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**FILED**

**JUL 24 2012**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: K. Yarborough, Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
  
Plaintiff, )  
  
v. )  
  
CARDINAL BRANDS, INC., et al., )  
  
Defendants. )

Case No. CIV-1105699

*Ka*  
**[PROPOSED] CONSENT JUDGMENT  
AS TO DCWV ACQUISITION  
CORPORATION**

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

1 solely for purposes of settling, compromising, and resolving issues disputed in this action.

2 **2. INJUNCTIVE RELIEF**

3 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent  
4 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell or offer for sale any  
5 Covered 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 All other materials: no more than .01 percent Lead by weight (100 ppm).

9 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,  
10 Defendant shall cease shipping the DCWV 3 Ring Album in Red, SKU No. 6-11356-95558-8, as  
11 identified in CEH's pre-suit Notice of Violation to Defendant (the "Recall Covered Products"), to  
12 stores and/or customers in California, and Defendant shall withdraw the Recall Covered Products  
13 from the market in California, and, at a minimum, send instructions to any of its stores and/or  
14 customers that offer the Recall Covered Products for sale in California to cease offering such  
15 Recall Covered Products for sale and to either return all Recall Covered Products to Defendant  
16 for destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall  
17 Covered Products shall be in compliance with all applicable laws. Defendant shall keep and  
18 make available to CEH for inspection and copying records and correspondence regarding the  
19 market withdrawal and destruction of the Recall Covered Products. If there is a dispute over the  
20 corrective action, the Parties shall meet and confer before seeking any remedy in court.

21 **3. ENFORCEMENT**

22 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show  
23 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the  
24 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall  
25 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an  
26 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to  
27 enforce may, by new action, motion or order to show cause before the Superior Court of Marin,  
28 seek to enforce the terms and conditions contained in this Consent Judgment.

1     **4.     PAYMENTS**

2             4.1             **Payments From Defendant.** Within five (5) days of the entry of this Consent  
3 Judgment, Defendant shall pay the total sum of \$30,000 as a settlement payment.

4             4.2             **Allocation of Payments.** The total settlement amount shall be paid in three  
5 separate checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503  
6 Divisadero Street, San Francisco, California 94117, and made payable and allocated as follows:

7                     4.2.1 Defendant shall pay the sum of \$3,930 as a penalty pursuant to Health &  
8 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &  
9 Safety Code § 25249.12. The penalty check shall be made payable to the Center For  
10 Environmental Health.

11                    4.2.2 Defendant shall pay the sum of \$5,900 as payment to CEH in lieu of  
12 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title  
13 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people  
14 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such  
15 funds to monitor compliance with the reformulation requirements of this and other similar  
16 Consent Judgments and to purchase and test Covered Products to confirm compliance with such  
17 reformulation requirements. In addition, as part of its *Community Environmental Action and*  
18 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots  
19 environmental justice groups working to educate and protect people from exposures to toxic  
20 chemicals. The method of selection of such groups can be found at the CEH web site at  
21 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the  
22 Center for Environmental Health.

23                    4.2.3 Defendant shall pay the sum of \$20,170 as reimbursement of reasonable  
24 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
25 payable to the Lexington Law Group.

26     **5.     MODIFICATION AND DISPUTE RESOLUTION**

27             5.1             **Modification.** This Consent Judgment may be modified from time to time by  
28 express written agreement of the Parties, with the approval of the Court, or by an order of this

1 Court upon motion and in accordance with law.

2 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent  
3 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a  
4 motion to modify the Consent Judgment.

5 **6. CLAIMS COVERED AND RELEASE**

6 6.1 This Consent Judgment is a full, final, and binding resolution between CEH  
7 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,  
8 partners, sister companies and their successors and assigns ("Defendant Releasees"), and all to  
9 whom they distribute or sell Covered Products including, but not limited to, distributors,  
10 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream  
11 Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law  
12 claims that have been or could have been asserted in the public interest against Defendant,  
13 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about  
14 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold  
15 by Defendant prior to the Effective Date.

16 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &  
17 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against  
18 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any  
19 violation of Proposition 65 or any other statutory or common law claims that have been or could  
20 have been asserted in the public interest regarding the failure to warn about exposure to Lead  
21 arising in connection with Covered Products manufactured, distributed or sold by Defendant prior  
22 to the Effective Date.

23 6.3 Compliance with the terms of this Consent Judgment by Defendant and the  
24 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the  
25 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged  
26 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant  
27 after the Effective Date.

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1     **7.     PROVISION OF NOTICE**

2             7.1             When any Party is entitled to receive any notice under this Consent Judgment,  
3 the notice shall be sent by first class and electronic mail as follows:

4                     7.1.1   **Notices to Defendant.** The person for Defendant to receive Notices  
5 pursuant to this Consent Judgment shall be:

6                                     Melissa A. Jones  
7                                     Stoel Rives LLP  
8                                     500 Capitol Mall, Ste. 1600  
9                                     Sacramento, CA 95814  
10                                    majones@stoel.com

11                    7.1.2   **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
12 this Consent Judgment shall be:

13                                     Howard Hirsch  
14                                     Lexington Law Group  
15                                     503 Divisadero Street  
16                                     San Francisco, CA 94117  
17                                     hhirsch@lexlawgroup.com

18             7.2             Any Party may modify the person and address to whom the notice is to be sent  
19 by sending the other Party notice by first class and electronic mail.

20     **8.     COURT APPROVAL**

21             8.1             This Consent Judgment shall become effective on the Effective Date, provided  
22 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
23 Defendant shall support approval of such Motion.

24             8.2             If this Consent Judgment is not entered by the Court, it shall be of no force or  
25 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
26 purpose.

27     **9.     GOVERNING LAW AND CONSTRUCTION**

28             9.1             The terms of this Consent Judgment shall be governed by the laws of the State  
of California.

**10.    ATTORNEYS' FEES**

           10.1             A Party who unsuccessfully brings or contests an action arising out of this  
Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and

1 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this  
2 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
3 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

4 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement  
5 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
6 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party  
7 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this  
8 provision shall not be construed as altering any procedural or substantive requirements for  
9 obtaining such an award.

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

## 12 **11. ENTIRE AGREEMENT**

13 11.1 This Consent Judgment contains the sole and entire agreement and  
14 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
15 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
16 merged herein and therein. There are no warranties, representations, or other agreements between  
17 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
18 implied, other than those specifically referred to in this Consent Judgment have been made by any  
19 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
20 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
21 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
22 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
23 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
24 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
25 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
26 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

1 **12. RETENTION OF JURISDICTION**

2 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

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

5 13.1 Each signatory to this Consent Judgment certifies that he or she is fully  
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
8 Party.

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

10 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any  
11 claim against another entity on terms that are different than those contained in this Consent  
12 Judgment.

13 **15. EXECUTION IN COUNTERPARTS**

14 15.1 The stipulations to this Consent Judgment may be executed in counterparts  
15 and by means of facsimile, which taken together shall be deemed to constitute one document.  
16

17 **IT IS SO STIPULATED:**

<p>18 Dated: <u>May 3</u>, 2012</p>	<p>19 <b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p>20 <i>CHARLIE PIZARO</i></p> <p>21 _____</p> <p>22 Printed Name</p> <p>23 <i>ASSOCIATE DIRECTOR</i></p> <p>24 _____</p> <p>25 Title</p>
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Dated: April 25, 20112012

DCWV ACQUISITION CORPORATION

*Gary Millet*  
*Gary Millet*

Printed Name

*CFO*

Title

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

Dated: **JUL 24 2012**

**LYNN DURYEE**

JUDGE OF THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA