

FILED

DEC 13 2011

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Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF MARIN**

12 CENTER FOR ENVIRONMENTAL HEALTH, a
non-profit corporation

13 Plaintiff,

14 v.

15 WORLD RICHMAN MANUFACTURING
16 CORPORATION *et al.*,

17 Defendants.

Case No. CIV 10-06651

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT RITZ CAMERA
& IMAGE LLC**

1 **1. INTRODUCTION**

2 **1.1** On December 22, 2010, Plaintiff Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint in Marin County Superior
4 Court, entitled Center for Environmental Health v. World Richman Manufacturing Corporation,
5 Marin County Superior Court Case Number CIV 10-06651 (the “Action”), for civil penalties and
6 injunctive relief pursuant to the provisions of California Health & Safety Code §25249.5 et seq.
7 (“Proposition 65”). On February 24, 2011, CEH filed a “Doe” amendment naming Ritz Camera &
8 Image LLC (“Ritz”) as a defendant in the Action.

9 **1.2** Plaintiff alleges that Ritz is a “person in the course of doing business” under
10 Proposition 65 and manufactures, distributes and/or sells camera cases (the “Products”) in the State
11 of California. Ritz and CEH are referred to collectively herein as the Parties.

12 **1.3** On or about December 9, 2010, CEH served Ritz and the appropriate public
13 enforcement agencies with the requisite 60-day notice that Ritz is in violation of Proposition 65.
14 CEH’s notice and the Complaint in this Action allege that Ritz exposes individuals who use or
15 otherwise handle the Products to lead and/or lead compounds (referred to interchangeably herein as
16 “Lead”), chemicals known to the State of California to cause cancer, birth defects and other
17 reproductive harm, without first providing clear and reasonable warning to such persons regarding
18 the carcinogenicity and reproductive toxicity of Lead. The notice and Complaint allege that Ritz’s
19 conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

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 Ritz as to the acts alleged in CEH’s Complaint, that venue is proper in the
23 County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full and
24 final resolution of all claims which were or could have been raised in the Complaint based on the
25 facts alleged therein.

26 **1.5** The Parties enter into this Consent Judgment effective on the date when this
27 Consent Judgment is approved by the Court by the signing of the Order below, and conditional upon
28 such approval, pursuant to a settlement of certain disputed claims between the Parties as alleged in

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

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Lead Reformulation.** Thirty (30) days after the date when the Court signs
13 the Order below approving this Consent Judgment, (the "Compliance Date"), Ritz shall not
14 distribute, ship, sell or offer for sale any Product that contains any component, or is made of any
15 material, that exceeds the following Lead limits:

16 **2.1.1** Paint or other Surface Coatings: 90 parts per million ("ppm").

17 **2.1.2** Polyvinyl chloride ("PVC"): 200 ppm.

18 **2.1.3** All other materials: 300 ppm.

19 **2.2 Supplier Specifications and Testing.** Ritz shall include in its specifications a
20 requirement that suppliers of the Products comply with the lead content requirements of Section 2.1
21 of this Consent Judgment. Ritz shall request from its suppliers of the Products test results certifying
22 that the Products meet the requirements of Section 2.1.

23 **2.3 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
24 the Products. Such testing shall be conducted by an independent laboratory. In the event that CEH's
25 testing demonstrates Lead levels in excess of the requirements of Section 2.1 for any Product sold in
26 California, CEH shall inform Ritz of the alleged violation(s), including information sufficient to
27 permit Ritz to identify the Product(s) and where they were purchased. CEH will also provide any
28 available information so that Ritz can determine the date products were sold, and a copy of any test

1 results supporting CEH's claim of violation. If the products were sold by Ritz before the
2 Compliance Date, Ritz shall not need to take any corrective action nor be in violation of this consent
3 judgment. If the products were sold by Ritz after the Compliance Date, Ritz shall, within twenty
4 (20) days following such notice, provide CEH at the address listed in Section 11, with: (a)
5 information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment; and
6 (b) a detailed description of corrective action that it has undertaken or proposes to undertake to
7 address the alleged violation. If there is a dispute over the sufficiency of the proposed corrective
8 action or its implementation, CEH shall promptly notify Ritz and the Parties shall meet and confer
9 before CEH seeks the intervention of the Court to resolve the dispute. This remedy is in addition to
10 any other remedies available to enforce the terms of this Consent Judgment.

11 **2.4 Documentation.** The results of all testing performed and obtained from
12 suppliers shall be retained by Ritz for a period of three years from the date of the testing and shall be
13 made available to CEH upon request.

14 **2.5 Products in the Stream of Commerce.** Ritz's Products that have been
15 manufactured, distributed, shipped or sold, or that are otherwise in the stream of commerce prior to
16 the Compliance Date shall be released from any claims that were brought or that could be brought by
17 CEH in the Complaint, as though they were Covered Claims within the meaning of sections 7.1
18 through 7.3 below.

19 **3. SETTLEMENT PAYMENTS**

20 **3.1** On or before December 15, 2011, Ritz shall pay a total of \$40,000 as a
21 settlement payment. Any failure by Ritz to comply with the payment terms herein shall be subject to
22 a stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
23 received. The late fees required under this section shall be recoverable, together with reasonable
24 attorneys' fees, in an enforcement proceeding brought pursuant to section 5 of this Consent
25 Judgment. The total amount paid by Ritz shall be allocated by CEH as follows:

26 **3.1.1 Penalty:** The sum of \$4,000 in penalties pursuant to Health and Safety
27 Code § 25249.7(b). This payment shall be made by check payable to Center for Environmental
28 Health. CEH shall provide seventy-five percent (75%) of the civil penalty to the Safe Drinking

1 Water and Toxic Enforcement Fund in accordance with Health and Safety Code § 25249.12.

2 **3.1.2 Monetary Payment in Lieu of Penalty:** \$11,500 shall be paid to CEH
3 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment shall be made
4 by check payable to Center for Environmental Health. CEH shall use such funds to continue its work
5 protecting people from exposures to toxic chemicals. As part of this work, CEH intends to conduct
6 periodic testing of the Products as set forth in Section 2.4. In addition, as part of its Community
7 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants to
8 grassroots environmental justice groups working to educate and protect people from exposures to
9 toxic chemicals. The method of selection of such groups can be found at the CEH web site at
10 www.ceh.org/justicefund.

11 **3.1.3 Attorneys' Fees and Costs:** \$24,500 shall be used to reimburse CEH
12 and its attorneys for a portion of their reasonable investigation fees and costs, attorneys' fees, and
13 any other costs incurred as a result of investigating, bringing this matter to Ritz's attention, litigating
14 and negotiating a settlement in the public interest, and securing entry of this Consent Judgment. This
15 payment shall be made by check payable to Lexington Law Group.

16 **4. MODIFICATION OF CONSENT JUDGMENT**

17 **4.1** This Consent Judgment may be modified by written agreement of CEH and
18 Ritz, or upon motion of CEH or Ritz as provided by law.

19 **5. ENFORCEMENT OF CONSENT JUDGMENT**

20 **5.1** Either Party may, by motion or application for an order to show cause before
21 the Superior Court of the County of Marin, enforce the terms and conditions contained in this
22 Consent Judgment. Should the moving party prevail on any motion, application for an order to show
23 cause or other proceeding to enforce a violation of this Consent Judgment, the moving party shall be
24 entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.

25 **6. APPLICATION OF CONSENT JUDGMENT**

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

1 7. **RELEASE**

2 7.1 This consent Judgment is a full, final and binding resolution between CEH
3 acting on behalf of itself and in the public interest, and Defendant and its parents, shareholders,
4 divisions, subdivisions, subsidiaries, partners, affiliates and their successors and assigns (“Defendant
5 Releasees”), and those to whom Defendant Releasees distribute or sell the Products, including but
6 not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members and
7 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 or any other
8 statutory or common law claims that have been or could have been asserted in the public interest
9 against Defendant, Defendant Releasees and Downstream Defendant Releasees regarding the alleged
10 failure to warn about alleged exposures to lead resulting from any Products manufactured,
11 distributed or sold by Defendant on or prior to the date of entry of this Consent Judgment (“Covered
12 Claims”).

13 7.2 CEH, acting for itself and on behalf of the public interest pursuant to Health &
14 Safety Code Section 25249.7(d), hereby releases, waives and forever discharges any and all Covered
15 Claims against Defendant, Defendant Releasees and Downstream Defendant Releasees based on
16 alleged failure to warn about exposure to lead contained in the Products.

17 7.3 Compliance with the terms of this Consent Judgment by Defendant shall
18 constitute compliance by Defendant, Defendant Releasees and Downstream Defendant Releasees
19 with Proposition 65 for purposes of exposures to lead from Defendant’s Products. Nothing in this
20 Section 7 shall be deemed to limit or affect the obligations of any Party created under this Consent
21 Judgment.

22 8. **SEVERABILITY**

23 8.1 In the event that any of the provisions of this Consent Judgment are held by a
24 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

25 9. **GOVERNING LAW**

26 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
27 of California.

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10. RETENTION OF JURISDICTION

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

11. PROVISION OF NOTICE

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

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

For Ritz: Kurt Weissmuller
Alston & Bird LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

12. COURT APPROVAL

12.1 If this Consent Judgment is not approved by the Court, it shall be of no further force or effect and CEH will return all money paid by Ritz within 15 days of its written request. CEH will prepare and file a Motion for Approval of this Consent Judgment. The Parties agree to support a Motion for Approval of this Consent Judgment.

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 provided herein, each party is to bear its own fees and costs.

1 **AGREED TO:**

2 CENTER FOR ENVIRONMENTAL HEALTH

3
4  9/28/11
5 _____
6 Signature

7
8 CHARLIE PIZZANO
9 _____
10 Printed Name

11
12 ASSOCIATE DIRECTOR
13 _____
14 Title

15
16 RITZ CAMERA & IMAGE, LLC

17
18 _____
19 Signature

20
21 _____
22 Printed Name

23
24 _____
25 Title

26 **ORDER AND JUDGMENT**

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

Dated: _____

Judge of the Superior Court of the State of California

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AGREED TO:

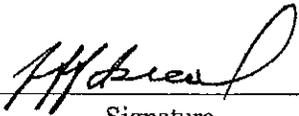
CENTER FOR ENVIRONMENTAL HEALTH

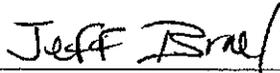
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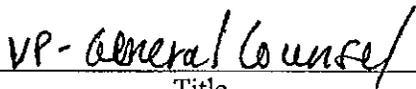
Printed Name

Title

RITZ CAMERA & IMAGE, LLC


Signature


Printed Name


Title

ORDER AND JUDGMENT

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

DEC 13 2011

Dated: _____

LYNN DURYEE

Judge of the Superior Court of the State of California