

FILED

JUL 19 2011

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

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6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

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

13 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
14)
Plaintiff,)
15)
16 v.)
17)
18 99 CENTS ONLY STORES; KITTRICH)
CORPORATION; and Defendant DOES 1)
through 200, inclusive,)
19)
20 Defendants.)

Case No. CIV1100300

Kim
**[PROPOSED] CONSENT JUDGMENT
AS TO KITTRICH CORPORATION**

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1 **1. INTRODUCTION**

2 **1.1** On January 18, 2011, Plaintiff 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. 99 Cents Only Stores, et al.*, Marin County Superior Court Case
5 Number CIV1100300, for civil penalties and injunctive relief pursuant to the provisions of Cal.
6 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) and naming Kittrich Corporation
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 shelf paper containing insecticide (the “Products”) in the
10 State of California.

11 **1.3** On or about November 11, 2010, CEH served Defendant and the
12 appropriate public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging
13 that Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in the CEH
14 action allege that Defendant exposes people who use or otherwise handle the Products to
15 propoxur, a chemical known to the State of California to cause cancer, without first providing
16 clear and reasonable warning to such persons regarding the carcinogenicity of propoxur. The
17 Notice and Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6,
18 the warning provision of Proposition 65. Defendant disputes such allegations and asserts that all
19 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 Judgment
24 as a full and final resolution of all claims which were or could have been raised in the Complaint
25 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 – WARNING**

8 **2.1 Warnings on Product Labels.** Upon entry of this Consent Judgment (the
9 “Compliance Date”), Defendant shall not distribute, ship, or sell, or cause to be distributed,
10 shipped or sold, any Product that contains propoxur unless such Product bears a label containing
11 the following warning language:

12 **“WARNING: This product contains propoxur, a**
13 **chemical known to the State of California**
14 **to cause cancer. Do not use this product**
15 **near food or any items that touch food.**
16 **Wash hands after handling this product**
17 **or items stored on this product.”**

18 The warning statement shall be prominently displayed in bold on the front of the outside of the
19 packaging for the Product, and shall be displayed in a separate outlined box set apart from any
20 other print and that contains no other language. The warning must be displayed with such
21 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
22 read and understood by an ordinary individual. The warning statement shall not be preceded,
23 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or
24 that introduces, modifies, qualifies, or explains the required text, such as “legal notice required
25 by law.” The parties agree that the copy of the label attached hereto as Exhibit A satisfies the
26 requirements of this section. Defendant shall not provide the warning described in this paragraph
27 for Products that do not contain propoxur. Defendant shall maintain documentation
28 demonstrating its compliance with this Section 2.1, which shall be made available to CEH upon

1 **3.2.1 Civil Penalty.** Defendant shall pay \$3,000 as a civil penalty
2 pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in
3 accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to
4 the Center For Environmental Health.

5 **3.2.2 Monetary Payment in Lieu of Civil Penalty.** Defendant shall
6 pay to CEH \$9,000 in lieu of penalty pursuant to Health & Safety Code § 25249.7(b). CEH shall
7 use such funds to continue its work protecting people from exposures to toxic chemicals. In
8 addition, as part of its *Community Environmental Action and Justice Fund*, CEH will use four
9 percent of such funds to award grants to grassroots environmental justice groups working to
10 educate and protect people from exposures to toxic chemicals. The method of selection of such
11 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of
12 penalty check shall be made payable to the Center For Environmental Health.

13 **3.2.3 Attorneys' Fees and Costs.** Defendant shall pay \$20,500 to
14 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,
15 and any other costs incurred as a result of investigating, bringing this matter to Defendant's
16 attention, litigating and negotiating a settlement in the public interest. The attorneys' fees and
17 cost reimbursement check shall be made payable to the Lexington Law Group.

18 **4. MODIFICATION OF CONSENT JUDGMENT**

19 **4.1** This Consent Judgment may be modified by written agreement of CEH
20 and Defendant, or upon motion of CEH or Defendant as provided by law.

21 **5. ENFORCEMENT OF CONSENT JUDGMENT**

22 **5.1 Enforcement Procedures.** Prior to bringing any motion or order to show
23 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
24 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
25 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
26 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
27 enforce may, by new action, motion or order to show cause before the Superior Court of Marin,
28 seek to enforce the terms and conditions contained in this Consent Judgment. Should the Party

1 seeking to enforce prevail on any motion or application under this section, such Party shall be
2 entitled to recover its reasonable attorneys' fees and costs associated with such motion or order to
3 show cause from the non-moving Party.

4 **6. APPLICATION OF CONSENT JUDGMENT**

5 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
6 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
7 them.

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

9 **7.1** This Consent Judgment is a full, final and binding resolution between
10 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
11 the Complaint against Defendant (including any claims that could be asserted in connection with
12 any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates,
13 directors, officers, employees, agents, attorneys, distributors, customers or retailers including
14 defendant 99 Cents Only Stores (collectively, "Defendant Releasees") based on failure to warn
15 about alleged exposures to propoxur resulting from any Products manufactured, distributed or
16 sold by Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment.
17 CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against
18 Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 for purposes of propoxur exposures from the Products.

20 **8. GOVERNING LAW**

21 **8.1** The terms of this Consent Judgment shall be governed by the laws of the
22 State of California.

23 **9. RETENTION OF JURISDICTION**

24 **9.1** This Court shall retain jurisdiction of this matter to implement and enforce
25 the terms this Consent Judgment.

26 **10. PROVISION OF NOTICE**

27 **10.1** All notices required pursuant to this Consent Judgment and
28 correspondence shall be sent to the following:

1 For CEH:

2 Mark N. Todzo
3 Lexington Law Group
4 503 Divisidero Street
San Francisco, CA 94117

5 For Defendant:

6 Todd Winter
7 Winter LLP
8 1901 Newport Blvd., Ste. 350
Costa Mesa, CA 92627

9 **11. COURT APPROVAL**

10 **11.1** CEH will comply with the settlement notice provisions of Health & Safety
11 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003 by preparing and
12 filing a motion for approval of this Consent Judgment and Defendant shall support approval of
13 such motion.

14 **12. COUNTERPARTS**

15 **12.1** The stipulations to this Consent Judgment may be executed in
16 counterparts.

17 **13. AUTHORIZATION**

18 **13.1** Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
20 into and execute the Consent Judgment on behalf of the party represented and legally bind that
21 party. The undersigned have read, understand and agree to all of the terms and conditions of this
22 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
23 costs.

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1 **AGREED TO:**

2 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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7 **KITTRICH CORPORATION**

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[Name]

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[Title]

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AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

KITTRICH CORPORATION



Robert Friedland

[Name]

President

[Title]

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JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Kittrich Corporation, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

JUL 19 2011

Dated: _____

LYNN DURYEE

Judge, Superior Court of the State of California

Exhibit A



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Not actual Font

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Kills Roaches, Ants,
(excluding fire, harvester, carpenter & pharaoh ants)
& Silverfish

Arial Narrow Bold - 16.5 pt

Arial Narrow - 6.5 pt

18 in. x 10 ft. 45 cm x 305 cm
Net Wt. 2.78 oz.

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Active Ingredient: Propoxur.....1.00%
Inert Ingredient.....99.00%
100.00%

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KEEP OUT OF REACH OF CHILDREN

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CAUTION:

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PRECAUTIONARY STATEMENTS

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HAZARDS TO HUMANS AND DOMESTIC ANIMALS

CAUTION: Harmful if absorbed through the skin. Causes mild eye irritation. Avoid contact with eyes, skin or clothing. Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.

FIRST AID: Contains an N-methyl carbamate that inhibits cholinesterase.
IF ON SKIN OR CLOTHING: Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for further treatment advice.
IF IN EYES: Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for further treatment advice.
Have the product container or label with you when calling a poison control center or going for treatment.
Questions? 1-800-627-2334 Monday through Friday 9 a.m. to 5 p.m.
NOTE TO PHYSICIAN: Administer Atropine sulfate in large therapeutic doses. Repeat as necessary to the point of tolerance.

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DIRECTIONS FOR USE:

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It is a violation of federal law to use this product in a manner inconsistent with its labeling. Do not allow children to play with this product. Do not place wrapped or unwrapped food or utensils on impregnated paper. Do not store linens, towelings, clothing or any other material that may come into contact with the skin on this paper.

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APPLICATION INSTRUCTIONS:

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This product is effective during the first 3 weeks after installation in killing American and German roaches, ants (excluding fire ants, harvester ants, carpenter ants and pharaoh ants) and silverfish. Replace product when effectiveness diminishes or paper becomes soiled. Use this product to line drawers and cabinets; use in storage areas and around garbage areas. Put under sinks and in broom closets and other secluded areas where insects may congregate. Use in basement areas and other damp areas.

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STORAGE AND DISPOSAL

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Do not contaminate water, food, or feed by storage and disposal.
Pesticide Storage: Store in original container in a cool, dry place away from food and foodstuffs. Keep product in locked storage area inaccessible to children and pets. **Pesticide Disposal and Container Handling:** Nonrefillable container. Do not reuse or refill this container. If empty, place in trash or offer for recycling if available. If partly filled, call your local solid waste agency for disposal instructions. Never place unused product down any indoor or outdoor drain.

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EPA Reg. No 62577-6

EPA Est. No 62577-CA-01

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Mittrich Corporation
14555 Alondra Blvd.
La Mirada, CA 90638
1-714-736-1000

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WARNING: This product contains propoxur, a chemical known to the State of California to cause cancer. Do not use this product near food or any items that touch food. Wash hands after handling this product or items stored on this product.

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