

FILED

JUL 13 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: T. Fraguero, Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

Plaintiff,)

vs.)

BARNES & NOBLE, INC. *et al.*,)

Defendants.)

Case No. CIV 1103790

~~PROPOSED~~ CONSENT JUDGMENT
AS TO C.R. GIBSON, LLC a/k/a
THE C.R. GIBSON COMPANY

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”) on the one hand, and C.R. Gibson, LLC a/k/a The C.R. Gibson Company (“Defendant”) on the other hand, 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. Barnes & Noble, Inc., et al.*, Marin County Superior Court Case No. CIV 1103790 (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

1 regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in
2 journals and planners ("Covered Products").

3 1.3 On July 29, 2011, CEH filed the complaint in the Action. On November 9,
4 2011, CEH amended its complaint to add Defendant as a Doe Defendant in the Action.

5 1.4 Defendant is a corporation that employs 10 or more persons, and that
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
8 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in
9 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
10 that venue is proper in the County of Marin, and that this Court has jurisdiction to enter this
11 Consent Judgment as a full and final resolution of all claims which were or could have been
12 raised in the Complaint based on the facts alleged therein with respect to Covered Products
13 manufactured, 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
28 accepted by the Parties solely for purposes of settling, compromising, and resolving issues

1 disputed in this Action.

2 **2. INJUNCTIVE RELIEF**

3 2.1 **Reformulation of Covered Products.** As of December 31, 2012 (the
4 “Effective Date”), Defendant shall not manufacture, ship, sell or offer for sale any Covered
5 Product unless such Covered Product complies with the following Lead Limits:

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

8 2.1.2 Leather, including composite leather: no more than 0.03 percent Lead by
9 weight (300 ppm).

10 2.1.3 All other materials: no more than .01 percent Lead by weight (100 ppm).

11 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
12 Defendant shall cease shipping the Markings by C.R. Gibson Faux Leather Journal in Maroon,
13 SKU No. 0-82272-70643-9, Style No. MJ23A-1, as identified in CEH’s pre-suit Notice of
14 Violation to Defendant (the “Recall Covered Products”), to stores and/or customers in California
15 and Defendant shall recall the Recall Covered Products from any retail stores in California.
16 Defendant shall keep and make available to CEH for inspection and copying records and
17 correspondence regarding the recall of the Recall Covered Products. If there is a dispute over the
18 corrective action, the Parties shall meet and confer before seeking any remedy in court. The
19 provisions of this Section 2.2 shall not apply to any Recall Covered Product that complies with
20 the lead limits set forth in Section 2.1.

21 2.3 **Covered Products In The Stream of Commerce.** Any Covered Products
22 that have been manufactured, distributed, shipped or sold by Defendant prior to the Effective
23 Date, shall not be subject to the requirements of Section 2.1.

24 **3. ENFORCEMENT**

25 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
26 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
27 violating party forty-five (45) days advance written notice of the alleged violation. The Parties
28 shall meet and confer during such forty-five (45) day period in an effort to try to reach agreement

1 on an appropriate cure for the alleged violation. After such forty-five (45) day period, the Party
2 seeking to enforce may, by new action, motion or order to show cause before the Superior Court
3 of Marin, seek to enforce the terms and conditions contained in this Consent Judgment. In any
4 such proceeding, CEH may seek whatever fines, costs, penalties attorneys' fees or remedies are
5 provided by law for failure to comply with this Consent Judgment. Any enforcement by CEH of
6 Paragraph 2.1 will be limited to Covered Products sold in California.

7 **4. PAYMENTS**

8 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
9 Judgment, Defendant shall pay the total sum of \$40,000 as a settlement payment.

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

14 4.2.1 Defendant shall pay the sum of \$5,250 as a penalty pursuant to Health &
15 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
16 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
17 Environmental Health.

18 4.2.2 Defendant shall pay the sum of \$7,900 as payment to CEH in lieu of
19 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
20 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
21 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
22 funds to monitor compliance with the reformulation requirements of this and other similar
23 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
24 reformulation requirements. In addition, as part of its *Community Environmental Action and*
25 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
26 environmental justice groups working to educate and protect people from exposures to toxic
27 chemicals. The method of selection of such groups can be found at the CEH website at
28

1 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
2 Center for Environmental Health.

3 4.2.3 Defendant shall pay the sum of \$26,850 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 **5. MODIFICATION AND DISPUTE RESOLUTION**

7 5.1 **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 5.2 **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 **6. CLAIMS COVERED AND RELEASE**

14 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
15 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
16 partners, sister companies and their successors and assigns ("Defendant Releasees"), and all to
17 whom they distribute or sell Covered Products including, but not limited to OfficeMax
18 Incorporated, OfficeMax North America, Inc., OMX, Inc., Staples, Inc., Staples The Office
19 Superstore, LLC, distributors, wholesalers, customers, retailers, franchisees, cooperative
20 members, and licensees ("Downstream Defendant Releasees"), of any claims for violation of
21 Proposition 65 that have been or could have been asserted in the public interest against
22 Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to
23 warn about exposure to Lead arising in connection with Covered Products manufactured,
24 distributed, or sold by Defendant prior to the Effective Date as set forth in the Notice of Violation
25 and Complaint.

26 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
27 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
28 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any claims

1 for violation of Proposition 65 that have been or could have been asserted in the public interest
2 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
3 manufactured, distributed or sold by Defendant prior to the Effective Date as set forth in the
4 Notice of Violation and Complaint.

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

10 6.4 CEH, on behalf of itself only, hereby releases and discharges Defendant, the
11 Defendant Releasees, and Downstream Defendant Releasees from any and all statutory or
12 common law claims that have been or could have been asserted in the Notice of Violation or the
13 Complaint regarding any alleged failure to warn about Lead in Covered Products manufactured,
14 distributed or sold by Defendant prior to the Effective Date. CEH represents and warrants that, as
15 of the date of its execution of this Consent Judgment, it has no current knowledge or information
16 that the Covered Products contain any listed chemicals other than Lead.

17 **7. PROVISION OF NOTICE**

18 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
19 the notice shall be sent by first class and electronic mail as follows:

20 7.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
21 pursuant to this Consent Judgment shall be:

22 Peg Carew Toledo
23 Mennemeier, Glassman & Stroud LLP
24 980 9th Street, Suite 1700
25 Sacramento, CA 95814
26 toledo@mgsllaw.com

27 and

28 Michael A. Santivaschi
Assistant General Counsel & Secretary
1845 Walnut Street, Suite 800
Philadelphia, PA 19103
mike.santivaschi@cssindustries.com

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2 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
3 this Consent Judgment shall be:

4 Howard Hirsch
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 hhirsch@lexlawgroup.com

9 7.2 Any Party may modify the person and address to whom the notice is to be sent
10 by sending the other Party notice by first class and electronic mail.

11 **8. COURT APPROVAL**

12 8.1 This Consent Judgment shall become effective on the Effective Date, provided
13 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
14 Defendant shall support approval of such Motion.

15 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
16 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
17 purpose.

18 **9. GOVERNING LAW AND CONSTRUCTION**

19 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
20 of California.

21 **10. ENTIRE AGREEMENT**

22 10.1 This Consent Judgment contains the sole and entire agreement and
23 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
24 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
25 merged herein and therein. There are no warranties, representations, or other agreements between
26 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
27 implied, other than those specifically referred to in this Consent Judgment have been made by any
28 Party hereto. No other agreements not specifically contained or referenced herein, oral or
otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind

1 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
2 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
3 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
4 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
5 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

6 **11. RETENTION OF JURISDICTION**

7 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

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

10 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
12 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
13 Party.

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


15 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
16 claim against another entity on terms that are different than those contained in this Consent
17 Judgment.

18 **14. EXECUTION IN COUNTERPARTS**

19 14.1 The stipulations to this Consent Judgment may be executed in counterparts
20 and by means of facsimile, which taken together shall be deemed to constitute one document.
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IT IS SO STIPULATED:

Dated: <u>April 20</u> , 2012	CENTER FOR ENVIRONMENTAL HEALTH  _____ Printed Name <u>ASSOCIATE DIRECTOR</u> _____ Title
Dated: _____, 2012	C.R. GIBSON, LLC a/k/a THE C.R. GIBSON COMPANY _____ Printed Name _____ Title

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

Dated: _____
JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

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IT IS SO STIPULATED:

Dated: _____, 2012	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p>
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Dated: <u>4.25</u> , 2012	<p>C.R. GIBSON, LLC a/k/a THE C.R. GIBSON COMPANY</p> <hr/> <p><i>SR Wash</i></p> <p>Printed Name Stephen R. WASH</p> <hr/> <p><i>SR VP Finance</i></p> <p>Title</p>
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IT IS SO ORDERED, ADJUDGED,
AND DECREED

Dated: **JUL 13 2012**

FAYE D'OPAL

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA