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DEC 12 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, 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.)

GLOBAL NEW BEGINNINGS, INC.; and
DOES 1 through 200, inclusive,)

Defendants.)

Case No. CIV-1204304

~~PROPOSED~~ CONSENT JUDGMENT
AS TO GLOBAL NEW BEGINNINGS,
INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Global New Beginnings, 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. Global New Beginnings, Inc., et al.*, Marin County Superior Court Case No. CIV-1204304 (the “Action”).

1.2 On July 11, 2012, 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 duffel bags (“Covered Products”).

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1 1.3 On or about September 20, 2012, CEH filed the complaint against Defendant in
2 the Action.

3 1.4 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
4 stipulate that this Court has jurisdiction over the allegations of violations contained in the
5 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
6 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
7 Judgment as a full and final resolution of all claims which were or could have been raised in the
8 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
9 distributed, and/or sold by Defendant.

10 1.5 CEH and Defendant enter into this Consent Judgment as a full and final
11 settlement of all claims that were raised in the Complaint, or which could have been raised in the
12 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
13 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
14 allegation of the Complaint, or any facts or conclusions of law including, but not limited to, any
15 facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any
16 other statutory, common law or equitable requirements. Nothing in this Consent Judgment is or
17 shall be construed as an admission by Defendant of any allegation of the Complaint or an
18 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
19 compliance with the Consent Judgment constitute or be construed as an admission by Defendant
20 of any allegation of the Complaint or an admission by the Parties of any fact, conclusion of law,
21 issue of law, or violation of law. Defendant denies the factual and legal allegations in CEH's
22 Complaint and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment
23 shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in
24 any other pending legal proceeding or future legal proceedings, except to the extent that such
25 future proceedings may be barred by the doctrines of *res judicata*, collateral estoppel or any
26 other similar claim-preclusion doctrines. This Consent Judgment is the product of negotiation
27 and compromise and is accepted by the Parties solely for purposes of settling, compromising,
28 and resolving issues disputed in this action.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of Covered Products.** As of the date of entry of this Consent
3 Judgment (the "Effective Date"), Defendant shall not purchase, manufacture, import, sell or
4 supply to an unaffiliated third party any Covered Product in California or anywhere else unless
5 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 .02 percent lead by weight (200 ppm).

9 **3. ENFORCEMENT**

10 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause
11 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
12 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
13 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
14 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce
15 may, by new action, motion or order to show cause before the Superior Court of Marin, seek to
16 enforce the terms and conditions contained in this Consent Judgment.

17 **4. PAYMENTS**

18 **4.1 Payments From Defendant.** Within five (5) business days of the entry of this
19 Consent Judgment, Defendant shall pay the total sum of \$40,000 as a settlement payment.

20 **4.2 Allocation of Payments.** The total settlement amount for Defendant shall be paid
21 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
22 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
23 as follows:

24 4.2.1 Defendant shall pay the sum of \$5,250 as a penalty pursuant to Health &
25 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
26 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
27 Environmental Health.

28 4.2.2 Defendant shall pay the sum of \$7,900 as payment to CEH in lieu of

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

12 4.2.3 Defendant shall pay the sum of \$26,850 as reimbursement of reasonable
13 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
14 payable to the Lexington Law Group.

15 5. MODIFICATION AND DISPUTE RESOLUTION

16 5.1 **Modification.** This Consent Judgment may be modified from time to time by
17 express written agreement of the Parties, with the approval of the Court.

18 6. CLAIMS COVERED AND RELEASE

19 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
20 acting in the public interest and Defendant and Defendant's parents, shareholders, divisions,
21 subdivisions, subsidiaries, partners, sister companies and their successors and assigns
22 ("Defendant Releasees"), and all to whom they distribute or sell Covered Products including, but
23 not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members,
24 and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 up
25 through the Effective Date that has been or could have been asserted in the public interest against
26 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on the failure to
27 warn about exposure to lead arising in connection with Covered Products manufactured,
28 distributed or sold by Defendant prior to the Effective Date as set forth in the "Notice of

1 Violation.”

2 6.2 CEH, for itself, releases, waives, and forever discharges any and all claims against
3 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
4 violation of Proposition 65 or any other statutory or common law claims that have been or could
5 have been asserted in the public interest based on failure to warn about exposure to lead arising
6 in connection with Covered Products manufactured, distributed or sold by Defendant prior to the
7 Effective Date.

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

13 **7. PROVISION OF NOTICE**

14 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail as follows:

16 7.1.1 **Notices to Defendant.** The persons for Defendant to receive Notices
17 pursuant to this Consent Judgment shall be:

18 Michael Gurley
19 Global New Beginnings Inc.
20 4042 West 82nd Court
21 Merrillville, IN 46410
22 Gnbimike@aol.com

23 With a copy to:

24 Mark A. Stang
25 Chuhak & Tecson, P.C.
26 30 S. Wacker Drive, Suite 2600
27 Chicago, IL 60606
28 mstang@chuhak.com

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

Howard Hirsch
Lexington Law Group

1 503 Divisadero Street
2 San Francisco, CA 94117
3 hhirsch@lexlawgroup.com

4 7.2 Any Party may modify the person and address to whom the notice is to be sent by
5 sending the other Party notice by first class and electronic mail.

6 **8. COURT APPROVAL**

7 8.1 This Consent Judgment shall become effective on the Effective Date, provided
8 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
9 Defendant shall support approval of such Motion.

10 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
11 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
12 purpose.

13 **9. GOVERNING LAW AND CONSTRUCTION**

14 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California.

16 **10. ENTIRE AGREEMENT**

17 10.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
20 and therein. There are no warranties, representations, or other agreements between the Parties
21 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
22 other than those specifically referred to in this Consent Judgment have been made by any Party
23 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
24 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
25 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
26 Parties hereto only to the extent that they are expressly incorporated herein. No
27 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
28 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other

1 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

2 **11. RETENTION OF JURISDICTION**

3 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
4 Consent Judgment.

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

6 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
7 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
8 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

10 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
11 against another entity on terms that are different than those contained in this Consent Judgment.

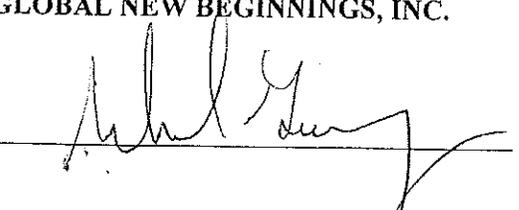
12 **14. EXECUTION IN COUNTERPARTS**

13 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
14 means of facsimile, which taken together shall be deemed to constitute one document.

15
16 **IT IS SO STIPULATED:**

| | |
|---------------------------------|---|
| 17 Dated: <u>Sept 12</u> , 2012 | 18 CENTER FOR ENVIRONMENTAL HEALTH 19  20 _____ 21 <u>CHARLIE P. EMSEO</u> 22 Printed Name 23 _____ 24 <u>ASSOCIATE DIRECTOR</u> 25 Title 26 _____ |
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| Dated: <u>09/13</u> , 2012 | GLOBAL NEW BEGINNINGS, INC.  _____ Michael Gurley Printed Name owner / President Title |
|----------------------------|--|

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

Dated: **DEC 12 2012**

ROY CHERNUS

Judge of the Superior Court of the State of
California

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