

FILED

SEP 12 2012

KIM TURNER, Court Exec. Officer
MARIN CO. SUPERIOR COURT
By: E. Turner, Deputy

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

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

vs.

ADAMS USA, INC., et al.,

Defendants.

Case No. CIV-1104003

[PROPOSED] CONSENT JUDGMENT AS
TO ATHLETIC SPECIALTIES, INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and Athletic Specialties, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Adams USA, Inc.*, 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" ("60-Day Notice") to the California Attorney General, the District Attorneys of every county in

1 California, the City Attorneys of every California city with a population greater than 750,000, and
2 to Defendant regarding the presence of lead in baseball or other sports belts used in athletic
3 uniforms ("Covered Products").

4 1.3 On August 10, 2011, CEH filed the complaint against Defendant in the Action.

5 1.4 Defendant is a corporation that employs 10 or more persons, and which
6 manufactures, distributes and/or sells Covered Products in the State of California.

7 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
8 stipulate that this Court has jurisdiction over the allegations of violations contained in the
9 Complaint and personal jurisdiction over Defendant 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 Defendant.

14 1.6 CEH and Defendant enter into this Consent Judgment as a full and final settlement
15 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
16 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
17 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
18 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
19 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
20 requirements. Nothing in this Consent Judgment is or shall be construed as an admission by the
21 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
22 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law, or violation of law. Defendant denies the material, factual and
24 legal allegations in CEH's Complaint and expressly denies any wrong doing whatsoever. Nothing
25 in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
26 the Parties may have in this or any other pending or future legal proceedings. This Consent
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1 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for
2 purposes of settling, compromising, and resolving issues disputed in this action.

3 **2. INJUNCTIVE RELIEF**

4 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
5 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell or offer for sale any
6 Covered Product unless such Covered Product complies with the following Lead Limits:

7 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R. §
8 1303.2(b): no more than 0.009 percent lead by weight (90 parts per million ("ppm")).

9 2.1.2 All other materials: no more than .01 percent lead by weight (100 ppm).

10 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
11 Defendant shall cease shipping the Athletic Specialties Youth Elastic Uniform Belt - Big Kids in
12 Yellow, as identified in CEH's pre-suit Notice of Violation to Defendant (the "Recall Covered
13 Product"), to stores and/or retail customers in California. Defendant shall send instructions to
14 those retail customers to whom Defendant shipped the Recall Covered Product in the past year for
15 which Defendant used a California shipping address, with Defendant instructing said customers to
16 cease offering such Recall Covered Product for sale in California and to either return all Recall
17 Covered Products to Defendant for destruction, or to directly destroy the Recall Covered
18 Products. Any destruction of the Recall Covered Products shall be in compliance with all
19 applicable laws. Defendant shall keep and make available to CEH for inspection and copying
20 records and correspondence regarding the market withdrawal and destruction of the Recall
21 Covered Products. If there is a dispute over the corrective action, the Parties shall meet and confer
22 before seeking any remedy in court.

23 **3. ENFORCEMENT**

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

4 **4. PAYMENTS**

5 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
6 Judgment, Defendant shall pay the total sum of \$15,000 as a settlement payment.

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

11 4.2.1 Defendant shall pay the sum of \$1,930 as a penalty pursuant to Health &
12 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
13 Safety Code §25249.12. The penalty check shall be made payable to the Center For
14 Environmental Health.

15 4.2.2 Defendant shall pay the sum of \$2,900 as payment to CEH in lieu of
16 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
17 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
18 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
19 to monitor compliance with the reformulation requirements of this and other similar Consent
20 Judgments and to purchase and test Covered Products to confirm compliance with such
21 reformulation requirements. In addition, as part of its Community Environmental Action and
22 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
23 justice groups working to educate and protect people from exposures to toxic chemicals. The
24 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
25 The payment in lieu of penalty check shall be made payable to the Center for Environmental
26 Health.

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1 4.2.3 Defendant shall pay the sum of \$10,170 as reimbursement of reasonable
2 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
3 payable to the Lexington Law Group.

4 **5. MODIFICATION AND DISPUTE RESOLUTION**

5 5.1 **Modification.** This Consent Judgment may be modified from time to time by
6 express written agreement of the Parties, with the approval of the Court, or by an order of this
7 Court upon motion and in accordance with law.

8 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
9 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
10 modify the Consent Judgment.

11 **6. CLAIMS COVERED AND RELEASE**

12 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and
13 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,
14 sister companies and their successors and assigns ("Defendant Releasees"), and all to whom they
15 distribute or sell Covered Products including, but not limited to, distributors, wholesalers,
16 customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant
17 Releasees"), of any violation of Proposition 65 or any other statutory or common law claims that
18 have been or could have been asserted in the public interest against Defendant, Defendant
19 Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure to
20 lead arising in connection with Covered Products manufactured, distributed, or sold by Defendant
21 prior to the Effective Date as set forth in the Notice of Violation.

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

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

6 **7. PROVISION OF NOTICE**

7 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class and electronic mail as follows:

9 7.1.1 **Notices to Defendant.** The persons for Defendant to receive Notices
10 pursuant to this Consent Judgment shall be:

11 John E. Dittoe
12 Reed Smith LLP
13 101 Second Street, Suite 1800
14 San Francisco, CA 94105
15 jdittoe@reedsmith.com

16 Michael J. Philippi
17 Ungaretti & Harris LLP
18 70 W. Madison, Suite 3500
19 Chicago, IL 60602
20 Mphilippi@uhlraw.com

21 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
22 this Consent Judgment shall be:

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

28 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.

8. COURT APPROVAL

8.1 This Consent Judgment shall become effective on the Effective Date, provided
however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and

1 Defendant shall support approval of such Motion.

2 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
3 and shall not be introduced into evidence or otherwise used in any proceeding for any 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 supplementation,
18 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
19 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
20 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
21 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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1 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

3 13.1 Except as set forth in Section 6 above, nothing in this Consent Judgment shall
4 preclude CEH from resolving any claim against another entity on terms that are different than
5 those contained in this Consent Judgment.

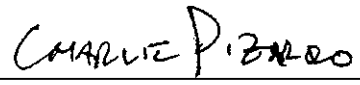
6 **14. EXECUTION IN COUNTERPARTS**

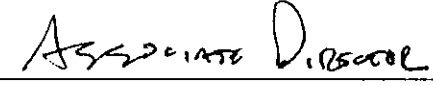
7 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
8 means of facsimile, which taken together shall be deemed to constitute one document.

9 **IT IS SO STIPULATED:**

10 **CENTER FOR ENVIRONMENTAL HEALTH**

11
12 
13 _____

14 
15 _____
16 Printed Name

17 
18 _____
19 Title

20 **ATHLETIC SPECIALTIES, INC.**

21 _____
22 _____
23 _____

24 Printed Name

25 _____
26 Title

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9 **IT IS SO STIPULATED:**

10 **CENTER FOR ENVIRONMENTAL HEALTH**

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Printed Name

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Title

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ATHLETIC SPECIALTIES, INC.

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Carey Brunell

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CAREY BRUNELLI

Printed Name

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PRESIDENT

Title

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1 IT IS SO ORDERED, ADJUDGED,
2 AND DECREED

LYNN DUTYEE

3 Dated: 9/12/12

4 Judge of the Superior Court of the State of California

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