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CENTER FOR ENVIRONMENTAL HEALTH

FILED

SEP 14 2009

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

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., et al.,

Defendants.

Case No. CV083678

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~~[PROPOSED]~~ **CONSENT JUDGMENT**
RE: INFANTINO LLC AND THE STEP2
COMPANY, LLC

1 **1. INTRODUCTION**

2 **1.1** On July 29, 2008, plaintiff Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint in San Francisco County
4 Superior Court, entitled *Center for Environmental Health v. Baby Boom Consumer Products,*
5 *Inc., et al.*, Marin County Superior Court Case Number CV083678 (the “CEH Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code §
7 25249.5, *et seq.* (“Proposition 65”). On April 21, 2009, the complaint in the CEH Action was
8 amended to name Infantino LLC and The Step2 Company, LLC (collectively, the “Defendants”)
9 as a defendant.

10 **1.2** Defendants are limited liability companies that employ 10 or more persons
11 and manufactured, distributed and/or sold infant accessory bags, including but not limited to bags
12 for breast pumps, baby bottles, and pacifiers, diaper bags and stroller bags (the “Products”) in the
13 State of California.

14 **1.3** Beginning on or about October 3, 2008, CEH served Defendants and public
15 enforcement agencies with the requisite 60-day notice alleging that Defendants were in violation
16 of Proposition 65 (“Notice”). CEH’s Notice and the Complaint in this Action allege that
17 Defendants exposed people who used or otherwise handled the Products to lead and/or lead
18 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
19 California to cause cancer, birth defects and other reproductive harm, without first providing clear
20 and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
21 Lead. The Notice and Complaint allege that Defendants’ conduct violates Proposition 65,
22 including Cal. Health & Safety Code § 25249.6. Defendants dispute such allegations and assert
23 that all of their Products are safe and comply with all applicable laws, including Consumer
24 Product Safety Commission and Federal Food and Drug Administration standards.

25 **1.4** For purposes of this Consent Judgment only, the CEH and Defendants
26 (collectively the “Parties”) stipulate that this Court has jurisdiction over the subject matter of the
27 violations alleged in CEH’s Complaint and personal jurisdiction over Defendants as to the acts
28 alleged in CEH’s Complaint, that venue is proper in the County of Marin, and that this Court has

1 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
2 or could have been raised in the Complaint and Notice 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 Notice and/or Complaint for the
5 purpose of avoiding prolonged and costly litigation regarding Products manufactured, distributed
6 and/or sold by Defendants. By executing this Consent Judgment, the Parties do not admit any
7 facts or conclusions of law. It is the Parties' intent that nothing in this Consent Judgment shall be
8 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation
9 of law, nor shall compliance with the Consent Judgment constitute or be construed as an
10 admission of any fact, conclusion of law, issue of law, or violation of law.

11 **2. COMPLIANCE - REFORMULATION**

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

17 **2.2 Certification.** Defendants shall obtain written certification from their
18 suppliers of the Products certifying that the Products do not contain Lead concentrations
19 exceeding the Reformulation Standard. Defendants shall obtain written certification with
20 corresponding test results from their suppliers of the Products certifying that neither the Products
21 nor any materials of which the Products are comprised contain Lead concentrations exceeding the
22 Reformulation Standard.

23 **2.3 Testing.** In order to ensure compliance with the requirements of Section
24 2.1, Defendants shall conduct (or cause to be conducted) testing to confirm that the Products do
25 not contain Lead concentrations exceeding the Reformulation Standard. All testing pursuant to
26 this Section 2 shall be performed according to EPA 3050B as interpreted and applied by an
27 International Laboratory Accreditation Cooperation ("ILAC") accredited lab, or a Consumer
28 Product Safety Commission ("CPSC") approved test method for testing total lead content in

1 substrate material (the "Test Protocol"). The results of all testing performed pursuant to this
2 Section 2 shall be made available to both CEH and Defendant on a confidential basis.

3 **2.3.1 Random Testing.** Testing pursuant to this Section 2 shall be
4 performed on randomly selected units of Products in accordance with Defendants' usual testing
5 practices. At a minimum, Defendants shall test at least 5 units (each unit consisting of one infant
6 accessory bag) of Product from each of the first two shipments from each supplier following the
7 Compliance Date. For the remainder of the shipments following the Compliance Date, Defendant
8 shall test at least 2 units of Product per shipment.

9 **2.3.2 Products that Exceed Stipulated Levels Pursuant to**
10 **Defendants' Testing.** If the results of the testing required pursuant to Section 2.3 show levels of
11 lead exceeding the Reformulation Standard for the Product, Defendant shall: (1) refuse to accept
12 all of the Products that were purchased under the particular purchase order; (2) send a notice to
13 the supplier explaining that such Products do not comply with the supplier's certification; and (3)
14 apply the testing frequency pursuant to Section 2.3.1 for the next order purchased from the
15 supplier as if such purchase were the first shipment following the Compliance Date.

16 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing
17 of the Products. Any such testing will be conducted by CEH at an independent laboratory in
18 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
19 excess of the Reformulation Standard for two or more Products, CEH shall inform Defendants of
20 the test results, including information sufficient to permit Defendants to identify the Product(s).
21 Within thirty (30) days following such notice, Defendants shall provide CEH, at the address listed
22 in Section 11, with the certification and testing information demonstrating its compliance with
23 Sections 2.2 and 2.3 of this Consent Judgment. Defendants shall then have the opportunity to
24 conduct their own independent testing of the Products from the same lot to confirm or deny
25 CEH's tests. If Defendants' independent testing confirms CEH's test results, Defendants shall
26 then apply the testing frequency set forth in Section 2.3.1 for the next two orders of Products from
27 the supplier(s) of the Products at issue as if such orders were the first ones following the
28 Compliance Date. In addition, if Defendants' independent testing confirms CEH's test results

1 and Defendants fail to provide CEH with certification and testing information demonstrating that
2 they complied with Sections 2.2 and/or 2.3, Defendants shall be liable for stipulated payments in
3 lieu of penalties for Products for which CEH produces tests demonstrating Lead levels exceeding
4 the Reformulation Standard, as set forth below. The payments shall be made to CEH and used for
5 the purposes described in Section 3.1.

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

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

13 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar
14 year, regardless of the number of units of Defendants' Products tested by CEH that exceed the
15 Lead levels set forth in this Consent Judgment, shall be \$3,500.

16 **3. SETTLEMENT PAYMENTS**

17 **3.1** In consideration of the mutual covenants and releases provided in this
18 Consent Judgment, within 10 days of execution of this Consent Judgment, Defendants
19 collectively shall pay a total of \$15,000 (made up of the two portions described in Sections 3.2
20 and 3.3 below) as a settlement payment. This total shall be paid in two separate checks delivered
21 to the address set forth in Section 12.1 within 10 days of execution and entry of this Consent
22 Judgment and shall be made payable and allocated as follows.

23 **3.2 Monetary Payment in Lieu of Penalty.** Defendants collectively shall pay
24 to CEH \$5,000 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH
25 shall use such funds to continue its work protecting people from exposures to toxic chemicals. As
26 part of this work, CEH intends to conduct periodic testing of the Products as set forth in Section
27 2.4. This payment shall be made payable to CEH.

1 **3.3 Attorneys' Fees and Costs.** Defendants collectively shall pay \$10,000 to
2 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,
3 and any other costs incurred as a result of investigating, bringing this matter to Defendants'
4 attention, litigating and negotiating a settlement in the public interest. This payment shall be
5 made payable to Lexington Law Group, LLP.

6 **4. MODIFICATION OF CONSENT JUDGMENT**

7 **4.1** This Consent Judgment may be modified by written agreement of the
8 Parties.

9 **4.2** CEH intends to enter into agreements with other entities that manufacture,
10 distribute and/or sell Products. Should Defendants determine that the provisions of any such
11 agreement with a similarly situated manufacturer or distributor of products are less stringent,
12 Defendants may obtain a modification of this Consent Judgment to conform with the terms of the
13 later signed agreement.

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 **5.1** The Parties agree that any action based on violation of this Consent
16 Judgment shall be brought in the Superior Court of California in Marin County. For purposes of
17 this Consent Judgment, notwithstanding Section 1.4 above, the Parties agree that the Superior
18 Court of California in Marin County has subject matter jurisdiction over any disputes arising from
19 this Consent Judgment and personal jurisdiction over each of the Parties, and that venue is proper
20 in the County of Marin. In any action by any Party arising under this Consent Judgment, the
21 prevailing Party shall be entitled to reasonable attorneys' fees and costs associated with such
22 action. CEH further agrees that any enforcement regarding alleged Lead exposures resulting
23 from Products sold after the Compliance Date will exclusively be addressed using the procedures
24 set forth in this Consent Judgment.

25 **6. APPLICATION OF CONSENT JUDGMENT**

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

1 **7. CLAIMS COVERED AND RELEASE**

2 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
3 and Defendants, including Defendants' parents, subsidiaries, shareholders, owners, divisions,
4 subdivisions, affiliates, directors, officers, employees, agents, attorneys, (collectively, "Defendant
5 Releasees") and all entities to whom Defendants distribute or sell the Products, including without
6 limitation distributors, wholesalers, retailers, licensees or customers (collectively, "Distribution
7 Releasees") of any violation of Proposition 65 that was or could have been asserted in the Notice
8 or Complaint against Defendants, including without limitation any claims that could be asserted
9 in connection with any of the Products covered by this Consent Judgment and any claims based
10 on failure to warn regarding alleged exposures to Lead with respect to any Products
11 manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date of
12 entry of this Consent Judgment. Compliance with the terms of this Consent Judgment constitutes
13 compliance with Proposition 65 for purposes of Lead exposures from the Products.

14 **7.2** CEH for itself and acting in the public interest pursuant to Health and
15 Safety Code section 25249.7 waives and forever discharges any and all claims against the
16 Defendant Releasees and Distribution Releasees arising from any violation of Proposition 65 or
17 any other statutory or common law claims that have been or could have been asserted in the
18 public interest pursuant to Health and Safety Code section 25249.7 regarding the failure to warn
19 about the exposure to Lead arising in connection with the Products manufactured, distributed or
20 sold by Defendants before the Compliance Date, or any claims based on the facts or conduct
21 alleged in the Notice or Complaint, or facts similar to those alleged.

22 **7.3** In furtherance of the foregoing, as to alleged exposures to lead from use of
23 the Products, CEH hereby waives any and all rights and benefits which it now has, or in the future
24 may have, conferred upon it by virtue of the provisions of Section 1542 of the California Civil
25 Code, which provides as follows:

26
27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
28 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

1 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
2 SETTLEMENT WITH THE DEBTOR.

3 CEH understands and acknowledges that the significance and consequence of this waiver of
4 California Civil Code Section 1542 is that even if CEH suffers future damages arising out of or
5 resulting from, or related directly or indirectly to, in whole or in part, the Products, including but
6 not limited to any exposure to, or failure to warn with respect to exposure to, the Products, CEH
7 will not be able to make any claim for those damages against Defendant Releasees or Distribution
8 Releasees, whether such claim was known or unknown at the time CEH entered this release.
9 Nothing in this Paragraph shall be read to limit the obligations of any Defendant as set forth under
10 this Consent Judgment.

11 **8. SEVERABILITY**

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

15 **9. SPECIFIC PERFORMANCE**

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

23 **10. GOVERNING LAW**

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

26 **11. RETENTION OF JURISDICTION**

27 **11.1** This Court shall retain jurisdiction of this matter to implement and
28 enforce 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 CEH:

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

For Defendants:

Nancy Shaw
Vice President, Human Resources & General Counsel
The Step2 Company, LLC
10010 Aurora-Hudson Road
Streetsboro, Ohio 44241

Bridget Weiss, CFO
Infantino USA
4920 Carroll Canyon Road, Suite 200
San Diego, CA 92121 USA

with a copy (which shall not constitute notice) to:

Elizabeth L. Deeley
Kirkland & Ellis LLP
555 California Street, Suite 2700
San Francisco, CA 94104

13. EXECUTION AND COUNTERPARTS

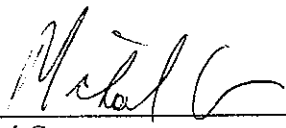
13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 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.

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AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Executive Director

Dated: 6/30/09

THE STEP2 COMPANY, LLC

Dated:

[Name]

[Title]

INFANTINO LLC

Dated:

[Name]

[Title]

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green
Executive Director

Dated:

THE STEP2 COMPANY, LLC

Holly Ohlrich

Dated: *June 29, 2009*

Holly Ohlrich
[Name]

Counsel
[Title]

INFANTINO LLC

Bridget Weiss

Dated: *July 2, 2009*

BRIDGET WEISS
[Name]

V. P. Finance
[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Infantino LLC and The Step2 Company, LLC, 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