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FILED
MAY 29 2012
KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
vs.
ADAMS USA, INC., *et al.*,
Defendants.

Case No. CIV-1104003
Ku
~~PROPOSED~~ CONSENT JUDGMENT

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and Pro Sports, Inc., dba Champion Sports Products Co. ("Defendants" or "Pro Sports"), to settle certain claims asserted by CEH against Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Adams USA, Inc. et al.*, Marin County Superior Court Case No. CIV-1104003 (the "Action").

1.2 On May 9, 2011, CEH provided a "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Defendants regarding the presence of lead in baseball or other sports belts used in athletic uniforms

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1 (“Covered Products”).

2 1.3 Subsequent to CEH's 60-Day Notice, Pro Sports promptly performed lead testing
3 on the UBY Youth baseball belt in Orange, SKU No. 7-1-858-01060-0 to evaluate CEH's
4 allegations. Pro Sports also conducted testing on its next shipment of athletic belts, including
5 UBY Youth baseball belt in Orange, SKU No. 7-1-858-01060-0, and rejected the entire container
6 shipment. Since then Pro Sports has refused a subsequent shipments until it could be confirmed
7 that the Covered Products meet or exceed applicable lead standards.

8 1.4 On August 10, 2011, CEH filed the complaint against Defendants in the Action.

9 1.5 Each Defendant is a corporation that employs 10 or more persons, and which
10 manufactures, distributes and/or sells Covered Products in the State of California.

11 1.6 For purposes of this Consent Judgment only, CEH and Defendants (the “Parties”)
12 stipulate that this Court has jurisdiction over the allegations of violations contained in the
13 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that
14 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
15 Judgment as a full and final resolution of all claims which were or could have been raised in the
16 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
17 distributed, and/or sold by Defendants.

18 1.7 CEH and Defendants enter into this Consent Judgment as a full and final
19 settlement of all claims that were raised in the Complaint, or which could have been raised in the
20 Complaint, arising out of the facts or conduct related to Defendants alleged therein. By
21 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
22 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of
23 law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common
24 law or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
25 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
26 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
27 of any fact, conclusion of law, issue of law, or violation of law. Defendants deny the material,
28

1 factual and legal allegations in CEH's Complaint and expressly deny any wrong doing
2 whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
3 remedy, argument or defense the Parties may have in this or any other pending or future legal
4 proceedings. This Consent Judgment is the product of negotiation and compromise and is
5 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
6 disputed in this action.

7 1.8 This Consent Judgment shall be effective on the date of entry of the order
8 approving this Consent Judgment (the "Effective Date"). All Covered Products shipped before
9 the Effective Date are deemed to be covered by the waiver and release provisions of paragraph 6
10 of this Consent Judgment and shall not be subject to any enforcement action by CEH under
11 Section 3 of this Consent Judgment. The reformulation requirements apply to any Covered
12 Product shipped by Pro Sports beginning on the Effective Date.

13 2. INJUNCTIVE RELIEF

14 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
15 Judgment (the "Effective Date"), Defendants shall not manufacture, ship, sell or offer for sale
16 any Covered Product unless such Covered Product complies with the following Lead Limits:

17 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R. §
18 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

19 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm).

20 3. ENFORCEMENT

21 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause
22 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
23 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
24 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
25 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
26 enforce may, by new action, motion or order to show cause before the Superior Court of Marin,
27 seek to enforce the terms and conditions contained in this Consent Judgment.
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1 **4. PAYMENTS**

2 4.1 **Payments From Defendants.** Within five (5) days of the entry of this Consent
3 Judgment, Defendants shall pay the total sum of \$35,000 as a settlement payment.

4 4.2 **Allocation of Payments.** The total settlement amount for Defendants shall be
5 paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
6 Hirsch), 503 Divisadero Street, San Francisco, California 94117 and made payable and allocated
7 as follows:

8 4.2.1 Defendants shall pay the sum of \$4,600 as a penalty pursuant to Health &
9 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
10 Safety Code §25249.12. The penalty check shall be made payable to the Center For
11 Environmental Health.

12 4.2.2 Defendants shall pay the sum of \$6,900 as payment to CEH in lieu of
13 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,
14 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting
15 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion
16 of such funds to monitor compliance with the reformulation requirements of this and other
17 similar Consent Judgments and to purchase and test Covered Products to confirm compliance
18 with such reformulation requirements. In addition, as part of its Community Environmental
19 Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
20 environmental justice groups working to educate and protect people from exposures to toxic
21 chemicals. The method of selection of such groups can be found at the CEH web site at
22 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
23 Center for Environmental Health.

24 4.2.3 Defendants shall pay the sum of \$23,500 as reimbursement of reasonable
25 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
26 payable to the Lexington Law Group.
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1 **5. MODIFICATION AND DISPUTE RESOLUTION**

2 5.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
7 modify the Consent Judgment.

8 **6. CLAIMS COVERED AND RELEASE**

9 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and
10 Defendants and Defendants’ parents, shareholders, divisions, subdivisions, subsidiaries, partners,
11 sister companies and their successors and assigns (“Defendant Releasees”), and all to whom they
12 distribute or sell Covered Products including, but not limited to, distributors, wholesalers,
13 customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant
14 Releasees”), of any violation of Proposition 65 that have been or could have been asserted in the
15 public interest against Defendants, Defendant Releasees, and Downstream Defendant Releasees,
16 regarding the failure to warn about exposure to lead arising in connection with Covered Products
17 manufactured, distributed, or sold by Defendants prior to the Effective Date.

18 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
19 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
20 Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
21 violation of Proposition 65 that have been or could have been asserted in the public interest
22 regarding the failure to warn about exposure to lead arising in connection with Covered Products
23 manufactured, distributed or sold by Defendants prior to the Effective Date.

24 6.3 Compliance with the terms of this Consent Judgment by Defendants and the
25 Defendant Releasees shall constitute compliance with Proposition 65 by Defendants, the
26 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
27 failure to warn about lead in Covered Products manufactured, distributed or sold by Defendants
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1 after the Effective Date.

2 6.4 In addition to the release stated in paragraph 6.1, 6.2, and 6.3, CEH, acting solely
3 on its behalf, hereby releases, waives and forever discharges any and all statutory or common
4 law claims against Defendant Releasees and Downstream Defendant Releasees, whether known
5 or unknown, now or in the future, that could have been asserted regarding the failure to warn
6 about exposure to lead arising in connection with Covered Products manufactured, distributed, or
7 sold by Defendants prior to the Effective Date.

8 **7. PROVISION OF NOTICE**

9 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
10 notice shall be sent by first class and electronic mail as follows:

11 7.1.1 **Notices to Defendants.** The person for Defendants to receive Notices
12 pursuant to this Consent Judgment shall be:

13
14 Michael J. Van Zandt
15 Hanson Bridgett LLP
16 (415) 995-5131 Direct
(415) 995-3477 Fax
mvanzandt@hansonbridgett.com

17 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
18 this Consent Judgment shall be:

19
20 Howard Hirsch
21 Lexington Law Group
22 503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

23 7.2 Any Party may modify the person and address to whom the notice is to be sent by
24 sending the other Party notice by first class and electronic mail.

25 **8. COURT APPROVAL**

26 8.1 This Consent Judgment shall become effective on the Effective Date, provided
27 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
28 Defendants shall support approval of such Motion.

1 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
3 purpose.

4 **9. GOVERNING LAW AND CONSTRUCTION**

5 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
6 California.

7 **10. ENTIRE AGREEMENT**

8 10.1 This Consent Judgment contains the sole and entire agreement and understanding
9 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
10 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
11 and therein. There are no warranties, representations, or other agreements between the Parties
12 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
13 other than those specifically referred to in this Consent Judgment have been made by any Party
14 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
15 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
16 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
17 Parties hereto only to the extent that they are expressly incorporated herein. No
18 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
19 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
20 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
21 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

22 **11. RETENTION OF JURISDICTION**

23 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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

26 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
27 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
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execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.


13. NO EFFECT ON OTHER SETTLEMENTS

13.1 Except as set forth in Section 6 above, nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different than those contained in this Consent Judgment.

14. EXECUTION IN COUNTERPARTS

14.1 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.

IT IS SO STIPULATED:

Dated: <u>March 22</u> , 2012	<p>CENTER FOR ENVIRONMENTAL HEALTH</p>  <p><u>CHARLIE PIZARRO</u></p> <hr/> Printed Name <p><u>ASSOCIATE DIRECTOR</u></p> <hr/> Title
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Dated: _____, 2012	CENTER FOR ENVIRONMENTAL HEALTH _____ Printed Name _____ Title
Dated: <u>3/20</u> , 2012	PRO SPORTS, INC. <u>Howard Mewer</u> Printed Name <u>President</u> Title

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

Dated: **MAY 29 2012**

LYNN DURYEE

Judge of the Superior Court of the State of California

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