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AUG 13 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY 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,
Plaintiff,
vs.
ADAMS USA, INC., *et al.*,
Defendants.

Case No. CIV 1104003
[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 Joe-Anne Company International, 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., et al.*, Marin County Superior Court Case No. CIV 1104003 (the "Action").

1.2 On August 24, 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 Defendant regarding the presence of lead in baseball or other sports belts used in athletic uniforms ("Covered Products").

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1 1.3 On August 10, 2011, CEH filed the complaint in the Action against other named
2 defendants and against Does 1 through 200. On November 2, 2011, CEH filed an amendment to
3 the complaint pursuant to California Code of Civil Procedure § 474 identifying Defendant as
4 Doe 1 in the complaint.

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
15 settlement of all claims that were raised in the Complaint, or which could have been raised in the
16 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
17 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
18 facts or conclusions of law including, but not limited to, any facts or conclusions of law
19 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
20 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
21 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
22 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
23 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
24 factual and legal allegations in CEH's Complaint and expressly denies any wrong doing
25 whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
26 remedy, argument or defense the Parties may have in this or any other pending or future legal
27 proceedings. This Consent Judgment is the product of negotiation and compromise and is
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1 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
2 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 purchase, manufacture, import, or supply
6 to an unaffiliated third party any Covered Product in California or anywhere else unless such
7 Covered Product complies with the following Lead Limits:

8 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R. §
9 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

10 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm).

11 **2.2 Market Withdrawal of Covered Products.** By the Effective Date, Defendant
12 shall cease shipping the Adams Brown Baseball Belt and the Adams Yellow Baseball Belt, as
13 identified in CEH's pre-suit Notice of Violation to Defendant (the "Recall Covered Products"),
14 to stores and/or customers in California, and Defendant shall withdraw the Recall Covered
15 Products from the market in California, and, at a minimum, send instructions to any of its stores
16 and/or customers that offer the Recall Covered Products for sale in California to cease offering
17 such Recall Covered Products for sale and to either return all Recall Covered Products to
18 Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction
19 of the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall
20 keep and make available to CEH for inspection and copying records and correspondence
21 regarding the market withdrawal and destruction of the Recall Covered Products. If there is a
22 dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in
23 court.

24 **3. ENFORCEMENT**

25 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause
26 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
27 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
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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 new action, motion or order to show cause before the Superior Court of Marin,
4 seek to enforce the terms and conditions contained in this Consent Judgment.

5 **4. PAYMENTS**

6 4.1 **Payments From Defendant.** Within five (5) days of entry of this Consent
7 Judgment, Defendant shall pay the sum of \$18,000, and on or before December 7, 2012,
8 Defendant shall pay the sum of \$18,000, for a total sum of \$36,000 as a settlement payment. The
9 payment due within five (5) days of entry of this Consent Judgment shall be paid in two separate
10 checks as follows: (a) \$11,830 made payable to the Center for Environmental Health; and (b)
11 \$6,170 made payable to Lexington Law Group. The \$18,000 payment due on December 7th shall
12 be made by check payable to Lexington Law Group. All of these payments shall be delivered to
13 the offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San
14 Francisco, California 94117-2212. Any failure by Defendant to comply with the payment terms
15 herein shall be subject to a stipulated late fee in the amount of \$100 for each day after the
16 delivery date the payment is received. The late fees required under this Section shall be
17 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
18 pursuant to Section 3.1 of this Consent Judgment.

19 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
20 allocated as follows:

21 4.2.1 Defendant shall pay the sum of \$4,730 as a penalty pursuant to Health &
22 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
23 Safety Code §25249.12. The penalty check shall be made payable to the Center For
24 Environmental Health.

25 4.2.2 Defendant shall pay the sum of \$7,100 as payment to CEH in lieu of
26 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,
27 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting
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1 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion
2 of such funds to monitor compliance with the reformulation requirements of this and other
3 similar Consent Judgments and to purchase and test Covered Products to confirm compliance
4 with such reformulation requirements. In addition, as part of its Community Environmental
5 Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
6 environmental justice groups working to educate and protect people from exposures to toxic
7 chemicals. The method of selection of such groups can be found at the CEH web site at
8 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
9 Center for Environmental Health.

10 4.2.3 Defendant shall pay the sum of \$24,170 as reimbursement of reasonable
11 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
12 payable to the Lexington Law Group.

13 5. MODIFICATION AND DISPUTE RESOLUTION

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

17 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
18 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
19 modify the Consent Judgment.

20 6. CLAIMS COVERED AND RELEASE

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

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

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

14 **7. PROVISION OF NOTICE**

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

17 7.1.1 **Notices to Defendant.** The persons for Defendant to receive Notices
18 pursuant to this Consent Judgment shall be:

19
20 Melissa Jones
21 Stoel Rives LLP
22 500 Capitol Mall, 16th Floor
23 Sacramento, CA 95814
24 majones@stoel.com

25 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
26 this Consent Judgment shall be:

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

1 7.2 Any Party may modify the person and address to whom the notice is to be sent by
2 sending the other Party notice by first class and electronic mail.

3 **8. COURT APPROVAL**

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

7 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
8 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
9 purpose.

10 **9. GOVERNING LAW AND CONSTRUCTION**

11 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California.

13 **10. ENTIRE AGREEMENT**

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

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

12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

12.1 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 to bind that Party.


13. NO EFFECT ON OTHER SETTLEMENTS

13.1 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

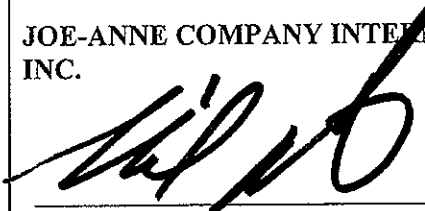
14.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: <u>JUNE 6</u> , 2012	CENTER FOR ENVIRONMENTAL HEALTH
	 _____
	Printed Name <u>MICHAEL GREER</u> _____
	Title <u>EXECUTIVE DIRECTOR</u>

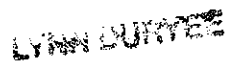
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Dated: <u>6-4-</u> , 2012	JOE-ANNE COMPANY INTERNATIONAL, INC.  _____ Printed Name <u>Neil Morgenstern</u> Title <u>President</u>
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IT IS SO ORDERED, ADJUDGED,
AND DECREED

Dated: 8/13/12



Judge of the Superior Court of the State of
California

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