

**FILED**

**MAY 08 2013**

**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  
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

vs.

HIGH 5 SPORTSWEAR, INC.; and DOES 1  
through 200, inclusive,

Defendants.

) Case No. CIV-1205330

) [PROPOSED] CONSENT JUDGMENT

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and High 5 Sportswear, 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. High 5 Sportswear, Inc., et al.*, Marin County Superior Court Case No. CIV-1205330 (the "Action").

1.2 On August 6, 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

1 regarding the presence of lead in baseball or other sports belts used in athletic uniforms.

2 1.3 On November 30, 2012, CEH filed the complaint against Defendant in the Action.

3 1.4 "Covered Products" shall mean all baseball or other sports belts used in athletic  
4 uniforms, including but not limited to the products identified in Attachment A of this Consent  
5 Judgment.

6 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")  
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
8 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that  
9 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent  
10 Judgment as a full and final resolution of all claims which were or could have been raised in the  
11 Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
12 distributed, and/or sold by Defendant.

13 1.6 CEH and Defendant enter into this Consent Judgment as a full and final  
14 settlement of all claims that were raised in the Complaint, or which could have been raised in the  
15 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution  
16 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any  
17 facts or conclusions of law including, but not limited to, any facts or conclusions of law  
18 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law  
19 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an  
20 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall  
21 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
22 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,  
23 factual and legal allegations in CEH's Complaint and expressly denies any wrong doing  
24 whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
25 remedy, argument or defense the Parties may have in this or any other pending or future legal  
26 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
27 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
28 disputed in this action.

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, or supply  
4 to an unaffiliated third party any Covered Product in California or anywhere else unless such  
5 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.** By the Effective Date, Defendant  
10 shall cease shipping the Youth Baseball Belt in Athletic Gold, Style No. 19821, RN No. 65378,  
11 as identified in CEH’s pre-suit Notice of Violation to Defendant (the “Withdrawal Covered  
12 Products”), to stores and/or customers in California, and Defendant shall withdraw the  
13 Withdrawal Covered Products from the market in California, and, at a minimum, send  
14 instructions to any of its stores and/or customers that offer the Withdrawal Covered Products for  
15 sale in California to cease offering such Withdrawal Covered Products for sale and to either  
16 return all Withdrawal Covered Products to Defendant for destruction, or to directly destroy the  
17 Withdrawal Covered Products. Any destruction of the Withdrawal Covered Products shall be in  
18 compliance with all applicable laws. Defendant shall keep and make available to CEH for  
19 inspection and copying records and correspondence regarding the market withdrawal and  
20 destruction of the Withdrawal Covered Products. If there is a dispute over the corrective action,  
21 the Parties shall meet and confer before seeking any remedy in court.

22           **3.       ENFORCEMENT**

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

1 seek to enforce the terms and conditions contained in this Consent Judgment.

2 **4. PAYMENTS**

3 4.1 **Payments From Defendant.** Within five (5) business days of the entry of this  
4 Consent Judgment, Defendant shall pay the total sum of \$37,500 as a settlement payment.

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

9 4.2.1 Defendant shall pay the sum of \$4,930 as a civil penalty pursuant to  
10 Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with  
11 Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center For  
12 Environmental Health.

13 4.2.2 Defendant shall pay the sum of \$7,400 as payment to CEH in lieu of civil  
14 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,  
15 Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting  
16 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion  
17 of such funds to monitor compliance with the reformulation requirements of this and other  
18 similar Consent Judgments and to purchase and test Covered Products to confirm compliance  
19 with such reformulation requirements. In addition, as part of its Community Environmental  
20 Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots  
21 environmental justice groups working to educate and protect people from exposures to toxic  
22 chemicals. The method of selection of such groups can be found at the CEH web site at  
23 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the  
24 Center for Environmental Health.

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

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1       **5.       MODIFICATION AND DISPUTE RESOLUTION**

2               5.1       **Modification.** This Consent Judgment may be modified from time to time by  
3 express written agreement of the Parties, with the approval of the Court, or by an order of this  
4 Court upon motion and in accordance with law.

5               5.2       **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
6 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
7 modify the Consent Judgment.

8       **6.       CLAIMS COVERED AND RELEASE**

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

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

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

1       **7.     PROVISION OF NOTICE**

2           7.1     When any Party is entitled to receive any notice under this Consent Judgment, the  
3 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                               Elizabeth V. McNulty  
7                               Hewitt Wolensky LLP  
8                               4041 MacArthur Bld., Suite 300  
9                               Newport Beach, CA 92660  
10                              emcnulty@hewittwolensky.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 by  
19 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.    ENTIRE AGREEMENT**

10.1    This Consent Judgment contains the sole and entire agreement and understanding

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

#### 14 **11. RETENTION OF JURISDICTION**

15 11.1 This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

#### 17 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
20 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

#### 21 **13. NO EFFECT ON OTHER SETTLEMENTS**

22 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
23 against another entity on terms that are different than those contained in this Consent Judgment.

#### 24 **14. EXECUTION IN COUNTERPARTS**

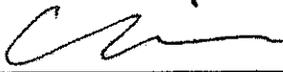
25 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
26 means of facsimile, which taken together shall be deemed to constitute one document.

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DOCUMENT PREPARED  
ON RECYCLED PAPER

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**IT IS SO STIPULATED:**

Dated: <u>March 1</u> , 2013	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Charlie Pizarro Associate Director
Dated: _____, 2013	<b>HIGH 5 SPORTSWEAR, INC.</b>  _____  _____ Printed Name  _____ Title

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

Dated: **MAY 08 2013**

**LYNN DURYEE**

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Judge of the Superior Court of the State of  
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**IT IS SO STIPULATED:**

Dated: _____, 2013	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Charlie Pizarro Associate Director
Dated: <u>15 February</u> , 2013	<b>HIGH 5 SPORTSWEAR, INC.</b>  _____ <i>William B. Swint</i>  _____ William B. Swint Printed Name  _____ President Title

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

Dated: \_\_\_\_\_  
Judge of the Superior Court of the State of  
California

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ON RECYCLED PAPER

**ATTACHMENT "A"**

All colors and styles of High Five Adult and Youth Baseball Belts sold into California from January 2010 through September 1, 2012, including but not limited to Styles 19820 and 19821, item numbers 19820.100 UADT, 19820.120 UADT, 19820.140 UADT, 19820.160 UADT, 19820.200 UADT, 19820.220 UADT, 19820.240 UADT, 19820.320 UADT, 19820.420 UADT, 19820.500 UADT, 19820.520 UADT, 19820.620 UADT, 19820.700 UADT, 19821.100 UYTH, 19821.120 UYTH, 19821.140 UYTH, 19821.160 UYTH, 19821.200 UYTH, 19821.220 UYTH, 19821.240 UYTH, 19821.320 UYTH, 19821.420 UYTH, 19821.500 UYTH, 19821.520 UYTH, 19821.620 UYTH, 19821.700 UYTH.