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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

FILED

APR 16 2009
KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hendryx, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

LIFETIME BRANDS, *et al.*,

Defendants.

Case No. CIV 090292

~~PROPOSED~~ CONSENT JUDGMENT
AS TO DEFENDANT LIFETIME
BRANDS

1 **1. INTRODUCTION**

2 **1.1** On January 22, 2009, plaintiff Center for Environmental Health (“CEH” or
3 “Plaintiff”), acting in the public interest, filed a complaint in Marin County Superior Court,
4 entitled *Center for Environmental Health v. Lifetime Brands, et al.*, Marin County Superior Court
5 Case Number CIV 090292 (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
8 **1.2** Lifetime Brands (identified herein as “Lifetime” or “Defendant”) is a
9 corporation that employs 10 or more persons and that manufactured, distributed and/or sold
10 picture frames containing lead solder in the State of California (the “Covered Products”).
11 Plaintiff and Lifetime are referred to collectively herein as the “Parties.” This agreement applies
12 only to picture frames containing lead solder sold or to be sold in the State of California.

13
14 **1.3** On or about August 26, 2008, Plaintiff served Lifetime and the appropriate
15 public enforcement agencies with the requisite 60-day notice that Lifetime was in violation of
16 Proposition 65. Plaintiff’s Notice and the Complaint in this Action allege that Lifetime exposes
17 individuals who use or otherwise handle the Covered Products to lead and/or lead compounds
18 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to
19 cause cancer, birth defects and other reproductive harm, without first providing clear and
20 reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
21 Lead. The Notice and Complaint allege that Lifetime’s conduct violates Health & Safety Code §
22 25249.6, the warning provision of Proposition 65.

23
24 **1.4** 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 Lifetime 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
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1 and final resolution of all claims which were or could have been raised in the Complaint against
2 Lifetime based on the facts alleged therein.

3 **1.5** 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

13
14 **2. COMPLIANCE - REFORMULATION**

15 **2.1 Reformulation Standard.** Within sixty days of entry of this Consent
16 Judgment (the "Compliance Date"), Lifetime shall not manufacture, distribute, ship, or sell, or
17 cause to be manufactured, distributed, shipped or sold, any Covered Product that contains Lead in
18 concentrations that exceed the Reformulation Standard set forth herein. For purposes of this
19 Consent Judgment only, the Reformulation Standard means that: (a) the solder used on the
20 Covered Products contains no more than 200 parts per million ("ppm") Lead; (b) the coating of
21 any other component of the Covered Products that is likely to be touched, contacted or handled by
22 a user of the Covered Product user during ordinary installation, cleaning, maintenance, or use of
23 such Covered Products contain no more than 200 ppm Lead.
24

25 **2.2 Certification of Level from Suppliers.** Lifetime shall obtain written
26 certification with corresponding test results from its suppliers of the Covered Products certifying
27 that the Covered Products meet the Reformulation Standard.
28

1 **2.3 Testing.** In order to ensure compliance with the requirements of Section
2 2.1, Lifetime shall conduct (or cause to be conducted) testing to confirm that the Covered
3 Products do not contain Lead concentrations exceeding the Reformulation Standard. All testing
4 pursuant to this section shall be performed by an independent laboratory in accordance with EPA
5 Method 3050B for the coating of the Products, and either EPA Method 3050B (the "Test
6 Protocol"), attached hereto as Exhibit A.
7

8 **2.3.1 Random Testing.** Testing pursuant to this Section 2.3 shall be
9 performed on randomly selected units in accordance with Lifetime's usual testing practices.

10 **2.3.2 Products that Exceed Stipulated Levels Pursuant to Lifetime's**
11 **Testing.** If the results of the testing required pursuant to Section 2.3 show levels of lead
12 exceeding the Reformulation Standard, Lifetime shall: (1) refuse to accept all of the Covered
13 Products that were purchased under the particular purchase order; and (2) send a notice to the
14 supplier explaining that such Covered Products do not comply with the supplier's certification.
15

16 **2.4 Plaintiff's Confirmatory Testing.** Plaintiff may, at its discretion, conduct
17 periodic testing of the Covered Products. Any such testing will be conducted pursuant to the Test
18 Protocol attached hereto as Exhibit A at an independent laboratory. In the event that Plaintiff's
19 testing demonstrates Lead levels in excess of the Reformulation Standard for one or more
20 Covered Products, Plaintiff shall inform Lifetime of the violation(s), including information
21 sufficient to permit Lifetime to identify the Covered Product(s). Within thirty (30) days
22 following such notice, Lifetime shall provide CEH, at the address listed in Section 12, with the
23 certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of
24 this Consent Judgment. If the testing and certification provided by Lifetime state that the product
25 in question complies with the Reformulation Standard, then Lifetime shall not be subject to any
26 further penalties for those products. If Lifetime fails to provide CEH with certification and
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1 testing information demonstrating that it complied with Sections 2.2 and/or 2.3, Lifetime shall be
2 liable for stipulated payments in lieu of penalties for Products for which CEH produces tests
3 demonstrating Lead levels exceeding the Reformulation Standard, as set forth below. The
4 payments shall be made to CEH and used for the purposes described in Section 3.1.1.

5
6 **2.5 Stipulated Penalties.** In addition to any other remedies provided by law,
7 Lifetime shall be liable for stipulated penalties if it violates the Reformulation Standard, unless
8 Lifetime provides testing information under Section 2.4 above that states that the product in
9 question complies with the Reformulation Standard. The stipulated penalty shall be as follows
10 for each unit of Covered Product for which Plaintiff produces a test result with Lead levels
11 exceeding the Reformulation Standard:

12 First Occurrence: \$250
13 Second Occurrence: \$500
14 Third Occurrence: \$750
15 Thereafter: \$1,000
16

17 **3. SETTLEMENT PAYMENTS**

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

26
27 **3.1.1 Monetary Payment in Lieu of Penalty:** \$5,000 shall be paid to
28

1 Plaintiff in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
2 shall be made by check payable to Center for Environmental Health. Plaintiff shall use such
3 funds to continue its work protecting people from exposures to toxic chemicals. As part of this
4 work, Plaintiff intends to conduct periodic testing of the Products as set forth in Section 2.4.

5 **3.1.2 Attorneys' Fees and Costs:** \$10,000 shall be used to reimburse
6 Plaintiff and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and
7 any other costs incurred as a result of investigating, bringing this matter to Lifetime's attention,
8 litigating and negotiating a settlement in the public interest. This payment shall be made by
9 check payable to Lexington Law Group, LLP.

10
11 **4. MODIFICATION OF CONSENT JUDGMENT**

12 **4.1** This Consent Judgment may be modified by written agreement of Plaintiff
13 and Lifetime, or upon motion of Plaintiff or Lifetime as provided by law.

14
15 **5. ENFORCEMENT OF CONSENT JUDGMENT**

16 **5.1** Plaintiff may, by motion or application for an order to show cause before
17 the Superior Court of the County of Marin, enforce the terms and conditions contained in this
18 Consent Judgment. Should Plaintiff prevail on any motion or application under this section,
19 Plaintiff shall be entitled to its reasonable attorneys' fees and costs associated with such motion or
20 application.

21
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**

1 7.1 This Consent Judgment is a full, final and binding resolution between
2 Plaintiff and Lifetime of any violation of Proposition 65 that could have been asserted against
3 Lifetime in the Complaint based on Lifetime's failure to warn about exposure to Lead contained
4 in the Covered Products, with respect to any Covered Products manufactured, distributed or sold
5 by Lifetime on or prior to the date of entry of this Consent Judgment. This release does not limit
6 or effect the obligations of any party created under this Consent Judgment.
7

8 **8. SEVERABILITY**

9 8.1 In the event that any of the provisions of this Consent Judgment are held by
10 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
11 affected.
12

13 **9. SPECIFIC PERFORMANCE**

14 9.1 The parties expressly recognize that Lifetime's obligations under this
15 Consent Judgment are unique. In the event that Lifetime is found to be in breach of this Consent
16 Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree that it
17 would be extremely impracticable to measure the resulting damages and that such breach would
18 cause irreparable damage. Accordingly, Plaintiff, in addition to any other available rights or
19 remedies, may sue in equity for specific performance, and Lifetime expressly waives the defense
20 that a remedy in damages will be adequate.
21

22 **10. GOVERNING LAW**

23 10.1 The terms of this Consent Judgment shall be governed by the laws of the
24 State of California.

25 **11. RETENTION OF JURISDICTION**

26 11.1 This Court shall retain jurisdiction of this matter to implement and enforce
27 the terms this Consent Judgment.
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12. PROVISION OF NOTICE

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

For Plaintiff:

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

For Lifetime:

Elliot Belilos
Olsson Frank Weeda Terman Bode Matz, P.C
1400 Sixteenth Street, N.W., Suite 400
Washington, D.C. 20036

13. COURT APPROVAL

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

14. EXECUTION AND COUNTERPARTS

14.1 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.

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.

1 AGREE TO:

2 CENTER FOR ENVIRONMENTAL HEALTH

3

4



Dated: 2/4/9

5

Michael Green, Executive Director
Center for Environmental Health

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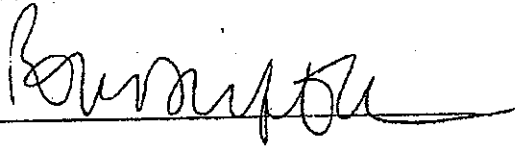
CHARLIE PIZZARO, Associate Dir.

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8

LIFETIME BRANDS

9



Dated: 2/3/09

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Ronald Shuftan

13

Printed Name

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Vice Chairman & COO

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Title

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ORDER AND JUDGMENT

Based upon the Stipulated Consent Judgment between Plaintiff and Lifetime Brands, the settlement is approved and judgment is hereby entered according to the terms therein.

Dated: APR 16 2009

MICHAEL B. DUFFICY
Judge, Superior Court of the State of California

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EXHIBIT A

(Test Methodology)

The following protocol shall be applied separately to each component of the Covered

Product:

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