

FILED

APR 17 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.)
)
CARDINAL BRANDS, INC., *et al.*,)
)
Defendants.)

Case No. CIV 1105699

**[PROPOSED] CONSENT JUDGMENT
RE: PIONEER PHOTO ALBUMS, INC.**

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 Pioneer Photo Albums, Inc. (“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. Cardinal Brands, Inc., et al.*, Marin County Superior Court Case No. CIV 1105699 (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

1 Attorneys of every California city with a population greater than 750,000, and to Defendant
2 regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in
3 photo albums and scrapbooks ("Covered Products").

4 1.3 On November 18, 2011, CEH filed the complaint against Defendant in the
5 Action.

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

8 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
9 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in
10 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
11 that venue is proper in the County of Marin, and that this Court has jurisdiction to enter this
12 Consent Judgment as a full and final resolution of all claims which were or could have been
13 raised in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed, and/or sold by Defendant.

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

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 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 Polyvinyl Chloride: no more than .02 percent Lead by weight (200 ppm).

10 2.1.3 All other materials: no more than .03 percent Lead by weight (300 ppm).

11 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
12 Defendant shall cease shipping the Pioneer Sewn Scrapbook in Red, SKU No. 0-23602-62298-2,
13 as 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 of
19 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 2.3 **Products in the Stream of Commerce.** The obligations of Section 2.1 do not
25 apply to any of Defendant's Products that have been manufactured, distributed, shipped, sold, or
26 that are otherwise in the stream of commerce prior to the Effective Date.

27 **3. ENFORCEMENT**

28 3.1 **Enforcement Procedures.** Prior to bringing any new action, motion, or order

1 to show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
2 provide the violating party thirty (30) days advanced written notice of the alleged violation. Said
3 written notice shall describe with particularity the circumstances surrounding the alleged
4 violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try
5 to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day
6 period, the Party seeking to enforce may, by new action, motion or order to show cause before the
7 Superior Court of Marin, seek to enforce the terms and conditions contained in this Consent
8 Judgment.

9 **4. PAYMENTS**

10 4.1 **Payments From Defendant.** Within seven (7) days of the entry of this
11 Consent Judgment, Defendant shall pay the total sum of \$30,000 as a settlement payment.

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

16 4.2.1 Defendant shall pay the sum of \$3,800 as a penalty pursuant to Health &
17 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
18 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
19 Environmental Health.

20 4.2.2 Defendant shall pay the sum of \$6,100 as payment to CEH in lieu of
21 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
22 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
23 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
24 funds to monitor compliance with the reformulation requirements of this and other similar
25 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
26 reformulation requirements. In addition, as part of its *Community Environmental Action and*
27 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
28 environmental justice groups working to educate and protect people from exposures to toxic

1 chemicals. The method of selection of such groups can be found at the CEH website at
2 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
3 Center for Environmental Health.

4 4.2.3 Defendant shall pay the sum of \$20,100 as reimbursement of reasonable
5 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
6 payable to the Lexington Law Group.

7 **5. MODIFICATION AND DISPUTE RESOLUTION**

8 5.1 **Modification.** This Consent Judgment may be modified from time to time by
9 express written agreement of the Parties, with the approval of the Court, or by an order of this
10 Court upon motion and in accordance with law.

11 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
12 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
13 motion to modify the Consent Judgment.

14 **6. CLAIMS COVERED AND RELEASE**

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

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

1 violation of Proposition 65 or any other statutory or common law claims that have been or could
2 have been asserted in the public interest regarding the failure to warn about exposure to Lead
3 arising in connection with Covered Products manufactured, distributed or sold by Defendant prior
4 to the Effective Date.

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 **7. PROVISION OF NOTICE**

11 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
12 the notice shall be sent by first class and electronic mail as follows:

13 7.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
14 pursuant to this Consent Judgment shall be:

15 Michael J. Stiles
16 Stiles Law Group
17 800 E. Colorado Blvd., Suite 210
Pasadena, CA 91101
mstiles@stileslawgroup.com

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

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
24 by 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 Defendant 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
6 of California.

7 **10. ATTORNEYS' FEES**

8 10.1 Should CEH prevail on any motion, application for an order to show cause or
9 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
10 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
11 Defendant prevail on any motion application for an order to show cause or other proceeding,
12 Defendant may be awarded its reasonable attorneys' fees and costs as a result of such motion or
13 application upon a finding by the court that CEH's prosecution of the motion or application
14 lacked substantial justification. For purposes of this Consent Judgment, the term substantial
15 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
16 Civil Procedure Section 2016, *et seq.*

17 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
18 its own attorneys' fees and costs.

19 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
20 sanctions pursuant to law.

21 **11. ENTIRE AGREEMENT**

22 11.1 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

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

8 **12. RETENTION OF JURISDICTION**

9 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
14 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
15 Party.

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

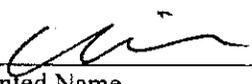
17 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
18 claim against another entity on terms that are different than those contained in this Consent
19 Judgment.

20 **15. EXECUTION IN COUNTERPARTS**

21 15.1 The stipulations to this Consent Judgment may be executed in counterparts
22 and by means of facsimile, which taken together shall be deemed to constitute one document.
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IT IS SO STIPULATED:

<p>Dated: <u>January 19</u>, 2012</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p> _____ Printed Name</p> <p><u>Associate Director</u> _____ Title</p>
<p>Dated: _____, 2012</p>	<p>PIONEER PHOTO ALBUMS, INC.</p> <p>_____ Printed Name</p> <p>_____ Title</p>

**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	CENTER FOR ENVIRONMENTAL HEALTH _____ Printed Name _____ Title
Dated: <u>JANUARY 20</u> , 2012	PIONEER PHOTO ALBUMS, INC. <i>Sheldon Plutsky</i> _____ Printed Name SHELDON PLUTSKY PRESIDENT _____ Title

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

Dated: **APR 17 2012**

LYNN DURYEE

 JUDGE OF THE SUPERIOR COURT OF THE
 STATE OF CALIFORNIA