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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

MAR 18 2015

K. McCoy, Exec. Off./Clerk

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

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

Plaintiff,)

vs.)

PONY TOOLS INC., *et al.*,)

Defendants.)

Case No. RG 14-739493

^(JSC)
~~PROPOSED~~ CONSENT JUDGMENT
AS TO PONY TOOLS INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health (“CEH”), a California non-profit corporation, and Pony Tools 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. Pony Tools Inc., et al.*, Alameda County Superior Court Case No. RG 14-739493 (the “Action”).

1.2 On May 16, 2014, CEH provided a “Notice of Violation” relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) to the

1 California Attorney General, the District Attorneys of every county in California, the City
2 Attorneys of every California city with a population greater than 750,000, and to Defendant
3 regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in
4 bar clamps with painted handles ("Covered Products").

5 1.3 On September 5, 2014, CEH filed the Complaint against Defendant in the
6 Action.

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

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

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

1 proceedings. This Consent Judgment is the product of negotiation and compromise and is
2 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
3 disputed in this action.

4 **2. INJUNCTIVE RELIEF**

5 **2.1 Reformulation of Covered Products.** As of the date of entry of this Consent
6 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell, or offer for sale any
7 Covered Product in California or anywhere else in the United States unless such Covered Product
8 complies with the following Lead Limits:

9 2.1.1 "Paint or other Surface Coatings," as that term is defined in 16 C.F.R.
10 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

11 2.1.2 Polyvinyl chloride ("PVC") components: no more than 0.02 percent Lead
12 by weight (200 ppm).

13 2.1.3 All other components: no more than 0.03 percent Lead by weight (300
14 ppm).

15 **2.2 Market Withdrawal of Covered Products.** On or before the Effective Date,
16 Defendant shall cease shipping the Jorgensen 12" Gear Clamp (SKU No. 0-44295-38012-6, Item
17 No. 38012), as identified in CEH's pre-suit Notice of Violation to Defendant, and the Jorgensen
18 4" Gear Clamp (Item No. 38004) (the "Recall Covered Products"), to stores and/or customers in
19 California, and Defendant shall withdraw the Recall Covered Products from the market in
20 California, and, at a minimum, send instructions to any of its stores and/or customers that offer
21 the Recall Covered Products for sale in California to cease offering such Recall Covered Products
22 for sale and to either return all Recall Covered Products to Defendant for destruction, or to
23 directly destroy the Recall Covered Products. Any destruction of the Recall Covered Products
24 shall be in compliance with all applicable laws. Defendant shall keep and make available to CEH
25 for inspection and copying records and correspondence regarding the market withdrawal and
26 destruction of the Recall Covered Products. If there is a dispute over the corrective action, the
27 Parties shall meet and confer before seeking any remedy in court
28

1 **3. ENFORCEMENT**

2 **3.1 Enforcement Procedures.** Prior to bringing any motion or application for an
3 order to show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce
4 shall provide the violating party thirty (30) days advanced written notice of the alleged violation.
5 The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
6 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
7 Party seeking to enforce may, by new action, motion, or order to show cause before the Superior
8 Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.
9 The prevailing party on any motion or application to enforce this Consent Judgment shall be
10 entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
11 application. This Consent Judgment may only be enforced by the Parties.

12 **4. PAYMENTS**

13 **4.1 Payments From Defendant.** Within five (5) days of the entry of this Consent
14 Judgment, Defendant shall pay the total sum of \$42,500 as a settlement payment.

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

19 **4.2.1** Defendant shall pay the sum of \$5,600 as a penalty pursuant to Health &
20 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
21 Safety Code § 25249.12. The penalty check shall be made payable to the Center for
22 Environmental Health.

23 **4.2.2** Defendant shall pay the sum of \$8,400 as payment to CEH in lieu of
24 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
25 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
26 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
27 funds to monitor compliance with the reformulation requirements of this and other similar
28 Consent Judgments and to purchase and test Covered Products to confirm compliance with such

1 reformulation requirements. In addition, as part of its *Community Environmental Action and*
2 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
3 environmental justice groups working to educate and protect people from exposures to toxic
4 chemicals. The method of selection of such groups can be found at the CEH web site at
5 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
6 Center for Environmental Health.

7 4.2.3 Defendant shall pay the sum of \$28,500 as reimbursement of reasonable
8 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
9 payable to the Lexington Law Group.

10 5. MODIFICATION AND DISPUTE RESOLUTION

11 5.1 **Modification.** This Consent Judgment may be modified from time to time by
12 express written agreement of the Parties, with the approval of the Court, or by an order of the
13 Court upon motion and in accordance with law.

14 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
15 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
16 motion to modify the Consent Judgment.

17 6. CLAIMS COVERED AND RELEASE

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

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1 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
2 Safety Code § 25249.7(d), 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 regarding the failure to warn about exposure to Lead
6 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
7 prior to the 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,
15 the notice shall be sent by first class and electronic mail as follows:

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

18 Joe Krueger
19 Pony Tools, Inc.
20 404 N. Armour Street
21 Chicago, IL 60642
22 jkrueger@ponytools.com

23 7.1.2 **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to
24 this Consent Judgment shall be:

25 Howard Hirsch
26 Joseph Mann
27 Lexington Law Group
28 503 Divisadero Street
 San Francisco, CA 94117
 hhirsch@lexlawgroup.com
 jmann@lexlawgroup.com

1 7.2 Any Party may modify the person and address to whom the notice is to be sent
2 by sending the other Party notice by first class and electronic mail.

3 **8. COURT APPROVAL**

4 8.1 This Consent Judgment shall become effective on the Effective Date, provided
5 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
6 Defendant shall support approval of such Motion.

7 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
8 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
9 purpose.

10 **9. GOVERNING LAW AND CONSTRUCTION**

11 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
12 of California.

13 **10. ENTIRE AGREEMENT**

14 10.1 This Consent Judgment contains the sole and entire agreement and
15 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
16 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
17 merged herein. There are no warranties, representations, or other agreements between the Parties
18 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
19 other than those specifically referred to in this Consent Judgment have been made by any Party
20 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
21 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
22 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
23 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
24 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
25 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
26 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
27 whether or not similar, nor shall such waiver constitute a continuing waiver.

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1 **11. RETENTION OF JURISDICTION**

2 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

5 12.1 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 **13. NO EFFECT ON OTHER SETTLEMENTS**

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

13 **14. EXECUTION IN COUNTERPARTS**

14 14.1 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:**

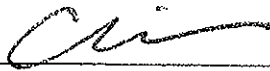
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19 Dated: December 2, 2014

CENTER FOR ENVIRONMENTAL HEALTH


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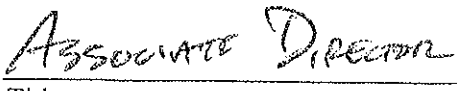


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Dated: NOVEMBER 17, 2014

PONY TOOLS INC.

Joseph Krueger

JOSEPH KRUEGER
Printed Name

PRESIDENT/CEO
Title

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

Dated: March 18, 2015

[Signature]
JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA