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CENTER FOR ENVIRONMENTAL HEALTH

FILED

JAN 20 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

vs.

LAND'S END, INC. DBA LAND'S END
DIRECT MERCHANTS, INC.; and Defendant
DOES 1 through 200, inclusive;

Defendants.

Case No. CIV1006649

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1** On December 22, 2010, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in Marin County
4 Superior Court, entitled *Center for Environmental Health v. Land’s End, Inc. dba Land’s End*
5 *Direct Merchants, Inc.*, Marin County Superior Court Case Number CIV1006649 (the “Action”),
6 for civil penalties and injunctive relief pursuant to the provisions of California Health & Safety
7 Code §25249.5 *et seq.* (“Proposition 65”).

8 **1.2** Defendant Land’s End, Inc. dba Land’s End Direct Merchants, Inc.
9 (“Land’s End”) is a “person in the course of doing business” under Proposition 65 and
10 manufactures, distributes and/or sells keychains and charms in the State of California. Land’s
11 End and CEH are referred to collectively herein as the Parties.

12 **1.3** On or about August 6, 2010, CEH served Land’s End and the appropriate
13 public enforcement agencies with the requisite 60-day notice that Land’s End is in violation of
14 Proposition 65. CEH’s notice and the Complaint in this Action allege that Land’s End exposes
15 individuals who use or otherwise handle keychains to lead and/or lead compounds (referred to
16 interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer,
17 birth defects and other reproductive harm, without first providing clear and reasonable warning to
18 such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notice and
19 Complaint allege that Land’s End’s conduct violates Health & Safety Code §25249.6, the
20 warning provision of Proposition 65.

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

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
7 any other or future legal proceedings. This Consent Judgment is the product of negotiation and
8 compromise and is accepted by the parties, for purposes of settling, compromising and resolving
9 issues disputed in this action, including future compliance by Land's End with Section 3 of this
10 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

11 **2. DEFINITIONS**

12 **2.1** The term "Product" shall mean keychains.

13 **2.2** The term "Effective Date" means the date of entry of this Consent
14 Judgment.

15 **3. COMPLIANCE - REFORMULATION**

16 **3.1 Lead Reformulation.** After the Effective Date, Land's End shall not
17 distribute, ship, or sell, or cause to be distributed, or sold, any Product unless such Product
18 complies with the following Lead Limits:

19 **3.1.1** "Paint or other Surface Coatings" as that term is defined in 16
20 C.F.R. § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

21 **3.1.2** Polyvinyl chloride ("PVC"): no more than 0.02 percent Lead by
22 weight (200 parts per million ("ppm")).

23 **3.1.3** All other materials: no more than .03 percent Lead by weight (300
24 ppm).

25 **3.2 Test Results from suppliers.** As set forth in Sections 3.3 and 3.4, Land's
26 End shall obtain test results from its suppliers of the Products and/or their testing labs confirming
27 that the Products comply with the Lead Limits established by Section 3.1.

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1 **3.3 Testing of Existing Inventory.** On or before the Effective Date, Land's
2 End shall have tested, or shall cause its supplier to test, each style of Product, it has in inventory
3 to ensure that such Products comply with the Lead Limits established by Section 3.1. Such
4 testing shall be conducted by an independent laboratory using an acid digest test method (the
5 "Test Protocol"). Land's End shall ensure that such testing is conducted each time Land's End (i)
6 offers a new style of Product for sale or (ii) changes suppliers or ingredients with respect to an
7 existing style of Product.

8 **3.4 Ongoing testing.** After the Effective Date, Land's End shall test, or cause
9 its supplier to test, Products from each shipment. Such testing shall be conducted by an
10 independent laboratory using the Test Protocol. If the supplier attempts to deliver a product to
11 Land's End for which the results of the testing required pursuant to this section show levels of
12 Lead exceeding the requirements of Section 3.1 for a Product, Land's End shall not accept
13 delivery of such Product from the supplier.

14 **3.5 Confirmatory testing by CEH.** CEH intends to conduct periodic testing
15 of the Products. Such testing shall be conducted by an independent laboratory using the Test
16 Protocol. In the event that CEH's testing demonstrates Lead levels in excess of the requirements
17 of Section 3.1 for any Products sold in California, then CEH shall inform Land's End of the
18 violation(s), including information sufficient to permit Land's End to identify the Product(s) and
19 the location at which such Product was sold. CEH shall also provide Land's End with a copy of
20 its laboratory test results demonstrating Lead levels in excess of the requirements of Section 3.1.
21 Land's End shall, within 30 days following such notice, provide CEH, at the address listed in
22 section 13, with: (a) its supplier certification and testing information demonstrating its
23 compliance with sections 3.2 and either 3.3 or 3.4 of this Consent Judgment, as applicable; and
24 (b) a detailed plan of correction to address the alleged violation(s). If there is a dispute over
25 Land's End's proposed corrective action, the Parties shall meet and confer prior to bringing any
26 enforcement action under Section 6.

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1 **4. SETTLEMENT PAYMENTS**

2 **4.1** Within seven business days of entry of this Consent Judgment, Land's End
3 shall pay a total of \$37,500 as a settlement payment. This total shall be paid in three separate
4 checks delivered to the offices of the Lexington Law Group at the address set forth in section 13
5 below and made payable and allocated as follows. Any failure by Land's End to comply with the
6 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
7 after the delivery date the payment is received. The late fees required under this section shall be
8 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
9 pursuant to section 6 of this Consent Judgment.

10 **4.1.1 Penalty:** The sum of \$3,750 in penalties pursuant to Health and
11 Safety Code § 25249.7(b). This payment shall be made by check payable to Center for
12 Environmental Health. CEH shall provide \$2,812.50 of this amount (75% of the civil penalty) to
13 the Safe Drinking Water and Toxic Enforcement Fund in accordance with Health and Safety
14 Code § 25249.12.

15 **4.1.2 Monetary Payment in Lieu of Penalty:** The sum of \$10,750 shall
16 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This
17 payment shall be made by check payable to Center for Environmental Health. CEH shall use
18 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
19 this work, CEH intends to conduct periodic testing of the Products as set forth in section 3.5. In
20 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
21 percent of such funds to award grants to grassroots environmental justice groups working to
22 educate and protect people from exposures to toxic chemicals. The method of selection of such
23 groups can be found at the CEH web site at www.ceh.org/justicefund

24 **4.1.3 Attorneys' Fees and Costs:** The sum of \$23,000 shall be used to
25 reimburse CEH and its attorneys for a portion of their reasonable investigation fees and costs,
26 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
27 Land's End's attention, litigating and negotiating a settlement in the public interest. This
28 payment shall be made by check payable to Lexington Law Group.

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5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified by written agreement of CEH and Land's End, or upon motion of CEH or Land's End as provided by law.

6. ENFORCEMENT OF CONSENT JUDGMENT

6.1 The Parties may, by motion or application for an order to show cause before the Superior Court of the County of Marin, enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3 above, the Parties shall meet and confer regarding the basis for the anticipated motion or application in an attempt to resolve it informally. Should such attempts at meeting and conferring fail, the initiating Party may file its enforcement motion or application. Any Party seeking to enforce this Consent Judgment by motion, application for an order to show cause before this Court, or other court proceeding, shall be entitled to recover from the Party or Parties against whom enforcement was sought its reasonable attorneys' fees and costs incurred in connection with such enforcement provided that it prevails in any such enforcement proceeding.

7. APPLICATION OF CONSENT JUDGMENT

7.1 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.

8. RELEASE

8.1 This Consent Judgment is a full, final and binding resolution between CEH and Land's End, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, and attorneys and each entity to whom they directly or indirectly distribute or sell Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Defendant Releasees"), for any violation of Proposition 65 or any other statutory or common law claims that have been, or could have been, asserted in the Complaint against Land's End or Defendant Releasees, regarding the failure to warn about alleged exposure to Lead contained in the Products, in connection with any Products manufactured, distributed or sold by Land's End on or prior to the date of entry of

1 this Consent Judgment. Compliance with the terms of this Consent Judgment by Land's End
2 resolves any issue into the future concerning compliance by Land's End and Defendant Releasees
3 with Proposition 65 regarding failure to warn about exposure to Lead contained in the Products in
4 connection with any Products manufactured, distributed or sold by Land's End after the
5 Compliance Date.

6 **8.2** CEH, for itself and acting on behalf of the public interest pursuant to
7 Health and Safety Code §25249.7(d), hereby releases, waives, and forever discharges any and all
8 claims against Defendant Releasees arising from any violation of Proposition 65 or any other
9 statutory or common law claims that have been, or could have been, asserted in the Complaint
10 against Land's End or Defendant Releasees arising from any violation of Proposition 65 or any
11 other statutory or common law claims that have been, or could have been, asserted in the public
12 interest regarding the failure to warn about exposure to Lead contained in the Products, with
13 respect to any Products manufactured, distributed or sold by Land's End on or prior to the date of
14 entry of this Consent Judgment. This release does not limit or effect the obligations of any party
15 created under this Consent Judgment.

16 **9. SEVERABILITY**

17 **9.1** In the event that any of the provisions of this Consent Judgment are held by
18 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
19 affected.

20 **10. GOVERNING LAW**

21 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
22 State of California.

23 **11. RETENTION OF JURISDICTION**

24 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
25 the terms this Consent Judgment.

26 **12. PROVISION OF NOTICE**

27 **12.1** All notices required pursuant to this Consent Judgment and correspondence
28 shall be sent to the following:

1 For CEH: Howard Hirsch
2 Lexington Law Group
3 503 Divisadero Street
San Francisco, CA 94117

4 For Land's End: Michael Steel
5 Morrison & Foerster LLP
6 425 Market Street, 35th Floor
San Francisco, CA 94105

7 **13. COURT APPROVAL**

8 **13.1** If this Consent Judgment is not approved by the Court, it shall be of no
9 further force or effect. The Parties agree to support a Motion for Approval of this Consent
10 Judgment.

11 **14. EXECUTION AND COUNTERPARTS**

12 **14.1** The stipulations to this Consent Judgment may be executed in counterparts
13 and by means of facsimile, which taken together shall be deemed to constitute one document.

14 **15. AUTHORIZATION**

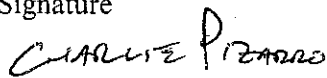
15 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into
17 and execute the Consent Judgment on behalf of the party represented and legally bind that party.
18 The undersigned have read, understand and agree to all of the terms and conditions of this
19 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
20 costs.

21 **AGREED TO:**

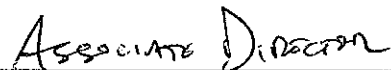
22 CENTER FOR ENVIRONMENTAL HEALTH

23 

24 _____
Signature


25 

26 _____
Printed Name

27 

28 _____
Title

1 LAND'S END, INC. DBA
2 LAND'S END DIRECT MERCHANTS, INC.

3 

4 Signature

5 Steven J. Peterson

6 Printed Name

7 Compliance Manager

8 Title

9 **ORDER AND JUDGMENT**

10 Based upon the stipulated Consent Judgment between the Parties, the settlement is
11 approved and judgment is hereby entered according to the terms herein.

12 Dated: JAN 20 2012

13 **FAYE D'OPAL**
14 Judge, Superior Court of the State of California