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ENDORSED
FILED
ALAMEDA COUNTY

JUN 10 2016

CLERK OF THE SUPERIOR COURT
By **SIANTE DEWBERRY**

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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 15-776331
a nonprofit corporation,)	
)	
Plaintiff,)	PROPOSED CONSENT JUDGMENT
)	AS TO VINH-SANH TRADING
v.)	CORPORATION
)	
VINH-SANH TRADING CORPORATION, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Vinh-Sanh Trading Corporation (“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. Vinh-Sanh Trading Corporation., et al.*, Alameda County Superior Court Case No. RG 15-776331(the “Action”).

1.2 On April 2, 2015, CEH provided a “Notice of Violation” relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“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 Cadmium in rice noodles (“Covered Products”).

3 1.3 On July 1, 2015, CEH filed the Complaint in the Action, naming Defendant as
4 a defendant in that Action.

5 1.4 Defendant manufactures, distributes, or sells Covered Products in the State of
6 California.

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

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

1 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 in California or anywhere else if such Covered Product contains a concentration
6 of more than fifty (50) parts per billion (“ppb”) Cadmium by weight, such concentration to be
7 determined by use of a test performed on a dry, uncooked sample of Covered Product by an
8 accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment
9 with a level of detection of at least ten (10) ppb that meets standard laboratory QA/QC
10 requirements.

11 **3. ENFORCEMENT**

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

19 **4. PAYMENTS**

20 4.1 **Payments from Defendant.** Within five (5) days of the entry of this Consent
21 Judgment, Defendant shall pay the total sum of \$50,000 as further set forth in this Section.

22 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
23 paid in four separate checks in the amounts set forth below and delivered as set forth below. Any
24 failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late
25 fee in the amount of \$100 for each day after the delivery date the payment is received. The late
26 fees required under this Section shall be recoverable, together with reasonable attorneys’ fees, in
27 an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds
28 paid by Defendant shall be allocated as set forth below between the following categories and

1 made payable as follows:

2 4.2.1 Defendant shall pay the sum of \$6,600 as a civil penalty pursuant to Health
3 & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with
4 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
5 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of
6 the civil penalty payment in the amount of \$4,950 shall be made payable to OEHHA and
7 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
8 follows:

9 For United States Postal Service Delivery:

10 Attn: Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010, MS #19B
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Attn: Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street, MS #19B
20 Sacramento, CA 95814

21 The CEH portion of the civil penalty payment in the amount of \$1,650 shall be made
22 payable to the Center for Environmental Health and associated with taxpayer identification
23 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
24 Street, San Francisco, CA 94117.

25 4.2.2 Defendant shall pay the sum of \$9,900 as payment to CEH in lieu of
26 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
27 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
28 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
funds to monitor compliance with the reformulation requirements of this and other similar
Consent Judgments and to purchase and test Covered Products to confirm compliance with such
reformulation requirements. In addition, as part of its *Community Environmental Action and
Justice Fund*, CEH will use four percent (4%) of such funds to award grants to grassroots

1 environmental justice groups working to educate and protect people from exposures to toxic
2 chemicals. The method of selection of such groups can be found at the CEH web site at
3 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
4 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
5 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
6 CA 94117.

7 4.2.3 Defendant shall pay the sum of \$33,500 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 and associated with taxpayer identification number 94-
10 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
11 Francisco, CA 94117.

12 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

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

19 **6. CLAIMS COVERED AND RELEASE**

20 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
21 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
22 affiliates, partners, sister companies, and their successors and assigns ("Defendant Releasees"),
23 and all to whom they distribute or sell Covered Products directly or indirectly including, but not
24 limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
25 licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other
26 statutory or common law claims that have been or could have been asserted in the public interest
27 against Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the
28

1 failure to warn about exposure to Cadmium arising in connection with Covered Products
2 manufactured, distributed, or sold by Defendant prior to the Effective Date.

3 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
4 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
5 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
6 violation of Proposition 65 or any other statutory or common law claims that have been or could
7 have been asserted in the public interest regarding the failure to warn about exposure to Cadmium
8 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
9 prior to the Effective Date.

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

15 **7. PROVISION OF NOTICE**

16 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
17 the notice shall be sent by first class and electronic mail as follows:

18 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
19 pursuant to this Consent Judgment shall be:

20 Garth N. Ward
21 Lewis Brisbois Bisgaard & Smith LLP
22 701 B Street, Suite 1900
San Diego, CA 92101
Garth.Ward@lewisbrisbois.com

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

25 Howard Hirsch
26 Lexington Law Group
27 503 Divisadero Street
San Francisco, CA 94117
hhirsch@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 and therein. There are no warranties, representations, or other agreements between
18 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
19 implied, other than those specifically referred to in this Consent Judgment have been made by any
20 Party hereto. No other agreements not specifically contained or referenced herein, oral or
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
22 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
23 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
24 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
25 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
26 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
27 provisions hereof 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.

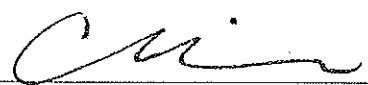
9 **13. NO EFFECT ON OTHER SETTLEMENTS**

10 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
11 claim against another entity on terms that are different than 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.
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18 **IT IS SO STIPULATED:**

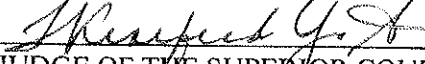
19 Dated: <u>8 APRIL</u> , 2016 20 21 22 23 24 25 26 27 28	CENTER FOR ENVIRONMENTAL HEALTH  Signature <u>CAMILLE PIZANOS</u> Printed Name <u>ASSOCIATE DIRECTOR</u> Title
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Dated: <u>4/4/16</u> , 2016	VINH-SANH TRADING CORPORATION 
	Signature _____
	Printed Name <u>Tim Chen</u>
	Title <u>President.</u>

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

Dated: 6/10/16



 JUDGE OF THE SUPERIOR COURT OF THE
 STATE OF CALIFORNIA
WINIFRED Y. SMITH