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DEC 07 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

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

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiffs,

VS.

GOLD MEDAL PRODUCTS, INC., *et al.*

Defendants.

) Case No. CV-1103702

) ~~PROPOSED~~ CONSENT JUDGMENT
) AS TO HUDSON INDUSTRIES, INC.
) AND GOLD MEDAL PRODUCTS,
) INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH") and Hudson Industries, Inc. ("Hudson") and Gold Medal Products, Inc. ("Gold Medal") (collectively Hudson and Gold Medal are referred to herein as "Settling Defendants"), to settle certain claims asserted by CEH against Settling Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Gold Medal Products, Inc., et al.*, Marin County Superior Court Case No. CV-1103702 (the "Action").

1.2 On March 2, 2011, CEH sent a "Notice of Violation of Proposition 65"

1 (“Notice”) to the California Attorney General, the District Attorneys of every county in California,
2 the City Attorneys of every California city with a population greater than 750,000, and to Settling
3 Defendants regarding the presence of lead and lead compounds (collectively, “Lead”) in beanbag
4 chairs made with vinyl materials (“Covered Products”) manufactured, distributed or sold by
5 Settling Defendants.

6 1.3 On July 26, 2011, CEH filed the Action against Settling Defendants.

7 1.4 For purposes of this Consent Judgment only, CEH and Settling Defendants (the
8 “Parties”) stipulate that this Court has jurisdiction over the allegations contained in the Complaint
9 and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that
10 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
11 Judgment as a full and final resolution of all claims which were or could have been raised in the
12 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
13 distributed, and/or sold by Settling Defendants.

14 1.5 CEH and Settling Defendants enter into this Consent Judgment as a full and
15 final settlement of all claims that were raised in the Notice and Complaint, or which could have
16 been raised in the Notice or Complaint, arising out of the facts or conduct related to Settling
17 Defendants alleged therein. By execution of this Consent Judgment and agreeing to comply with
18 its terms, the Parties do not admit any facts or conclusions of law including, but not limited to, any
19 facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any
20 other statutory, common law or equitable requirements relating to Lead in the Covered Products.
21 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any
22 fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
23 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
24 issue of law, or violation of law. Settling Defendants deny the material, factual and legal
25 allegations in CEH’s Complaint and expressly deny any wrong doing whatsoever. Nothing in this
26 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the
27 Parties may have in this or any other pending or future legal proceedings. This Consent Judgment
28 is the product of negotiation and compromise and is accepted by the Parties solely for purposes of

1 settling, compromising, and resolving issues disputed in this action.

2 **2. INJUNCTIVE RELIEF**

3 **2.1 Reformulation of Covered Products.** After the date of entry of this Consent
4 Judgment (the "Effective Date"), Settling Defendants shall not manufacture, ship, sell or offer for
5 sale any Covered Product that contains any Accessible Component made of any material that is
6 more than 0.02 percent (200 parts per million ("ppm")) Lead by weight. For purposes of this
7 Consent Judgment, "Accessible Component" shall mean a component of a Covered Product that
8 could be touched or handled by a consumer during normal and reasonably foreseeable use.

9 **2.2 Consumer Recall of Covered Products.** On or before the Effective Date,
10 Settling Defendants shall have withdrawn from sale in California, and attempt to recall from
11 consumer purchasers, the Deluxe Vinyl Teen Red Beanbag Chair, Item Number 1013155 ("Recall
12 Product"), which was identified in the 60-Day Notice sent by CEH to Settling Defendants. Such
13 recall shall extend to consumers who purchased the Recall Product between January 1, 2010 and
14 April 30, 2011 and exclude CEH or its agents. In attempting to recall the Recall Product from
15 prior purchasers, Settling Defendants shall, at a minimum: (a) determine the name and last known
16 mailing address of prior purchasers based on a review of Settling Defendants' records and an
17 inquiry to their retailers; (b) send a notice of the recall to prior purchasers that explains that the
18 Recall Product is being recalled due to a Proposition 65 Settlement involving lead in the Recall
19 Products and offer a full refund of the retail purchase price plus any shipping costs to any
20 consumer who returns the Recall Product to Settling Defendants within 90 days of the sending of
21 the recall notice; (c) honor any valid requests for refunds that are received within 90 days of the
22 sending of the recall notice; and (d) destroy any Recall Products that are returned by retailers or
23 consumers. Any destruction of the Recall Products shall be in compliance with all applicable laws.
24 Settling Defendants shall keep and make available to CEH for inspection and copying records and
25 correspondence regarding the recall and destruction of the Recall Products. If there is a dispute
26 over the corrective action, the Parties shall meet and confer before seeking any remedy in court.

27 **3. ENFORCEMENT**

28 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show

1 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
2 allegedly breaching party twenty (20) days advanced written notice of the alleged violation. The
3 Parties shall meet and confer during such twenty (20) day period in an effort to try to reach
4 agreement on an appropriate cure for the alleged violation. After such twenty (20) day period, the
5 Party seeking to enforce may, by new action, motion or order to show cause before the Superior
6 Court of Marin, seek to enforce the terms and conditions contained in this Consent Judgment.

7 **4. PAYMENTS**

8 4.1 **Payments From Settling Defendants.** Within five (5) days of the entry of this
9 Consent Judgment, Settling Defendants shall pay the total sum of \$15,000 as a settlement
10 payment. If Settling Defendants fail to comply with the payment terms herein, CEH shall be
11 entitled to enforce the payment terms by motion or order to show cause before the Superior Court
12 of Marin and shall be entitled to recover its reasonable attorneys' fees and costs from Settling
13 Defendants in connection with any such enforcement proceeding brought pursuant to Section 3. If
14 the Court's approval of this Consent Judgment is overturned on appeal, and unless the Parties can
15 agree to a modification or the Court orders otherwise, CEH shall return any funds received from
16 Settling Defendants within thirty (30) days after such appeal becomes final.

17 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendants
18 shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn:
19 Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and
20 allocated as follows:

21 4.2.1 Settling Defendants shall pay the sum of \$1,500 as a penalty pursuant to
22 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with
23 Health & Safety Code §25249.12. The penalty check shall be made payable to the Center For
24 Environmental Health.

25 4.2.2 Settling Defendants shall pay the sum of \$4,000 as payment to CEH in
26 lieu of penalty pursuant to Health & Safety Code §25249.7(b), and California Code of
27 Regulations, Title 11, §3202(b). CEH will use such funds to continue its work educating and
28 protecting people from exposures to toxic chemicals, including heavy metals. CEH may also use a

1 portion of such funds to monitor compliance with the reformulation requirements of this and other
2 similar Consent Judgments. In addition, as part of its Community Environmental Action and
3 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
4 justice groups working to educate and protect people from exposures to toxic chemicals. The
5 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
6 The payment in lieu of penalty check shall be made payable to the Center For Environmental
7 Health.

8 4.2.3 Settling Defendants shall pay the sum of \$9,500 as reimbursement of
9 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check
10 shall be made payable to the Lexington Law Group.

11 **5. MODIFICATION AND DISPUTE RESOLUTION**

12 5.1 **Modification.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties, with the approval of the Court, or by an order of this
14 Court upon motion and in accordance with law.

15 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
16 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a
17 motion to modify the Consent Judgment.

18 **6. CLAIMS COVERED AND RELEASE**

19 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and
20 Settling Defendants and Settling Defendants' parents, shareholders, divisions, subdivisions,
21 subsidiaries, partners, sister companies and their successors and assigns ("Defendant Releasees"),
22 and all entities to whom they distribute or sell Covered Products including, but not limited to,
23 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
24 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or
25 common law claims that have been or could have been asserted in the public interest against
26 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the
27 failure to warn about exposure to Lead arising in connection with Covered Products manufactured,
28 distributed, or sold by Settling Defendants prior to the Effective Date.

1 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
2 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
3 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
4 violation of Proposition 65 or any other statutory or common law claims that have been or could
5 have been asserted in the public interest regarding the failure to warn about exposure to Lead
6 arising in connection with Covered Products manufactured, distributed or sold by Settling
7 Defendants prior to the Effective Date.

8 6.3 Compliance with the terms of this Consent Judgment by Settling Defendants
9 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
10 Defendants, the Defendant Releasees and their Downstream Defendant Releasees with respect to
11 any alleged failure to warn about Lead in Covered Products manufactured, distributed or sold by
12 Settling Defendants after the Effective Date.

13 **7. PROVISION OF NOTICE**

14 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
15 the notice shall be sent by first class and electronic mail as follows:

16 7.1.1 **Notices to Settling Defendants.** The persons for Settling Defendants and
17 to receive Notices pursuant to this Consent Judgment shall be:

18 Malcolm C. Weiss
19 Hunton & Williams LLP
20 550 South Hope Street, Suite 2000
21 Los Angeles, CA 90071
22 mweiss@hunton.com

23 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
24 this Consent Judgment shall be:

25 Howard Hirsch
26 Lexington Law Group
27 503 Divisadero Street
28 San Francisco, CA 94117
 hhirsch@lexlawgroup.com

 7.2 Any Party may modify the person and address to whom the notice is to be sent
by sending the other Party notice by first class and electronic mail.

1 **8. COURT APPROVAL**

2 8.1 This Consent Judgment shall become effective on the Effective Date, provided
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
4 Settling Defendants shall support approval of such Motion.

5 8.2 If this Consent Judgment is not entered by the Court within 12 months after
6 executed by the Settling Defendants, it shall be of no force or effect and shall not be introduced
7 into evidence or otherwise used in any proceeding for any purpose.

8 **9. GOVERNING LAW AND CONSTRUCTION**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
10 of California.

11 **10. ENTIRE AGREEMENT**

12 10.1 This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
15 merged herein and therein. There are no warranties, representations, or other agreements between
16 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
17 implied, other than those specifically referred to in this Consent Judgment have been made by any
18 Party hereto. No other agreements not specifically contained or referenced herein, oral or
19 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
20 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
21 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
22 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
23 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of
24 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
25 hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

26 **11. RETENTION OF JURISDICTION**

27 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.

1 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

2 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
5 Party.

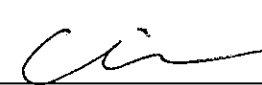
6 **13. NO EFFECT ON OTHER SETTLEMENTS**

7 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
8 against an entity that is not a Settling Defendant on terms that are different than those contained in
9 this Consent Judgment.


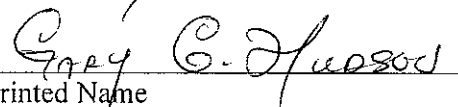
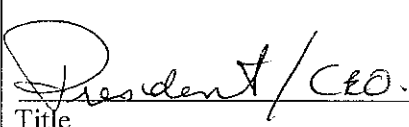
10 **14. EXECUTION IN COUNTERPARTS**

11 14.1 The stipulations to this Consent Judgment may be executed in counterparts and
12 by means of facsimile, which taken together shall be deemed to constitute one document.

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15 IT IS SO STIPULATED:

16 Dated: <u>July 29</u> , 2011	17 CENTER FOR ENVIRONMENTAL HEALTH 18 19  20 21 <u>CHARLES PIZZANO</u> 22 Printed Name 23 24 <u>ASSOCIATE DIRECTOR</u> 25 Title
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Dated: _____, 2011	HUDSON INDUSTRIES, INC. and GOLD MEDAL PRODUCTS, INC.  <hr/>  Printed Name  Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: **DEC 07 2011**

ROY CHERNUS

Judge of the Superior Court of the State of California