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FILED

APR 29 2010

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

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

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

13 Plaintiff,)

14 v.)

15
16 SCHURMAN FINE PAPERS; and DOES 1
through 200, inclusive,)

17 Defendants.)
18
19

Case No. CIV 10-00626

DM
**[PROPOSED] CONSENT JUDGMENT
AS TO SCHURMAN FINE PAPERS**

1 **1. INTRODUCTION**

2 **1.1** On February 4, 2010, Plaintiff the Center for Environmental Health
3 ("CEH"), a non-profit corporation acting in the public interest, filed a complaint entitled *Center*
4 *for Environmental Health v. Schurman Fine Papers, et al.*, Marin County Superior Court Case
5 Number CIV 10-00626, for civil penalties and injunctive relief pursuant to the provisions of Cal.
6 Health & Safety Code §25249.5, *et seq.* ("Proposition 65") and naming Schurman Fine Papers
7 ("Defendant") as a defendant.

8 **1.2** Defendant is a corporation that employs ten or more persons and
9 manufactured, distributed and/or sold jeweled boxes (the "Products") in the State of California.

10 **1.3** On or about May 15, 2008, CEH served Defendant and the appropriate
11 public enforcement agencies with the requisite 60-day Notice (the "Notice") alleging that
12 Defendant was in violation of Proposition 65. CEH's Notice and the Complaint in the CEH
13 Action allege that Defendant exposes people who use or otherwise handle the Products to lead
14 and lead compounds (collectively referred to herein as "Lead"), chemicals known to the State of
15 California to cause cancer, birth defects and other reproductive harm, without first providing
16 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
17 toxicity of Lead. The Notice and Complaint allege that Defendant's conduct violates Health &
18 Safety Code §25249.6, the warning provision of Proposition 65. Defendant disputes such
19 allegations and asserts that all of its Products comply with all applicable laws.

20 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
21 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
22 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is
23 proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
24 Judgment as a full and final resolution of all claims which were or could have been raised in the
25 Complaint based on the facts alleged therein.

26 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
27 certain disputed claims between the Parties as alleged in the Complaint. By executing this
28 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'

1 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
2 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
3 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
5 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
6 any other or future legal proceedings.

7 **2. COMPLIANCE - REFORMULATION**

8 **2.1 Reformulation Standard.** Upon entry of this Consent Judgment (the
9 “Compliance Date”), Defendant shall not manufacture, purchase, distribute, ship, or sell, or
10 cause to be manufactured, distributed, shipped or sold, any Product in the United States that
11 contains any component or is made of any material identified in Sections 2.1.1 through 2.1.3,
12 below.

13 **2.1.1** A component not covered under Sections 2.1.2 or 2.1.3, or a
14 material not covered under Sections 2.1.2 or 2.1.3, that is more than 0.02 percent (200 parts per
15 million (“ppm”)) Lead by weight;

16 **2.1.2** A metal component, or a metallic material, that is more than 0.03
17 percent (300 ppm) Lead by weight; and

18 **2.1.1** A Paint or Surface Coating that is more than 0.009 percent (90
19 ppm) Lead by weight. For purposes of this Consent Judgment, “Paint or Surface Coating” shall
20 carry the same meaning as “Paint or other similar surface coating” under 16 C.F.R.
21 §1303.2(b)(1) (“Paint and other similar surface-coating materials means a fluid, semi-fluid, or
22 other material, with or without a suspension of finely divided coloring matter, which changes to
23 a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or
24 other surface. This term does not include printing inks or those materials which actually become
25 a part of the substrate, such as the pigment in a plastic article, or those materials which are
26 actually bonded to the substrate, such as by electroplating or ceramic glazing.”).

27 **2.2 Market Withdrawal of Covered Products.** On or before the
28 Compliance Date, Defendant shall cease shipping (1) the Heart Jeweled Box, SKU No. 414409,

1 which was identified in the 60-Day Notice of Violation sent by CEH to Defendant, and (2) the
2 Dragonfly Jeweled Box, SKU No. 415196 (the "Recall Products"), to stores and/or customers in
3 California, and Defendant shall withdraw the Recall Products from the market in California, and,
4 at a minimum, send instructions to any of its stores and/or customers that offer the Recall
5 Products for sale in California to cease offering such Recall Products for sale and to either return
6 all Recall Products to Defendant for destruction, or to directly destroy the Recall Products. Any
7 destruction of the Recall Products shall be in compliance with all applicable laws. Defendant
8 shall keep and make available to CEH for inspection and copying records and correspondence
9 regarding the market withdrawal and destruction of the Recall Products. If there is a dispute
10 over the corrective action, the Parties shall meet and confer before seeking any remedy in court.

11 **3. SETTLEMENT PAYMENTS**

12 **3.1 Payments From Defendant.** Within five (5) days of entry of this
13 Consent Judgment, Defendant shall pay the total sum of \$20,000 as a settlement payment.

14 **3.2 Allocation of Payments.** The total settlement amount for Defendant shall
15 be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric
16 Somers), 1627 Irving Street, San Francisco, California 94122, and made payable and allocated as
17 follows:

18 **3.2.1 Civil Penalty.** Defendant shall pay \$800 as a civil penalty
19 pursuant to Health and Safety Code §25249.7(b), such money to be apportioned by CEH in
20 accordance with Health & Safety Code §25249.12. The penalty check shall be made payable to
21 the Center For Environmental Health.

22 **3.2.2 Monetary Payment in Lieu of Civil Penalty.** Defendant shall
23 pay to CEH \$6,200 in lieu of penalty pursuant to Health and Safety Code §25249.7(b). CEH
24 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
25 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in
26 Section 2.4. In addition, as part of its Community Environmental Action and Justice Fund, CEH
27 will use four percent of such funds to award grants to grassroots environmental justice groups
28 working to educate and protect people from exposures to toxic chemicals. The method of

1 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
2 payment in lieu of penalty check shall be made payable to the Center For Environmental Health.

3 **3.2.3 Attorneys' Fees and Costs.** Defendant shall pay \$13,000 to
4 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,
5 and any other costs incurred as a result of investigating, bringing this matter to Defendant's
6 attention, litigating and negotiating a settlement in the public interest. The attorneys' fees and
7 cost reimbursement check shall be made payable to the Lexington Law Group.

8 **4. MODIFICATION OF CONSENT JUDGMENT**

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

11 **5. ENFORCEMENT OF CONSENT JUDGMENT**

12 **5.1 Enforcement Procedures.** Prior to bringing any motion or order to show
13 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
14 violating party thirty (30) days advanced written notice of the alleged violation. The Parties
15 shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on
16 an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking
17 to enforce may, by new action, motion or order to show cause before the Superior Court of
18 Marin, seek to enforce the terms and conditions contained in this Consent Judgment. Should the
19 Party seeking to enforce prevail on any motion or application under this section, such Party shall
20 be entitled to recover its reasonable attorneys' fees and costs associated with such motion or
21 order to show cause from the non-moving Party.

22 **6. APPLICATION OF CONSENT JUDGMENT**

23 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
24 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
25 them.

26 **7. CLAIMS COVERED AND RELEASE OF CLAIMS**

27 **7.1** This Consent Judgment is a full, final and binding resolution between
28 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in

1 the Complaint against Defendant (including any claims that could be asserted in connection with
2 any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates,
3 directors, officers, employees, agents, attorneys, distributors, customers or retailers (collectively,
4 "Defendant Releasees") based on failure to warn about alleged exposures to Lead resulting from
5 any Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to
6 the date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys
7 hereby release all Covered Claims against Defendant Releasees. Compliance with the terms of
8 this Consent Judgment constitutes compliance with Proposition 65 for purposes of Lead
9 exposures from the Products.

10 **8. SEVERABILITY**

11 **8.1** In the event that any of the provisions of this Consent Judgment are held
12 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
13 affected.

14 **9. GOVERNING LAW**

15 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
16 State of California.

17 **10. RETENTION OF JURISDICTION**

18 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
19 the terms this Consent Judgment.

20 **11. PROVISION OF NOTICE**

21 **11.1** All notices required pursuant to this Consent Judgment and
22 correspondence shall be sent to the following:

23 For CEH:

24 Eric S. Somers
25 Lexington Law Group
26 1627 Irving Street
San Francisco, CA 94122

27 For Defendant:
28

1 Laura McKaskle
2 Morgan, Lewis & Bockius LLP
3 300 South Grand Avenue, 22nd Floor
4 Los Angeles, CA 90071-3132

5 **12. ATTORNEYS' FEES**

6 **12.1** A Party who unsuccessfully brings or contests an action arising out of this
7 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and
8 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
9 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
10 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

11 **12.2** Notwithstanding Section 12.1, a Party who prevails in a contested
12 enforcement action brought pursuant to Section 5.1 may seek an award of attorneys' fees
13 pursuant to Code of Civil Procedure §1021.5 against a Party that acted with substantial
14 justification. The Party seeking such an award shall bear the burden of meeting all of the
15 elements of §1021.5, and this provision shall not be construed as altering any procedural or
16 substantive requirements for obtaining such an award.

17 **12.3** Nothing in this Section 12 shall preclude a Party from seeking an award of
18 sanctions pursuant to law.

19 **13. COURT APPROVAL**

20 **13.1** CEH will comply with the settlement notice provisions of Health and
21 Safety Code §25249.7(f) and Title 11 of the California Code of Regulations §3003 by preparing
22 and filing a motion for approval of this Consent Judgment and Defendant shall support approval
23 of such motion.

24 **14. COUNTERPARTS**

25 **14.1** The stipulations to this Consent Judgment may be executed in
26 counterparts.

27 **15. AUTHORIZATION**

28 **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

1 into and execute the Consent Judgment on behalf of the party represented and legally bind that
2 party. The undersigned have read, understand and agree to all of the terms and conditions of this
3 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
4 costs.

5
6 **AGREED TO:**

7 **CENTER FOR ENVIRONMENTAL HEALTH**

8 

9 _____
10
11 CHARLIE PIZARRO

12 [Name]

13
14 ASSOCIATE DIRECTOR

15 [Title]

16 **SCHURMAN FINE PAPERS**

17
18
19 _____
20
21 [Name]

22
23
24 [Title]
25
26
27
28

1 into and execute the Consent Judgment on behalf of the party represented and legally bind that
2 party. The undersigned have read, understand and agree to all of the terms and conditions of this
3 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
4 costs.

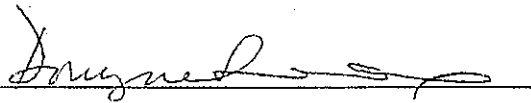
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6 **AGREED TO:**

7 **CENTER FOR ENVIRONMENTAL HEALTH**

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12 _____
[Name]

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14 _____
[Title]

15
16 **SCHURMAN FINE PAPERS**

17
18 
19 _____

20
21 DOMINIQUE SCHURMAN
22 [Name]

23 
24 _____
[Title]

1 **ORDER AND JUDGMENT**

2 Based upon the stipulated Consent Judgment between CEH and Schurman Fine
3 Papers, the settlement is approved and the clerk is directed to enter judgment in accordance with
4 the terms herein.

5
6 Dated: APR 29 2010

7
8 **VERNA ADAMS**
9 Judge, Superior Court of the State of California