

1 “Lead”) in camera cases.

2 1.3 On July 26, 2011, CEH initiated this Action on behalf of itself and in the
3 public interest under Cal. Health & Safety Code § 25249.7(d) by filing its Complaint. Defendant
4 denies all material allegations of the NOV and the Complaint and has asserted numerous
5 affirmative defenses.

6 1.4 Defendant is a corporation that employs 10 or more persons, and that
7 manufactures, distributes and/or sells the Covered Products (defined in Section 2.1 below) in the
8 State of California.

9 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
10 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
11 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
12 that venue is proper in the County of Marin, and that this Court has jurisdiction to enter this
13 Consent Judgment as a full and final resolution of all claims which were or could have been
14 raised in the Complaint based on the facts alleged therein or in the NOV with respect to Covered
15 Products manufactured, distributed, and/or sold by Defendant.

16 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
17 settlement of all claims that were raised in the Complaint, or which could have been raised in the
18 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By executing
19 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit, and
20 nothing in this Consent Judgment is or shall be construed as an admission by the Parties of, any
21 fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability, including,
22 but not limited to, any admission concerning any alleged violation of Proposition 65 or any other
23 statutory, common law or equitable requirements. Nothing in this Consent Judgment shall
24 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
25 any other pending or future legal proceedings. This Consent Judgment is the product of
26 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
27 compromising, and resolving issues disputed in this Action.

28

1 **2. DEFINITIONS**

2 2.1 The term “Covered Products” means camera (including video) cases, pouches
3 and bags.

4 2.2 The term “Effective Date” means the date of entry of this Consent Judgment.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Reformulation of Covered Products.** As of the Effective Date, Defendant
7 shall not manufacture, ship, sell or offer for sale any Covered Product unless such Covered
8 Product complies with the following Lead Limits:

9 3.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
10 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

11 3.1.2 Polyvinyl Chloride: no more than .02 percent Lead by weight (200 ppm).

12 3.1.3 All other materials: no more than .03 percent Lead by weight (300 ppm).

13 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
14 Defendant shall cease shipping the Acme Made Bowler Pouch in Red, SKU No. 8-73888-00753-
15 5, as identified in CEH’s NOV (the “Recall Covered Products”), to stores and/or customers in
16 California. Defendant also shall recall the Recall Covered Products from retail stores in
17 California, and, at a minimum, send instructions to any of its stores that offer the Recall Covered
18 Products for sale in California to cease offering such Recall Covered Products for sale and to
19 either return all Recall Covered Products to Defendant for destruction, or to directly destroy the
20 Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance
21 with all applicable laws. Defendant shall keep for one (1) year after the Effective Date and make
22 available to CEH for inspection and copying records and correspondence regarding the recall and
23 destruction of the Recall Covered Products. If there is a dispute over the corrective action, the
24 Parties shall meet and confer before seeking any remedy in court.

25 **4. ENFORCEMENT**

26 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
27 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
28 violating Party thirty (30) days advanced written notice of the alleged violation. The Parties shall

1 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
2 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
3 enforce may, by motion or order to show cause before this Court, seek to enforce the terms and
4 conditions contained in this Consent Judgment.

5 **5. PAYMENTS**

6 **5.1 Payments From Defendant.** Except for any amounts that may be due as a
7 result of an enforcement action brought under Section 4, within five (5) days of Notice of Entry
8 of this Consent Judgment, Defendant shall pay the total sum of \$48,750 as full and final
9 satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees, and
10 costs.

11 **5.2 Allocation of Payments.** The total payment from Defendant shall be paid in
12 three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch),
13 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated as
14 follows:

15 **5.2.1** Defendant shall pay the sum of \$5,000 as a penalty pursuant to Health &
16 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
17 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
18 Environmental Health.

19 **5.2.2** Defendant shall pay the sum of \$14,500 as payment to CEH in lieu of
20 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
21 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
22 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
23 funds to monitor compliance with the reformulation requirements of this and other similar
24 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
25 reformulation requirements. In addition, as part of its *Community Environmental Action and*
26 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
27 environmental justice groups working to educate and protect people from exposures to toxic
28 chemicals. The method of selection of such groups can be found at the CEH web site at

1 www.ceh.org/what-we-do/supporting-communities/the-justice-fund. The payment in lieu of
2 penalty check shall be made payable to the Center for Environmental Health.

3 5.2.3 Defendant shall pay the sum of \$29,250 as reimbursement of reasonable
4 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
5 payable to the Lexington Law Group.

6 **6. MODIFICATION AND DISPUTE RESOLUTION**

7 6.1 **Modification.** This Consent Judgment may be modified from time to time by
8 express written agreement of the Parties, with the approval of the Court, or by an order of this
9 Court upon motion and in accordance with law.

10 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
11 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
12 motion to modify the Consent Judgment.

13 **7. CLAIMS COVERED AND RELEASE**

14 7.1 This Consent Judgment is a full, final, and binding resolution between CEH,
15 on behalf of itself, the general public, and in the public interest, and Defendant and its officers,
16 directors, shareholders, parent companies, divisions, subdivisions, subsidiaries, sister companies,
17 employees, agents, franchisees, licensees, customers, distributors, wholesalers, retailers
18 (including, without limitation, OfficeMax Incorporated and OfficeMax North America, Inc.), and
19 all other entities in the distribution chain down to the consumer of any Covered Product, and the
20 predecessors, successors and assigns of any of them (collectively, "Released Parties"), of any
21 alleged violation of Proposition 65 that has been or could have been asserted in the public interest
22 against Defendant or the Released Parties, regarding the failure to warn about exposure to Lead
23 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
24 prior to the Effective Date.

25 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Cal.
26 Health & Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims
27 against Defendant and the Released Parties arising from any alleged violation of Proposition 65
28 or any other statutory or common law claims that have been or could have been asserted in the

1 public interest regarding the failure to warn about exposure to Lead arising in connection with
2 Covered Products manufactured, distributed or sold by Defendant prior to the Effective Date.

3 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
4 Released Parties shall constitute compliance with Proposition 65 by Defendant and the Released
5 Parties with respect to any alleged failure to warn about Lead in Covered Products manufactured,
6 distributed or sold by Defendant after the Effective Date.

7 **8. PROVISION OF NOTICE**

8 8.1 When any Party is entitled to receive any notice under this Consent Judgment,
9 the notice shall be sent by first class and electronic mail as follows:

10 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
11 pursuant to this Consent Judgment shall be:

12 Thomas Donnelly
13 Jones Day
14 555 California Street, 26th Floor
San Francisco, CA 94104
tmdonnelly@jonesday.com

15 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
16 this Consent Judgment shall be:

17 Howard Hirsch
18 Lexington Law Group
19 503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

20 8.2 Any Party may modify the person and address to whom the notice is to be sent
21 by sending the other Party notice by first class and electronic mail.

22 **9. COURT APPROVAL**

23 9.1 This Consent Judgment shall become effective on the Effective Date, provided
24 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
25 Defendants shall support approval of such Motion.

26 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
27 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
28 purpose.

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by and construed in
3 accordance with the laws of the State of California.

4 **11. ATTORNEYS' FEES**

5 11.1 A Party who unsuccessfully brings or contests an action arising out of this
6 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and
7 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
8 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
9 Civil Discovery Act of 1986. *See, e.g.,* Code of Civil Procedure §§ 2019.030(c) and 2023.030(a).

10 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
11 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
12 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
13 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
14 provision shall not be construed as altering any procedural or substantive requirements for
15 obtaining such an award.

16 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

19 12.1 This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
22 merged herein and therein. There are no warranties, representations, or other agreements between
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
27 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
28 any of the Parties hereto only to the extent that they are expressly incorporated herein. No

1 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
2 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
3 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
4 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement, modify,
7 enforce or terminate this Consent Judgment.

8 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

9 14.1 Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment, to enter into
11 and execute the Consent Judgment on behalf of the Party represented, and legally to bind that
12 Party.

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

14 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
15 claim against another entity on terms that are different than those contained in this Consent
16 Judgment.

17 **16. CONSTRUCTION OF CONSENT JUDGMENT, SEVERABILITY**

18 16.1 The terms and conditions of this Consent Judgment have been reviewed by the
19 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
20 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
21 construction of this Consent Judgment, the terms and conditions shall not be construed against
22 any Party.

23 16.2 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
25 affected.


26 **17. APPLICATION OF CONSENT JUDGMENT**

27 17.1 This Consent Judgment shall apply to and be binding upon the Parties, and
28 their respective successors and assigns.

1 **18. EXECUTION IN COUNTERPARTS**

2 18.1 The stipulations to this Consent Judgment may be executed in counterparts
3 and by means of facsimile, which taken together shall be deemed to constitute one document.

4 **IT IS SO STIPULATED:**

5 Dated: <u>Nov 17</u> , 2011 6 7 8 9 10 11 12 13	CENTER FOR ENVIRONMENTAL HEALTH  Signature <u>CONNIE PIZANO</u> Printed Name <u>ASSOCIATE DIRECTOR</u> Title
14 Dated: _____, 2011 15 16 17 18 19 20 21 22	DAYMEN U.S., INC. Signature Printed Name Title

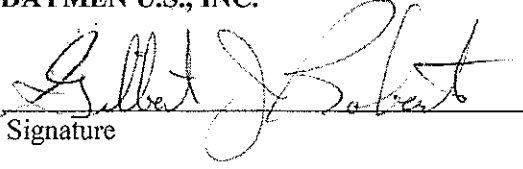
23 **IT IS SO ORDERED, ADJUDGED,
24 AND DECREED**

25 Dated: _____
26 JUDGE OF THE SUPERIOR COURT OF THE
27 STATE OF CALIFORNIA
28

1 **18. EXECUTION IN COUNTERPARTS**

2 18.1 The stipulations to this Consent Judgment may be executed in counterparts
3 and by means of facsimile, which taken together shall be deemed to constitute one document.

4 **IT IS SO STIPULATED:**

5 Dated: _____, 2011 6 7 8 9 10 11 12	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
13 14 Dated: <u>November 21</u> , 2011 15 16 17 18 19 20 21	DAYMEN U.S., INC.  _____ Signature <u>Gilbert J. Roberts</u> _____ Printed Name <u>CEO</u> _____ Title

22
23 **IT IS SO ORDERED, ADJUDGED,
24 AND DECREED**

25 Dated: **JAN 17 2012**

LYNN DURYEE

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA