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FILED

MAY 18 2009

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: *K. Main, Deputy*

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

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11
12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 BABY BOOM CONSUMER PRODUCTS,)
17 INC.; BETESH GROUP HOLDING)
CORPORATION; DOLLY, INC.;)
18 EASTSPORT, INC.; THE FIRST YEARS,)
INC.; INFANTINO, LLC; KALENCOM)
19 CORPORATION; LEARNING CURVE)
BRANDS, INC.; RC2 BRANDS, INC.; STEP2)
20 COMPANY, LLC; WILLIAM CARTER)
COMPANY; and Defendant DOES 1 through)
21 200, inclusive,)

22 Defendants.)
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Case No. CV-083678
Kim

[PROPOSED] CONSENT JUDGMENT
RE: BABY BOOM CONSUMER
PRODUCTS, INC., BETESH GROUP
HOLDING CORPORATION, AND
WILLIAM CARTER COMPANY

1 **1. INTRODUCTION**

2 **1.1** On July 29, 2008, Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint in Marin County Superior
4 Court entitled *Center for Environmental Health v. Baby Boom Consumer Products, Inc., et al.*,
5 Marin County Superior Court Case Number CV-08-83678 (the “Action”), for civil penalties and
6 injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.*
7 (“Proposition 65”). Baby Boom Consumer Products, Inc., Betesh Group Holding Corporation,
8 and William Carter Company are named defendants in the Action.

9 **1.2** Baby Boom Consumer Products, Inc., Betesh Group Holding Corporation,
10 and William Carter Company (collectively referred to herein as “Defendant”) are corporations
11 that employ 10 or more persons and manufacture, distribute and/or sell vinyl lining and pads in
12 infant accessory bags, including but not limited to bags for breast pumps, baby bottles, and
13 pacifiers, diaper bags, and stroller bags (the “Products”), in California.

14 **1.3** On March 24, 2008, CEH served Defendant and the appropriate public
15 enforcement agencies with a 60-day notice (the “Notice”) alleging that Defendant is in violation
16 of Proposition 65. CEH’s Notice and the Complaint in this Action allege that Defendant
17 distributes and/or sells the Products made of material that contain lead and/or lead compounds
18 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to
19 cause cancer and birth defects or other reproductive toxicity, without first providing clear and
20 reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
21 Lead. The Notice and the Complaint allege that Defendant’s conduct violates Health & Safety
22 Code § 25249.6, the warning provision of Proposition 65.

23 **1.4** The Parties enter into this Consent Judgment for the purpose of avoiding
24 prolonged and costly litigation regarding Products manufactured, distributed and/or sold by
25 Defendant. By executing this Consent Judgment, the Parties do not admit any facts or
26 conclusions of law. It is the Parties’ intent that nothing in this Consent Judgment shall be
27 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation
28 of law, nor shall compliance with the Consent Judgment constitute or be construed as an

1 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

2 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument
3 or defense the Parties may have in this or any other or future legal proceedings.

4 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
5 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
6 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is
7 proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
8 Judgment as a full and final resolution of all claims which were or could have been raised in the
9 Complaint based on the facts alleged therein.

10 **2. COMPLIANCE - REFORMULATION**

11 **2.1 Level.** Defendant shall not manufacture, distribute, ship, or sell, or cause
12 to be manufactured, distributed, or sold, any Product with Lead concentrations exceeding the
13 following Reformulation Standard: (a) within ninety (90) days of entry of this Consent Judgment
14 (the "Compliance Date"), 200 parts per million ("ppm"); and (b) within three years after the
15 Compliance Date, 100 ppm.

16 **2.2 Certification of Level from Suppliers.** Defendant shall obtain written
17 certification from its suppliers of the Products certifying that the Products do not contain Lead
18 concentrations exceeding the Reformulation Standard. Such supplier certifications shall be
19 obtained annually for three successive years. If Defendant begins purchasing Products from a
20 new supplier, certifications shall be obtained annually from that supplier for three consecutive
21 years after the Defendant's initial purchase order from that supplier.

22 **2.3 Testing.** In order to help ensure compliance with the requirements of
23 Section 2.1, Defendant shall conduct or cause to be conducted testing to confirm that the
24 Products do not Lead concentrations exceeding the Reformulation Standard. All testing pursuant
25 to this section shall be performed on randomly selected units by an independent laboratory in
26 accordance with testing protocol EPA 3050B (the Test Protocol"). At the request of CEH, the
27 results of all testing performed pursuant to this section shall be made available to CEH. The
28 frequency and amount of testing required shall be as follows:

1 **2.3.1 Testing Frequency.** Defendant shall test at least 5 units of
2 Product from each of the first two shipments from each vinyl supplier following the Compliance
3 Date. For the remainder of the shipments following the Compliance Date, Defendant shall test at
4 least 2 units per shipment.

5 **2.3.2 Products that Exceed the Reformulation Standard Pursuant to**
6 **Defendant's Accessories's Testing.** If the results of the testing required pursuant to Section 2.3
7 exceed the Reformulation Standard for a Product, Defendant shall refuse to accept all of the
8 Products that were purchased under the particular purchase order to the supplier with a letter
9 explaining that such Products do not comply with the supplier's certification. Following a
10 Product test exceed the Reformulation Standard, Defendant shall apply the testing frequency
11 pursuant to Section 2.3.1 for the next order purchased from the vinyl supplier as if such purchase
12 were the first shipment following the Compliance Date.

13 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic
14 testing of the Products. Any such testing will be conducted by CEH at an independent
15 laboratory, in accordance with the Test Protocol. In the event that CEH's testing demonstrates
16 Lead levels exceeding the Reformulation Standard for one or more Products, CEH shall inform
17 Defendant of the test results, including information sufficient to permit Defendant to identify the
18 Product(s). Defendant shall, within 20 days following such notice, provide CEH, at the address
19 listed in Section 12, with its supplier certification and testing information demonstrating its
20 compliance with Sections 2.2 and 2.3 of this Consent Judgment. Defendant shall then have the
21 opportunity to conduct its own independent testing of the Products from the same lot to confirm
22 or deny CEH's tests. If Defendant's independent testing confirms CEH's test results, Defendant
23 shall apply the testing frequency pursuant to either Section 2.3.1 for the next order purchased
24 from the supplier as if such purchase were the first shipment following the Compliance Date in
25 determining the number of units to be tested for the two shipments following the Product test
26 exceed the Reformulation Standard from that supplier. In addition, if Defendant's independent
27 testing verifies CEH's test results and Defendant fails to provide CEH with information
28 demonstrating that it complied with Sections 2.2 and 2.3 for the particular shipment(s) at issue,

1 Defendant shall also be liable for stipulated payments in lieu of penalties for Products for which
2 CEH produces tests demonstrating Lead levels exceeding the Reformulation Standard as set
3 forth below. These payments shall be made to CEH and used for the purposes described in
4 Section 3.2.

5 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
6 payments in lieu of penalties are warranted under Section 2.4, the stipulated payment amount
7 shall be as follows:

8	First Occurrence:	\$1,250
9	Second Occurrence:	\$1,500
10	Third Occurrence:	\$1,750
11	Thereafter:	\$2,500

12 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,
13 regardless of the number of units of Product tested by CEH with exceedances of the Lead levels
14 set forth in this Consent Judgment, shall be \$5,000.

15 **2.4.2 Products in the Stream of Commerce.** Defendant's Products
16 that have been manufactured, shipped, sold, or that otherwise are in the stream of commerce
17 prior to the Compliance Date shall be released from any claims that were brought or that could
18 have been brought by CEH in its Complaint, as though they were Covered Claims within the
19 meaning of Section 7.1, below.

20 **3. SETTLEMENT PAYMENTS**

21 **3.1** In consideration of the mutual covenants and releases provided in this
22 Consent Judgment, within 10 days of execution of this Consent Judgment, Defendant shall pay a
23 total of \$15,000 as a settlement payment. This total shall be paid in two separate checks
24 delivered to the address set forth in Section 12.1 within 10 days of execution of this Consent
25 Judgment and shall be made payable and allocated as follows.

26 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
27 \$5,000 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
28 such funds to continue its work protecting people from exposures to toxic chemicals. As part of

1 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.

2 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$10,000 to reimburse
3 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
4 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
5 litigating and negotiating a settlement in the public interest. This payment shall be made payable
6 to Lexington Law Group, LLP

7 **4. MODIFICATION OF CONSENT JUDGMENT**

8 **4.1** This Consent Judgment may be modified by written agreement of the
9 Parties, or upon motion of CEH or Defendant as provided by law.

10 **4.2** CEH intends to enter into agreements with other entities that manufacture,
11 distribute and/or sell Products. Should Defendant determine that the provisions of any such
12 agreement with a similarly situated manufacturer or distributor of Products are less stringent,
13 Defendant may obtain a modification of this Consent Judgment to conform with the terms of the
14 later signed agreement.

15 **5. ENFORCEMENT OF CONSENT JUDGMENT**

16 **5.1** The Parties agree that the any action based on violation of this Consent
17 Judgment shall be brought in the Superior Court of California in Marin County. For purposes of
18 this Consent Judgment, notwithstanding Section 1.4 above, the Parties agree that the Superior
19 Court of California in Marin County has subject matter jurisdiction over any disputes arising
20 from this Consent Judgment and personal jurisdiction over each of the Parties, and that venue is
21 proper in the County of San Francisco. Should CEH prevail on any action to enforce the terms
22 of this Consent Judgment it shall be entitled to reasonable attorneys' fees and costs associated
23 with such enforcement.

24 **6. APPLICATION OF CONSENT JUDGMENT**

25 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
26 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
27 them.
28

1 **7. CLAIMS COVERED**

2 **7.1** This Consent Judgment is a full, final and binding resolution between
3 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
4 the Notice or Complaint against Defendant (including any claims that could be asserted in
5 connection with any of the Products covered by this Consent Judgment) or its parents,
6 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or
7 customers (collectively, "Defendant Releasees") based on failure to warn about alleged
8 Proposition 65 exposures with respect to any Products manufactured, distributed or sold by
9 Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment.
10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
11 for purposes of Lead exposures from the Products.

12 **8. SEVERABILITY**

13 **8.1** In the event that any of the provisions of this Consent Judgment are held
14 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
15 affected.

16 **9. SPECIFIC PERFORMANCE**

17 **9.1** The Parties expressly recognize that Defendant's obligations under this
18 Consent Judgment are unique. In the event that any Defendant is found to be in breach of this
19 Consent Judgment for failure to comply with the provisions of Section 2 hereof, the Parties agree
20 that it would be extremely impracticable to measure the resulting damages and that such breach
21 would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or
22 remedies, may sue in equity for specific performance, and Defendant expressly waive the
23 defense that a remedy in damages will be adequate.

24 **10. GOVERNING LAW**

25 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
26 State of California.

27 **11. RETENTION OF JURISDICTION**

28 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce

1 the terms this Consent Judgment.

2 **12. PROVISION OF NOTICE**

3 **12.1** All notices required pursuant to this Consent Judgment and
4 correspondence shall be sent to the following:

5 For CEH:

6 Mark N. Todzo
7 Lexington Law Group, LLP
8 1627 Irving Street
9 San Francisco, CA 94122

10 For Defendant:

11 Frederick Locker
12 Locker Greenberg & Brainin PC
13 Attorneys At Law
14 420 Fifth Avenue
15 New York NY 10018

16 **13. EXECUTION AND COUNTERPARTS**

17 **13.1** The stipulations to this Consent Judgment may be executed in
18 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
19 document.

20 **14. AUTHORIZATION**


21 **14.1** Each signatory to this Consent Judgment certifies that he or she is
22 fully authorized by the party he or she represents to stipulate to this Consent Judgment and to
23 enter into and execute the Consent Judgment on behalf of the party represented and legally bind
24 that party. The undersigned have read, understand and agree to all of the terms and conditions of
25 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
26 and costs.

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1 **AGREED TO:**

2 CENTER FOR ENVIRONMENTAL HEALTH


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Dated: 3/31/09

5
6 MARIE PIZANO
[Name]

7
8 Associate Director
[Title]

10 BABY BOOM CONSUMER PRODUCTS, INC.,
11 BETESH GROUP HOLDING CORPORATION,
12 AND WILLIAM CARTER COMPANY

13
14 

Dated: 3/23/09

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16 Steven Belesit
[Name]

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18 President
[Title]

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