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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a CALIFORNIA non-profit
corporation,

Plaintiff,

v.

HUCK SPAULDING ENTERPRISES, INC., a
NEW YORK corporation; et al.

Defendants.

Case No. BC 319440

[Hon. Irving S. Feffer]

**[PROPOSED] CONSENT JUDGMENT
ONLY AS TO DEFENDANT UNIMAX
SUPPLY CO. INC.**

Complaint Filed: August 2, 2004
Dept. 51, Room 511

This Consent Judgment is entered into by and between the AMERICAN ENVIRONMENTAL SAFETY INSTITUTE, plaintiff in this matter (hereinafter “Plaintiff” or “the Institute”), and defendant UNIMAX SUPPLY CO. INC. (hereinafter “Defendant” or “Unimax”).

1. Definitions. As used in this Consent Judgment, the following definitions shall apply:

1.1 “Products” includes all tattoo inks and/or pigment products made by or on behalf of Unimax, including but not limited to: Eunju-Kang 100% Pure Pigment tattoo inks, Mario Barth’s “Intenze” inks, “Mom’s” inks by Millenium, Talens drawing ink, Kuro Sumi outline ink, and Pelikan drawing ink.

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1 **1.2** “Products” shall also include any future tattoo inks and/or pigment products that
2 are sold by or on behalf of Unimax to California consumers after June 30, 2005 under any
3 product name or brand, whether a current or new name and/or brand.

4 **1.3** “Antimony” means the chemicals Antimony oxide and Antimony trioxide
5 (collectively referred to herein as “Antimony”), listed as subject to Proposition 65 regulation in
6 Title 22, California Code of Regulations, section 12000.

7 **1.4** “Arsenic” means the chemical Arsenic (inorganic arsenic compounds/inorganic
8 oxides), listed as subject to Proposition 65 regulation in Title 22, California Code of
9 Regulations, section 12000.

10 **1.5** “Beryllium” means the chemicals Beryllium and Beryllium compounds
11 (collectively referred to herein as “Beryllium”), listed as subject to Proposition 65 regulations in
12 Title 22, California Code of Regulations, section 12000.

13 **1.6** “Chromium” means the chemical Chromium (hexavalent compounds), listed as
14 subject to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

15 **1.7** “Cobalt” means the chemicals Cobalt metal powder and Cobalt (II) oxide
16 (collectively referred to herein as “Cobalt”), listed as subject to Proposition 65 regulations in
17 Title 22, California Code of Regulations, section 12000.

18 **1.8** “Lead” means the chemicals lead and lead compounds listed as subject to
19 Proposition 65 regulation in Title 22, California Code of Regulations, section 12000.

20 **1.9** “Nickel” means the chemicals Nickel (Metallic), Nickel acetate, Nickel carbonate,
21 Nickel carbonyl, Nickel hydroxide, Nickelocene, Nickel oxide, and Nickel subsulfide
22 (collectively referred to herein as “Nickel”), listed as subject to Proposition 65 regulations in
23 Title 22, California Code of Regulations, section 12000.

24 **1.10** “Selenium” means the chemical Selenium sulfide (“Selenium”), listed as subject
25 to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

26 **1.11** “Heavy Metals” means Antimony, Arsenic, Beryllium, Chromium, Cobalt, Lead,
27 Nickel, and Selenium.

28 **1.12** “ppm” means parts-per-million in concentration.

1 **1.13** Plaintiff and Defendant will be referred to collectively as the “Parties” or
2 individually as a “Party.”

3 **2. Background.**

4 **2.1** Plaintiff American Environmental Safety Institute (“Institute”) is a non-profit
5 California corporation dedicated to investigating environmental and public health hazards
6 affecting children and adults in their regular daily lives. The Institute is based in Palo Alto,
7 California, and was incorporated under the laws of the State of California in 1998. The Institute
8 is a “person” within the meaning of Health & Safety Code (“H&S Code”) §25249.11(a), and
9 brought this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

10 **2.2** On or about July 24, 2003, the Institute served a 60-Day “Notice of Violation of
11 Proposition 65” (the “Notice”) on the California Attorney General, the District Attorneys of
12 every county in California, the City Attorneys of every California city with a population greater
13 than 750,000, and on the Defendant, alleging that Defendant was in violation of the Safe
14 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §§ 25249.5 et seq.
15 (“Proposition 65”) for failing to warn purchasers of Unimax’s Products sold in California that
16 use of these Products expose users to Antimony, Arsenic, Beryllium, Cobalt, Lead and Lead
17 compounds, Nickel and Selenium (collectively “Heavy Metals”). No public prosecutor has
18 commenced an action regarding the matters raised in the Notice.

19 **2.3** On August 2, 2004, the Institute filed its complaint entitled *American*
20 *Environmental Safety Institute v. Huck Spaulding Enterprises, Inc., et al*, in the Los Angeles
21 County Superior Court, No. BC 319440 (the “Complaint”).

22 **2.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over the allegations of the violations contained in the Notice and the Complaint,
24 and personal jurisdiction over Defendant as to the acts or omissions alleged in the Complaint;
25 that venue is proper in the County of Los Angeles; and that this Court has jurisdiction to enter
26 this Consent Judgment.

1 **2.5** Defendant denies that the Products have been or are in violation of Proposition 65
2 or any other law, and further contends that all Products have been and are safe for use as
3 directed. However, Defendant wishes to resolve this matter without further litigation or cost.

4 **2.6** The Parties enter into this Consent Judgment to settle certain disputed claims as
5 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to promote
6 the public interest. By executing and complying with this Consent Judgment, no Party admits
7 any facts or conclusions of law including, but not limited to, any facts or conclusions of law
8 regarding any violations of Proposition 65, the Unfair Competition Law or any other statutory,
9 common law or equitable claim or requirement relating to or arising from Defendant's Products.
10 This Consent Judgment shall not be construed as an admission by Defendant as to any of the
11 allegations in the Notice or the Complaint.

12 **3. Injunctive Relief.**

13 **3.1 Suspension of Sales of Products in California.**

14 Effective June 30, 2005, Unimax shall stop selling any of its current or future Products as
15 defined herein into the California market, including but not limited to stopping such sales via
16 direct consumer purchase, sales to wholesalers or distributors specifically for resale into
17 California, or sales via mail-order catalog, telephone order or Internet sales.

18 **3.2 Future Sales Will Require a Warning.**

19 If Unimax decides to sell its Products as defined herein in any form or fashion into
20 California after June 30, 2005, Unimax shall do the following:

21 a. Give written notice to the Institute thirty (30) days prior to commencing
22 such sales; and

23 b. Place the following warning prominently on the label of each of its
24 Products shipped for sale by Unimax into California:

25 “**WARNING:** Tattoo inks and pigments contain toxic metals,
26 including Arsenic, Lead, Nickel and others, all of which are known
27 to the State of California to cause cancer or birth defects and other
28 reproductive harm.”

1 **4. Settlement Payments.** In keeping with the concept of, but in lieu of, the statutory
2 penalties and/or restitution required under the statutes set forth in the Complaint, Defendant shall
3 pay to the Trust Account of the Carrick Law Group P.C., by wire transfer, certified or bank
4 check in immediately available funds, the sum of \$5,000.00. This settlement amount shall be
5 due and payable within five calendar days after the date of entry of this Consent Judgment. This
6 sum of \$5,000.00 shall be disbursed by the Carrick Law Group P.C. as follows:

7 **4.1 To The Institute:** \$5,000.00, to be used by the Institute for its on-going
8 compliance monitoring costs of this Consent Judgment, and to reimburse the Institute for the
9 Institute's enforcement efforts on behalf of the public interest and the general public in
10 conformity with Health and Safety Code §25192(a)(2).

11 **5. Termination of All Claims.**

12 **5.1 Claims Covered and Release.** This Consent Judgment includes the resolution of
13 actual and potential claims that were considered or could have been brought by the Institute on
14 behalf of the public interest and the general public regarding Heavy Metals in Defendant's
15 Products. This Consent Judgment is a final and binding resolution between the Institute, on
16 behalf of the public interest and the general public, and Defendant, of any and all alleged
17 violations of Proposition 65 that was or could have been asserted in the Notice or Complaint by
18 the Institute on behalf of the public interest and the general public against Defendant or
19 purchasers or sellers of Defendant's Products arising from or related to Defendant's Products up
20 through the date of entry of this Consent Judgment, including, but not limited to, any claims for
21 attorneys' fees and costs. The Institute, on behalf of the public interest and the general public,
22 hereby releases Defendant from and against the claims described in this paragraph to the extent
23 such claims do, did, or could arise from or relate to Defendant's Products; however, the Institute
24 cannot and does not release any claims, including specifically any personal injury or directly
25 related claims, that could be brought by any individual or organization. Defendant hereby
26 releases the Institute from and against any claims arising out of the Institute's filing or
27 prosecution of this action. Each Party respectively waives any right to appeal or other review of
28 this Consent Judgment, except as expressly provided in this Consent Judgment.

1 **5.2 Waiver and Release of Unknown Claims.** To the extent that California Civil
2 Code section 1542 or similar provisions of law are deemed to apply to the releases by the
3 Institute and Unimax set forth above, both the Institute and Unimax each acknowledges and
4 agrees that the release set forth above applies to all claims for injuries, damages, restitution,
5 penalties or losses related to or arising from Defendants' Products, whether those for injuries,
6 damages, restitution, penalties or losses are known or unknown, foreseen or unforeseen, or
7 patent or latent. The Institute and Unimax each certifies that it has read California Civil Code
8 section 1542. The Institute hereby knowingly and expressly waives its rights, on behalf itself,
9 the public interest and the general public, and Unimax hereby knowingly and expressly waives
10 its rights, respectively, under California Civil Code Section 1542, which provides as follows:

11 A general release does not extend to claims which the creditor does
12 not know or suspect to exist in his favor at the time of executing the
13 release which, if known by him must have materially affected his
14 settlement with the debtor.

14 To the extent that California Civil Code § 1542 or similar provisions of law are deemed
15 to apply to the release by Defendant set forth above, Defendant separately acknowledges and
16 agrees that the release set forth above applies to any claim for malicious prosecution, abuse of
17 process, damages, or other similar claim related to or arising out of the Institute's filing or
18 prosecution of this action. Defendant hereby knowingly and expressly waives any rights under
19 California Civil Code § 1542, the text of which is set forth above.

20 **6. Covenant Not To Sue.** The Institute and Defendant covenant and agree that with regard
21 to those matters that the Institute has herein released and that are described above, neither the
22 Institute nor Defendant will ever institute a lawsuit or administrative proceedings against another
23 Party, nor shall any Party assert any claim of any nature against any person or entity hereby
24 released with regard to any such matters which have been released. However, nothing in this
25 paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to
26 Section 7 below.

27 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to
28 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To

1 enforce this Consent Judgment, any Party must first give written notice of any violation of this
2 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties
3 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is
4 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the
5 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce
6 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
7 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
8 enforcement proceeding.

9 **8. Application of Consent Judgment.** Sections 5 and 6 of this Consent Judgment shall
10 apply to, be binding upon and inure to the benefit of, the Parties, their divisions, subdivisions,
11 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers,
12 employees, legal counsel, and agents of each of them, as applicable, and will inure to the benefit
13 of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and contract
14 manufacturers, and all of their respective directors, officers, employees, legal counsel, and
15 agents.

16 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
17 modified upon written agreement of Defendant and the Institute, as to Defendant, with approval
18 of the Court, or upon noticed motion for good cause shown. Such "good cause" shall include,
19 but not be limited to, any change in applicable law relating to Proposition 65 within the State of
20 California that, should its terms be applicable to Products similar to Defendant's Products or to
21 ingredients of Defendant's Products, would materially alter the obligations of Defendant
22 hereunder. If any of the statutes at issue in this action are individually or collectively amended
23 by the California Legislature in the future, or if regulations implementing these statutes are
24 lawfully adopted and/or amended by the appropriate administrative agency, the Parties shall
25 comply with that provision of law or regulation as then-amended.

26 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in
27 accordance with, the laws of the State of California.

28

1 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
2 other agreement has been made conferring any benefit upon any party except those contained
3 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
4 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
5 representations, agreements and understandings of the Parties with respect to such matters,
6 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
7 among the Parties to any term or condition contrary to or in addition to the terms and conditions
8 contained in this Consent Judgment, The Parties acknowledge that each has not relied on any
9 promise, representation or warranty, expressed or implied, not contained in this Consent
10 Judgment except for those contained in the Confidentiality Undertaking except with regard to
11 that certain declaration executed under penalty of perjury by Unimax providing information that
12 induced Plaintiff to enter into the financial terms of this Consent Judgment, which declaration
13 may be used solely as evidence in any future enforcement proceeding brought pursuant to
14 Section 7 above.

15 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment
16 for good cause shown under Section 9 hereof, the Parties agree that they, individually or
17 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any
18 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that
19 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each
20 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has
21 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other
22 Party so as to create a fiduciary, agency or confidential relationship.

23 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The
24 language of this Consent Judgment shall be construed as a whole according to its fair meaning
25 and not strictly for or against any Party.

26 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
27 represents and warrants that each signatory has all requisite power, authority and legal right
28 necessary to execute and deliver this Consent Judgment and to perform and carry out the

1 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment
2 represents that each has been duly authorized to execute this Consent Judgment. No other or
3 further authorization or approval from any person will be required for the validity and
4 enforceability of the provisions of this Consent Judgment.

5 **15. Cooperation and Further Assurances.** The Parties hereby will execute such other
6 documents and take such other actions as may be necessary to further the purposes and fulfill the
7 terms of this Consent Judgment.

8 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the
9 same force and effect as if all the signatures were obtained in one document.

10 **17. Notices.**

11 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiff the
12 Institute shall be sent to:

13 Roger Lane Carrick
14 The Carrick Law Group, P.C.
15 350 S. Grand Avenue, Suite 2930
16 Los Angeles, CA 90071-3406
17 Tel: (213) 346-7930
18 Fax: (213) 346-7931
19 E-mail: roger@carricklawgroup.com

20 **17.2** All correspondence and notices required by this Consent Judgment to Defendant
21 Unimax shall be sent to Defendant as follows:

22 UNIMAX SUPPLY CO. INC.	23 With a copy to:
24 Westley Wood	25 Christopher Morik, Esq.
26 President	27 Gaffin & Mayo, P.C.
28 Unimax Supply Co. Inc.	225 Broadway, Suite 2510
269 Canal Street	New York, NY 10007-3001
New York, NY 10013	Tel.: (212) 962-5757
	Fax: (212) 406-3548

24 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
25 Judgment shall be null and void, and without any force or effect, unless fully approved as
26 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
27 execution thereof by Defendant or the Institute shall not be construed as an admission by
28 Defendant or the Institute of any fact, issue of law or violation of law.

1 **19. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this Consent
2 Judgment.

3 **20. Compliance with Reporting Requirements.** The Institute shall comply with the
4 reporting form requirements referenced in Health and Safety Code section 25249.7(f) and
5 established in 11 California Code of Regulations §§ 3000-3008. Copies of all such reports shall
6 be supplied to Unimax as provided in Section 17.2.

7 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
8 as use their best efforts, to secure the Attorney General's approval of this Consent Judgment, and
9 not to seek his disapproval of any portion of this Consent Judgment.

10
11 **IT IS SO STIPULATED.**

12 Date: June 23, 2005

UNIMAX SUPPLY CO. INC.

13
14 By: Westley Wood, Pres.
15 Westley Wood
16 President

17 Date: _____, 2005

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

18
19
20 By: _____
21 Deborah A. Sivas
22 President and CEO

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10
11 **IT IS SO STIPULATED.**

12 Date: _____, 2005

UNIMAX SUPPLY CO. INC.

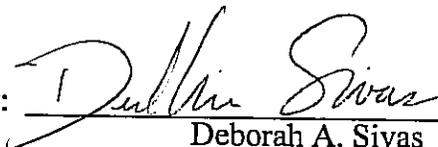
13
14 By: _____

Westley Wood
President

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16
17 Date: July 6, 2005

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

18
19
20 By: _____


Deborah A. Sivas
President and CEO

THE COURT HEREBY FINDS:

1
2 1. The warning required by the foregoing stipulated Consent Judgment complies
3 with the provisions of Health & Safety Code §§ 25249.5-25249.13.

4 2. The Parties' agreement that no civil penalties are warranted is in accord with the
5 criteria set forth in Health & Safety Code § 25249.7(b)(2), in that payments totaling \$5,000.00 in
6 lieu of such penalties to American Environmental Safety Institute furthers the remedial purposes
7 established under the statutes as set forth in the Complaint by providing funds for its compliance
8 monitoring of this Consent Judgment, as well as for its future investigational and enforcement
9 activities regarding toxic chemicals and Proposition 65, in a manner that is consistent with the
10 private enforcement mechanism and funds allocation scheme established by Health & Safety
11 Code § 25192 and § 25249.7 *et. seq.*

12 4. This Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
13 Court.

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

15
16 DATED: _____

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19 _____
20 IRVING S. FEFFER
21 JUDGE OF THE SUPERIOR COURT
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