

1 Attorneys of every California city with a population greater than 750,000, and to Settling
2 Defendant regarding the presence of lead and lead compounds (collectively, "Lead") in reusable
3 shopping bags ("Covered Products") manufactured, distributed and/or sold by Settling Defendant.

4 1.3 Prior to entry of this Consent Judgment, CEH will amend the operative complaint
5 in the Action to name Settling Defendant as a party.

6 1.4 Settling Defendant is a corporation that employs 10 or more persons, and which
7 manufactures, distributes and/or sells Covered Products that are offered for sale in the State of
8 California.

9 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant (the
10 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in
11 the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
12 Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to
13 enter this Consent Judgment.

14 1.6 CEH and Settling 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 Settling Defendant alleged therein. By
17 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
18 admit any 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 relating to Lead in the Covered Products. Nothing in this Consent
21 Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law,
22 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
23 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation
24 of law. Settling Defendant denies the material, factual and legal allegations in CEH's Complaint
25 and expressly denies any wrongdoing whatsoever. Nothing in this Consent Judgment shall
26 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
27 any other pending or future legal proceedings. This Consent Judgment is the product of
28 negotiation and compromise and is accepted by the Parties solely for purposes of settling,

1 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 Defendant shall not manufacture, ship, or sell any
5 Covered Product unless such Covered Product complies with the following Lead Limits:

6 2.1.1 "Paint or other Surface Coatings" as defined in 16 C.F.R. § 1303.2(b): no
7 more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

8 2.1.2 Polyvinyl Chloride: no more than 0.02 percent Lead by weight (200
9 ppm).

10 2.1.3 All other materials: no more than 0.03 percent Lead by weight (300 ppm).

11 **2.2 Market Withdrawal of Covered Products.** On or before the Effective Date,
12 Settling Defendant shall cease shipping the Reusable Shopping Bag in Hearts & Stars, SKU No. 0-
13 56156-05181-6, Style No. GEB14146/HD; as identified in CEH's pre-suit Notice of Violation to
14 Settling Defendant (the "Recall Covered Products"), to customers in California, and Settling
15 Defendant shall withdraw the Recall Covered Products from the market in California, and, at a
16 minimum, send instructions to any of its customers that offer the Recall Covered Products for sale
17 in California to either return all Recall Covered Products to Settling Defendant for destruction, or
18 to directly destroy the Recall Covered Products. Any destruction of the Recall Covered Products
19 shall be in compliance with all applicable laws. Settling Defendant shall keep and make available
20 to CEH for inspection and copying records and correspondence regarding the market withdrawal
21 and destruction of the Recall Covered Products. If there is a dispute over Settling Defendant's
22 compliance with this Section 2.2, the Parties shall meet and confer before seeking any remedy in
23 court.

24 **3. PAYMENTS**

25 **3.1 Payments From Settling Defendant.** Settling Defendant shall pay the total sum
26 of \$35,000 as a settlement payment according to the following schedule: (a) on or before May 1,
27 2012: \$17,500; and (b) on or before May 25, 2012: \$17,500. Each \$17,500 payment shall be
28 payable in three separate checks as follows: (1) \$2,300 made payable to the Center for

1 Environmental Health; (2) \$3,450 made payable to the Center for Environmental Health; and (3)
2 \$11,750 made payable to the Lexington Law Group. These payments shall be delivered to the
3 offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San Francisco,
4 California 94117. Any failure by Settling Defendant to comply with the payment terms herein
5 shall be subject to a stipulated late fee in the amount of \$100 for each day after the delivery date
6 the payment is received. The late fees required under this Section shall be recoverable, together
7 with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4.1 of
8 this Consent Judgment.

9 **3.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
10 be allocated as follows:

11 3.2.1 Settling Defendant shall pay the sum of \$4,600 as a penalty pursuant to
12 Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
13 Health & Safety Code § 25249.12.

14 3.2.2 Settling Defendant shall pay the sum of \$6,900 as payment to CEH in lieu
15 of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,
16 Title 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
17 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
18 funds to monitor compliance with the reformulation requirements of this and other similar Consent
19 Judgments. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH
20 will use four percent of such funds to award grants to grassroots environmental justice groups
21 working to educate and protect people from exposures to toxic chemicals. The method of
22 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.

23 3.2.3 Settling Defendant shall pay the sum of \$23,500 as reimbursement of a
24 portion of CEH's reasonable attorneys' fees and costs.

25 **4. ENFORCEMENT**

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

1 thirty (30) day period in an effort to try to resolve the alleged violation before seeking to enforce
2 the terms and conditions contained in this Consent Judgment.

3 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

7 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
8 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **6. APPLICATION OF CONSENT JUDGMENT**

11 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
12 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

13 **7. CLAIMS COVERED AND RELEASE**

14 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
15 Settling Defendant and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
16 sister companies and their successors and assigns (“Defendant Releasees”), and all entities to
17 whom they distribute or sell Covered Products including, but not limited to, distributors,
18 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream
19 Defendant Releasees”), of any violation of Proposition 65 or any other statutory or common law
20 claims that have been or could have been asserted in the public interest against Settling Defendant,
21 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
22 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
23 by Settling Defendant prior to the Effective Date.

24 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
25 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
26 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
27 violation of Proposition 65 or any other statutory or common law claims that have been or could
28 have been asserted in the public interest regarding the failure to warn about exposure to Lead

1 arising in connection with Covered Products manufactured, distributed or sold by Settling
2 Defendant prior to the Effective Date.

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

8 **8. PROVISION OF NOTICE**

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

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

13 Frank Dres
14 Fiberlinks Textiles, Inc.
15 815 Tecumseh Avenue
16 Pointe-Claire, Quebec H9R 4B1, Canada

17 With a copy to

18 Frank M. Schlesinger
19 Spiegel Sohmer Inc.
20 5 Place Ville Marie, Suite 1203
21 Montreal, Quebec H3B 2G2 Canada

22 And with a copy to

23 Jeffrey B. Margulies
24 Fulbright & Jaworski L.L.P.
25 555 South Flower Street, 41st Floor
26 Los Angeles, CA 90071

27 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
28 this Consent Judgment shall be:

29 Howard Hirsch
30 Lexington Law Group
31 503 Divisadero Street
32 San Francisco, CA 94117
33 hhirsch@lexlawgroup.com

34 8.2 Any Party may modify the person and address to whom the notice is to be sent by

1 sending the other Party notice by electronic or certified mail.

2 **9. COURT APPROVAL**

3 9.1 CEH will comply with the settlement notice provisions of Health & Safety Code
4 § 25249.7(f) and Title 11 of the California Code of Regulations § 3003 by preparing and filing a
5 motion for approval of this Consent Judgment and Settling Defendants shall support approval of
6 such motion.

7 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
8 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

9 **10. ATTORNEYS' FEES**

10 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
11 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
12 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
13 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
14 Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

15 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
16 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
17 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
18 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
19 provision shall not be construed as altering any procedural or substantive requirements for
20 obtaining such an award.

21 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
22 sanctions pursuant to law.

23 **11. RETENTION OF JURISDICTION**

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

26 **12. SEVERABILITY**

27 12.1 In the event that any of the provisions of this Consent Judgment are held by a court
28 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

1 **13. ENTIRE AGREEMENT**

2 13.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. There are no warranties, representations, or other agreements between the Parties
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
7 other than those specifically referred to in this Consent Judgment have been made by any Party
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **14. GOVERNING LAW AND CONSTRUCTION**

17 14.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

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

20 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
21 against an entity that is not Settling Defendants on terms that are different than those contained in
22 this Consent Judgment.

23 **16. EXECUTION IN COUNTERPARTS**

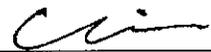
24 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
25 means of facsimile, which taken together shall be deemed to constitute one document.

26 **17. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

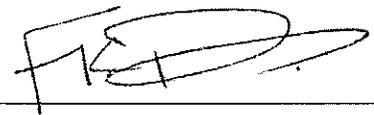
27 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
28 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and

1 execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The
2 undersigned have read, understand and agree to all of the terms and conditions of this Consent
3 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

4 **IT IS SO STIPULATED:**
5

6 Dated: March <u>14</u> , 2012	7 CENTER FOR ENVIRONMENTAL HEALTH 8  9 _____ 10 CHARLIE PIZARRO 11 Printed Name 12 _____ 13 ASSOCIATE DIRECTOR 14 Title 15 _____ 16 17 18 19 20 21 22 23 24 25 26 27 28
---------------------------------	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March <u>12</u> 2012	FIBERLINKS TEXTILES, INC.  <hr/> <p>Frank Dres</p> Printed Name <hr/> <p>President</p> Title <hr/>
-----------------------------	---

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

Dated: **JUL 13 2012**

FAYE D'OPALÉ

Judge of the Superior Court of the State of California