



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 21 2016

CLERK OF THE SUPERIOR COURT
BY C. Wright DEPUTY

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
vs.)
)
SPIRIT HALLOWEEN SUPERSTORES LLC,)
et al.,)
)
Defendants.)

Case No. RG 16-802669

~~PROPOSED~~ CONSENT JUDGMENT
AS TO SPIRIT HALLOWEEN
SUPERSTORES LLC

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 Spirit Halloween Superstores LLC (“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. Spirit Halloween Superstores LLC, et al.*, Alameda County Superior Court Case No. RG 16-802669 (the “Action”).

1.2 On November 12, 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 lead and lead compounds (collectively referred to herein as "Lead") in
3 the Spirit Western Belt & Holster, SKU No. 07206634 ("Covered Products").

4 1.3 On February 3, 2016, CEH filed the Complaint in the Action naming
5 Defendant as a defendant in the Action.

6 1.4 Defendant manufactures, distributes, and/or sells Covered Products in the
7 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 Alameda, 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 Complaint, or which could have been raised in the
17 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
18 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
19 facts or conclusions of law including, but not limited to, any facts or conclusions of law
20 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
21 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
22 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
23 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
24 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material
25 factual and legal allegations in CEH's Complaint and expressly denies any wrong doing
26 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
27 remedy, argument, or defense the Parties may have in this or any other pending or future legal
28 proceedings. This Consent Judgment is the product of negotiation and compromise and is

1 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
2 disputed in this action.

3 **2. INJUNCTIVE RELIEF**

4 **2.1 Reformulation of Covered Products.** As of the date of entry of this Consent
5 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell, or offer for sale any
6 Covered Product in California or anywhere else unless such Covered Product complies with the
7 following Lead Limits:

8 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
9 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) ("ppm").

10 2.1.2 Polyvinyl chloride ("PVC"): no more than 0.02 percent Lead by weight
11 (200 ppm).

12 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
13 zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by weight (300
14 ppm).

15 **2.2 Market Withdrawal of Covered Products.** On or before August 31, 2016,
16 Defendant shall withdraw all Covered Products that do not meet the Lead Limits ("Recall
17 Covered Products") from the market in California, and, at a minimum, send instructions to any of
18 its stores and/or customers that offer the Recall Covered Products for sale in California to cease
19 offering such Recall Covered Products for sale and to either return all Recall Covered Products to
20 Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of
21 the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall
22 keep and make available to CEH for inspection and copying records and correspondence
23 regarding the market withdrawal and destruction of the Recall Covered Products. If there is a
24 dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in
25 court.

26 **3. ENFORCEMENT**

27 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show
28 cause to enforce the terms of Section 2 of this Consent Judgment, a Party seeking to enforce shall

1 provide the violating party thirty (30) days advanced written notice of the alleged violation. The
2 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
3 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
4 Party seeking to enforce may, by new action, motion, or order to show cause before the Superior
5 Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.

6 **4. PAYMENTS**

7 4.1 **Payments from Defendant.** Within five (5) days of the entry of this Consent
8 Judgment, Defendant shall pay the total sum of \$35,000, as further set forth in this Section.

9 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
10 paid in four separate checks in the amounts set forth below and delivered as set forth below. Any
11 failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late
12 fee in the amount of \$100 for each day after the delivery date the payment is received. The late
13 fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in
14 an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds
15 paid by Defendant shall be allocated as set forth below between the following categories and
16 made payable as follows:

17 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b) in the
18 amount of \$4,600. The civil penalty payment shall be apportioned in accordance with Health &
19 Safety Code § 25249.12 (*i.e.*, 25% to CEH and 75% to the State of California's Office of
20 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of
21 the civil penalty payment in the amount of \$3,450 shall be made payable to OEHHA and
22 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
23 follows:

24 For United States Postal Service Delivery:

25 Attn: Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Non-United States Postal Service Delivery:

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

The CEH portion of the civil penalty payment in the amount of \$1,150 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b) in the amount of \$6,900. CEH will use such funds to continue its work educating and protecting people 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 of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and costs in the amount of \$23,500. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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
6 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
7 motion to 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
10 and Defendant and Defendant’s parents, shareholders, divisions, subdivisions, subsidiaries,
11 partners, sister companies, and their successors and assigns (“Defendant Releasees”), and all to
12 whom they distribute or sell Covered Products including, but not limited to, distributors,
13 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream
14 Defendant Releasees”), of any violation of Proposition 65 or any other statutory or common law
15 claims that have been or could have been asserted in the public interest against Defendant,
16 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
17 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
18 by Defendant prior to the Effective Date.

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

26 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
27 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
28 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged

1 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
2 after the Effective Date.

3 **7. PROVISION OF NOTICE**

4 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
5 the notice shall be sent by first class and electronic mail as follows:

6 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
7 pursuant to this Consent Judgment shall be:

8 Kevin Mahoney
9 Spirit Halloween Superstores LLC
10 6826 Black Horse Pike
11 Egg Harbor Township, NJ 08234
12 kevin.mahoney@spencergifts.com

13 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
14 this Consent Judgment shall be:

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

20 7.2 Any Party may modify the person and address to whom the notice is to be sent
21 by sending the other Party notice by first class and electronic mail.

22 **8. COURT APPROVAL**

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

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

9. ATTORNEYS' FEES

9.1 Should CEH prevail on any motion, application for an order to show cause, or
other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its

1 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
2 Defendant prevail on any such motion, application for an order to show cause, or other
3 proceeding, Defendant may be awarded its reasonable attorneys' fees and costs as a result of such
4 motion or application upon a finding by the Court that CEH's prosecution of the motion or
5 application lacked substantial justification. For purposes of this Consent Judgment, the term
6 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
7 Code of Civil Procedure §§ 2016, *et seq.*

8 9.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
9 its own attorneys' fees and costs.

10 9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of
11 sanctions pursuant to law.

12 **10. GOVERNING LAW AND CONSTRUCTION**

13 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
14 of California.

15 **11. ENTIRE AGREEMENT**

16 11.1 This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
18 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
19 merged herein and therein. There are no warranties, representations, or other agreements between
20 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
21 implied, other than those specifically referred to in this Consent Judgment have been made by any
22 Party hereto. No other agreements not specifically contained or referenced herein, oral or
23 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
24 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
25 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
26 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
27 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
28 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 **12. RETENTION OF JURISDICTION**

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

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

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

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

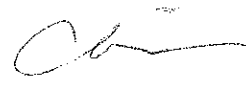
11 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
12 claim against another entity on terms that are different than those contained in this Consent
13 Judgment.

14 **15. EXECUTION IN COUNTERPARTS**

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

17
18 **IT IS SO STIPULATED:**
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

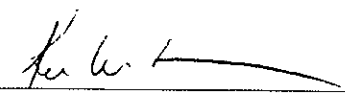
Dated: <u>11 March</u> , 2016	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>CHARLIE PIZZANO</u> _____ Printed Name <u>ASSOCIATE DIRECTOR</u> _____ Title
Dated: _____, 2016	SPIRIT HALLOWEEN SUPERSTORES LLC _____ Signature _____ Printed Name _____ Title

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

Dated: _____

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2016	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>March 2</u> , 2016	SPIRIT HALLOWEEN SUPERSTORES LLC  _____ Signature <u>Kevin W. Mahoney</u> _____ Printed Name <u>Vice President and General Counsel</u> _____ Title

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

Dated: 3/21/2016



JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA