. As of the date of entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture or cause to be manufactured any Product with Lead concentrations exceeding 300 parts per million ("ppm") using the Test Protocol defined in Paragraph 2.3 below. Unless the federal Consumer Product Safety Commission in the future determines that a standard of 100 ppm is not technically feasible for the Products or similar types of products, Defendant shall not manufacture or cause to be manufactured any Product with Lead concentrations exceeding 100 ppm as of August 14, 2011 or, if later, as of the date by which the Consumer Product Safety Commission requires compliance with a standard of 100 ppm for the Products or similar types of Products.

2.2 Certification of Level from Suppliers. Defendant shall obtain written certification (i.e., a Continuing Product Guaranty) from their suppliers of the Products certifying that the Products do not contain Lead concentrations exceeding the Reformulation Standard. Such Continuing Product Guaranties shall be obtained once from each of Defendant's suppliers of the Products. If Defendant begins purchasing Products from a new supplier, a Continuing Product Guaranty shall be obtained once from that supplier.

2.3 Testing. In order to help ensure compliance with the requirements of Section 2.1, Defendant shall conduct or cause to be conducted testing to confirm that the Products do not have Lead concentrations exceeding the Reformulation Standard. All testing pursuant to this Consent Judgment shall be performed in accordance with testing protocol CPSC CH-E-1002-

8 and/or CPSC CH-E-1001-8 (the "Test Protocol"). At the request of CEH, the results of all testing performed pursuant to this section shall be made available to CEH. The frequency and amount of testing required shall be as follows.

2.3.1 Testing Frequency. Defendant shall: (i) test or cause to be tested by an independent laboratory each batch of component materials to be used in the manufacture of the Products prior to said manufacture; (ii) test or cause to be tested each component of 1 random sample of each lot of Products; (iii) confirm the existence of valid test reports for items (i) and (ii) of this section; and (iv) confirm the test reports for items (i) and (ii) of this section indicate compliance with the Reformulation Standard before releasing the lot of Products for shipment to California.

2.3.2 Products that Exceed the Reformulation Standard Pursuant to Defendant's Testing. If the results of the testing required pursuant to section 2.3 exceed the Reformulation Standard for a Product, Defendant shall refuse to allow shipment to California of the lot of Products to which the test results pertain and shall inform the supplier with a letter explaining that the lot of Products does not comply with the supplier's certification.

2.4 Confirmatory testing by CEH. CEH intends to conduct periodic testing of the Products. Any such testing will be conducted by CEH at an independent laboratory, in accordance with the Test Protocol at CEH's expense. In the event that CEH's testing demonstrates Lead levels exceeding the Reformulation Standard for one or more Products: (i) CEH shall inform Defendant of the test results, including information sufficient to permit Defendant to identify the Product(s); and (ii) CEH shall provide to Defendant any and all remnants or remainder of the tested Product(s) to allow testing of those items by Defendant. Defendant shall, within 20 working days following such notice, provide CEH, at the address listed in Section 12, with either: (a) information sufficient to demonstrate that the Products in question were manufactured by Defendant prior to the Compliance Date; or (b) its supplier certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If the Product in question was manufactured by Defendant prior to the Compliance Date, Defendant will have no further obligations under this section. Otherwise, Defendant shall then have the opportunity to

conduct its own independent testing of the Product(s) to confirm or deny CEH's tests. If Defendant's independent testing indicates the Product(s) comply with the Reformulation Standard, CEH and Defendant will send the remnants or remainder of the Product(s) to a third, independent laboratory for testing and the results of this third test (the "Third Test") will control whether the Product(s) comply with the Reformulation Standard. If the Third Test indicates the Product(s) comply with the Reformulation Standard, no further action shall be taken as to the Product(s) tested. If Defendant's independent testing confirms CEH's test results or the Third Test confirms CEH's test results and Defendant fails to provide CEH with information demonstrating that it complied with Sections 2.2 and 2.3 for the particular lot(s) of Product(s) at issue, Defendant shall also be liable for stipulated payments in lieu of penalties for Products for which CEH produces tests demonstrating Lead levels exceeding the Reformulation Standard as set forth below. These payments shall be made to CEH and used for the purposes described in Section 3.2. The stipulated penalties set forth in Section 2.4.1 below shall be the only remedy available to CEH for violation of Section 2 of this Consent Judgment except as provided for in Section 5.1.

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

First Occurrence:	$1,250
Second Occurrence:	$1,500
Third Occurrence:	$1,750
Thereafter:	$2,500

Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year, regardless of the number of units of Product tested by CEH with exceedances of the Lead levels set forth in this Consent Judgment, shall be $5,000. The term "occurrence" as used in this Section 2.4.1 shall refer to a single unit of Product.

3. SETTLEMENT PAYMENTS

3.1 In consideration of the mutual covenants and releases provided in this Consent Judgment, within 10 days of execution of this Consent Judgment, Defendant shall pay a

total of $30,000 as a settlement payment. This total shall be paid in three separate checks delivered to the address set forth in Section 12.1 within 10 days of execution of this Consent Judgment and shall be made payable and allocated as follows.

3.2 Penalty. Defendant shall pay $1,000 as a civil penalty pursuant to Health and Safety Code §25249.7(b). The penalty shall be made payable to CEH, which will apportion the penalty in accordance with Health and Safety Code §25249.12.

3.3 Payment in Lieu of Additional Penalty. Defendant shall pay to CEH $9,500 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4. The payment required under this section shall be made payable to CEH.

3.4 Attorneys' Fees and Costs. Defendant shall pay $19,500 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement in the public interest. This payment shall be made payable to Lexington Law Group.

4. MODIFICATION OF CONSENT JUDGMENT

4.1 This Consent Judgment may be modified by written agreement of the Parties, or upon motion of CEH or Defendant as provided by law.

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 The Parties agree that the any action based on violation of this Consent Judgment shall be brought in the Superior Court of California in Marin County. For purposes of this Consent Judgment, notwithstanding Section 1.4 above, the Parties agree that the Superior Court of California in Marin County has subject matter jurisdiction over any disputes arising from this Consent Judgment and personal jurisdiction over each of the Parties, and that venue is proper in the County of Marin. Should CEH prevail on any action to enforce the terms of this Consent Judgment it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

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 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in the Notice or Complaint against Defendant (including any claims that could be asserted in connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or customers (collectively, "Defendant Releasees") based on failure to warn about alleged Proposition 65 exposures with respect to any Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of Lead exposures from the Products.

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.

9. GOVERNING LAW

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

10. RETENTION OF JURISDICTION

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

11. PROVISION OF NOTICE

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

For CEH:

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

For Defendant:

M. Elizabeth McDaniel
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center, Seventeenth Floor
San Francisco, CA 9411

12. EXECUTION AND COUNTERPARTS

12.1 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.

13. AUTHORIZATION

13.1 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

_____ Dated: 7/8/09

~~Michael Green~~, ~~Executive Director~~ Associate Director
Center for Environmental Health
Charlie Pizarro

LEARNING CURVE BRANDS, INC.

_____ Dated: _____

Peter A. Nicholson, Chief Financial Officer
Learning Curve Brands, Inc.,

For CEH:

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

For Defendant:

M. Elizabeth McDaniel
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center, Seventeenth Floor
San Francisco, CA 9411

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CENTER FOR ENVIRONMENTAL HEALTH

_____ Dated: _____

Michael Green, Executive Director
Center for Environmental Health

LEARNING CURVE BRANDS, INC.

_____ Dated: 7/8/09

Peter A. Nicholson, Chief Financial Officer
Learning Curve Brands, Inc.,

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH on the one hand and Learning Curve Brands, Inc. fka RC2 Brands, Inc. on the other hand, the settlement is approved and the clerk is hereby instructed to enter judgment in accordance with its terms.

Dated: SEP 14 2009

MICHAEL B. DUFFICY

Judge, Superior Court of the State of California