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8 Attorneys for Plaintiff
9 ECOLOGICAL RIGHTS FOUNDATION

10 SHEPPARD MULLIN RICHTER & HAMPTON LLP
11 A Limited Liability Partnership
12 Including Professional Corporations
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15 San Francisco, CA 94111-4106
16 Telephone: 415-434-9100
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18 Attorneys for Defendants
19 ROYAL CABINETS, INC.
20 ROYAL INDUSTRIES, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 COUNTY OF SAN FRANCISCO
23 (Unlimited Jurisdiction)

24 ECOLOGICAL RIGHTS FOUNDATION,

CASE NO. CGC-05-443431

25 Plaintiff,

[PROPOSED] CONSENT JUDGMENT

26 v.

27 ROYAL CABINETS, INC.; ROYAL
28 INDUSTRIES, INC.; and DOES 1 through 100
inclusive,

Defendants.

1. INTRODUCTION

1.1 Plaintiff: Plaintiff Ecological Rights Foundation (“ERF” or “Plaintiff”), is a nonprofit foundation dedicated to, among other causes, the protection of the environment, promotion of human health, environmental education, and consumer rights.

1.2 The Action: On July 25, 2005, Plaintiff filed a complaint in the Superior Court for

1 the City and County of San Francisco (hereafter referred to as the “Action”) charging Royal
2 Cabinets, Inc. and Royal Industries, Inc. (hereinafter “Defendants”) with having violated The
3 Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Health and Safety
4 Code Section 25249.5 *et. seq.*, by exposing individuals to lead, a chemical known to the State of
5 California to cause cancer and birth defects and other reproductive harm, without providing clear
6 and reasonable warnings to such individuals. The alleged violations addressed in the Action were
7 described in Plaintiff’s Notice of Intent to Sue dated May 13, 2005 (“Plaintiff’s Notice”), which
8 Plaintiff had sent to the Defendants and to public enforcers as required by Health & Safety Code
9 Section 25249.7. Royal Cabinets, Inc. and Royal Industries, Inc. filed an answer in the Action on
10 August 31, 2005 denying all material allegations and asserting numerous affirmative defenses.
11 The alleged violations at issue in the Action relate to exposure to lead from furniture—including
12 but not limited to bookcases—with leaded glass and leaded glass inserts containing leaded
13 mullions manufactured, imported, distributed, and/or sold by Defendants.

14 1.3 Jurisdiction: For purposes of this Consent Judgment, the Parties stipulate that the
15 San Francisco Superior Court has jurisdiction over the allegations in the Action and personal
16 jurisdiction over Defendants as to the acts alleged in the Action, that venue is proper in the City
17 and County of San Francisco, that this Court has jurisdiction to enter this Consent Judgment as a
18 resolution of all claims which were alleged in the Action, and that the Court shall retain
19 jurisdiction to implement the Consent Judgment.

20 1.4 No Admissions: For the purpose of avoiding prolonged litigation, the Parties enter
21 into this Consent Judgment as a compromise of disputed claims and none of its provisions shall
22 be construed as an admission by any Party of any fact, finding, issue of law, or violation of law,
23 including Proposition 65, or any other statute, regulation, or common law requirement related to
24 exposure to lead or other chemicals listed under Proposition 65 from the Covered Products. By
25 executing this Consent Judgment and agreeing to provide the relief and remedies specified
26 herein, Defendants do not admit any violations of Proposition 65, or any other law or legal duty
27 and specifically deny that they have committed any such violations. This Consent Judgment shall
28 not be construed as an admission that any reformulation and/or warnings regarding exposure to

1 lead are required under Proposition 65 for the Covered Products. Defendants maintain that all
2 Covered Products manufactured, distributed, and sold by them in California have at all times
3 been in compliance with all applicable laws. Nothing in this Consent Judgment shall prejudice,
4 waive, or impair any right, remedy, or defense that Plaintiff and Defendants may have in any
5 other or in future legal proceedings unrelated to these proceedings. Defendants reserve all of
6 their rights and defenses with regard to any claim by any person under Proposition 65 or
7 otherwise. However, this paragraph shall not diminish or otherwise affect the obligations,
8 responsibilities, waivers, releases, and/or duties provided for under this Consent Judgment.

9 **2. INJUNCTIVE RELIEF**

10 2.1 Definition Of “Covered Products”: For purposes of this Consent Judgment, the
11 term “Covered Products” means all furniture—including but not limited to bookcases—which
12 contain leaded glass inserts, leaded mullions, leaded coming and/or lead solder which are
13 manufactured, marketed, sold, and/or distributed by Defendants (regardless of product
14 nomenclature, model design, model designation or brand name - *i.e.*, both those employed
15 directly by Defendants as well as privately labeled products supplied to others by Defendants).

16 2.2 Reformulation of Covered Products: As of the Effective Date of this Consent
17 Judgment, Defendants shall not, by themselves or through others, manufacture, ship for sale
18 and/or sell in the State of California any Covered Products manufactured with (a) solder that is
19 specified to have a lead content exceeding 0.05 percent (0.05%) lead by weight, and/or (b)
20 mullions or coming material that is specified to have a lead content exceeding 0.01 percent
21 (0.01%) lead by weight.

22 2.3 Reliance On Specifications: Defendants may comply with the requirement in
23 Paragraph 2.2 by relying on the specifications provided by the supplier(s) of solder, mullions, or
24 coming material, provided such reliance is in good faith.

25 2.4 Warnings to Past California Customers

26 Defendants will exert best faith reasonable efforts to identify all their direct customers in
27 California (ie retailers, dealers, distributors) who have already purchased the Covered Products.
28 Within 60 days of the Effective Date of this Consent Judgment, Defendants will provide the

1 following warning by mail on Defendants' letterhead to each such identified customer.

2 Warning: Our records indicate that you purchased leaded glass product(s) manufactured,
3 distributed, and/or sold by Royal Cabinets, Inc. and/or Royal Industries, Inc. The solder,
4 caming and mullions in these products contain lead, a chemical known to the State of
5 California to cause cancer, birth defects, and other reproductive harm. Avoid contact.
6 Wash your hands immediately after handling.

7 Within 120 days of the Effective Date of this Consent Judgment, Defendants will notify Plaintiff
8 of their efforts to identify and provide warning by mail to such identified customers.

9 2.5 Removal from Display by Retailers and Distributors

10 Defendants will instruct each of their dealers, retailers and distributors in California to
11 return all Covered Products in their possession or control to Defendants within 30 days of the
12 Effective Date of this Consent Decree. Defendants will certify, within 60 days of the Effective
13 Date of this Consent Decree, that each of Defendants' dealers, retailers and distributors in
14 California has returned all Covered Products in their possession or control to Defendants.

15 **3. WAIVER AND RELEASE OF ALL CLAIMS**

16 3.1 Waiver And Release of Claims Against Defendants: Plaintiff, on its own behalf
17 and on behalf of its members, subsidiaries, successors, and assigns and its directors, officers,
18 agents, attorneys, representatives, and employees, hereby releases Defendants and their directors,
19 officers, agents, attorneys, representatives, employees, licensors, heirs, subsidiaries, affiliates,
20 suppliers, authorized dealers, predecessors, successors, and assigns, and waives all claims for
21 injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of
22 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed, for the
23 alleged failure of Defendants or their subsidiaries, affiliates, suppliers, authorized dealers,
24 predecessors, successors, and assigns to provide clear and reasonable warning about exposure to
25 lead from the sale or use of any Covered Products manufactured, distributed, and/or sold by
26 Defendants in accordance with and including, but not limited to, Proposition 65.

27 Plaintiff, on behalf of all other private persons or entities potentially having standing
28 under Health and Safety Code § 25249.7(d) and on behalf of their respective members,
29 subsidiaries, successors, and assigns and their directors, officers, agents, attorneys,
30 representatives, and employees, further hereby releases Defendants and their directors, officers,

1 agents, attorneys, representatives, employees, licensors, heirs, subsidiaries, affiliates, suppliers,
2 authorized dealers, successors, and assigns, and waives all claims for injunctive relief or
3 damages, penalties, fines, sanctions, mitigation, fees (including fees for attorneys, experts and
4 others), costs, expenses, or any other sum incurred or claimed for violations of Proposition 65 as
5 set forth in Plaintiff's Notice, for the alleged failure to provide clear and reasonable warning
6 about exposure to lead from the sale or use of any Covered Products manufactured, distributed,
7 and/or sold by Defendants or their subsidiaries, affiliates, suppliers, authorized dealers,
8 predecessors, successors, and assigns.

9 3.2 Defendants' Waiver And Release Of Plaintiff: Defendants on their own behalf
10 and on behalf of their subsidiaries, affiliates, authorized dealers, successors, and assigns and
11 their directors, officers, agents, attorneys, representatives, and employees release Plaintiff and its
12 members, directors, officers, agents, attorneys, representatives, employees, heirs, successors, and
13 assigns from, and waives all claims for injunctive relief or damages, penalties, fines, sanctions,
14 mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other
15 sum incurred or claimed or which could have been claimed for matters related to the Action.

16 3.3 Matters Covered By This Consent Judgment/Release of Future Claims: As to
17 Covered Products, this Consent Judgment is a full, final, and binding resolution between the
18 Plaintiff, acting on behalf of itself and, as to those matters raised in Plaintiff's Notice, and the
19 public interest pursuant to Health and Safety Code Section 25249.7(d) on the one hand, and
20 Defendants on the other hand, for the alleged failure to provide clear, reasonable, and lawful
21 warnings of exposure to lead used or contained in exposed or accessible areas of Covered
22 Products manufactured, distributed, and/or sold by Defendants. As to Covered Products,
23 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
24 concerning compliance by Defendants with existing requirements of Proposition 65 and the
25 Unfair Competition Act to provide clear and reasonable warning about exposure to lead in
26 exposed or accessible areas of Covered Products manufactured, distributed, and/or sold by
27 Defendants.

28 3.4 Waiver Of Civil Code Section 1542: This Consent Judgment is intended as a full

1 settlement and compromise of all claims arising out of or relating to Plaintiffs' Notice and/or the
2 Action regarding Covered Products, except as set forth herein. No claim is reserved as between
3 the Parties hereto, and each Party expressly waives any and all rights which it may have under
4 the provisions of Section 1542 of the Civil Code of the State of California, which provides:

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

9 **4. MONETARY PAYMENTS**

10 4.1 Within fifteen (15) days following the parties' execution of this Consent
11 Judgment, Defendants shall pay \$14,500, in the form of a check made payable to "Brian
12 Gaffney, Attorney Client Trust Account" with this amount to be used by The Rose Foundation
13 for Communities & the Environment to reduce harm from toxic chemicals or other pollutants, or
14 to increase consumer worker and community awareness of health hazards posed by toxic
15 chemicals. The payment for use by The Rose Foundation for Communities & the Environment
16 shall not be construed as a credit against the personal claims of absent third parties for restitution
17 against defendants. The check shall be delivered by overnight delivery to Brian Gaffney, LAW
18 OFFICES OF BRIAN GAFFNEY, 605 Market St., Suite 505, San Francisco, CA 94105. In the
19 event this Consent Judgment becomes null and void under either Paragraphs 11 or 12 infra,
20 Plaintiff shall, within fifteen days, return the payment made under this paragraph to Defendants.

21 4.2 Within fifteen (15) days following the parties' execution of this Consent
22 Judgment, Defendants shall pay \$14,500, in the form of a check made payable to "Brian
23 Gaffney, Attorney Client Trust Account" as reimbursement for the investigation fees and costs,
24 testing costs, expert witness fees, attorneys fees, and other litigation costs and expenses. The
25 check shall be delivered by overnight delivery to Brian Gaffney, LAW OFFICES OF BRIAN
26 GAFFNEY, 605 Market St., Suite 505, San Francisco, CA 94105. In the event this Consent
27 Judgment becomes null and void under either Paragraphs 11 or 12 infra, Plaintiff shall, within
28 fifteen days, return the payment made under this paragraph to Defendants.

4.3 Defendants understand that the sales data and declaration under penalty of perjury

1 provided to Plaintiff by Defendants was a material factor upon which Plaintiff has relied to
2 determine the amount of monetary payments made under paragraph 4.1 above. To the best of
3 Defendants' knowledge, the sales data provided is true and accurate. Plaintiffs understands that
4 Defendants consider the sales data and declaration to be confidential information and shall return
5 the sales data and declaration to Defendants within fifteen days of the execution of this
6 Agreement. In the event that Plaintiff discovers facts that demonstrate to a reasonable degree of
7 certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt
8 to resolve the matter within ten (10) days of Defendants' receipt of notice from Plaintiff of his
9 intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve
10 Plaintiff's concerns, Plaintiff shall have the right to re-institute an enforcement action against
11 Defendants, for those additional Covered Products, based upon any existing 60-Day Notice of
12 violation allegedly served on Defendants. In such cases, all applicable statutes of limitation shall
13 be deemed tolled for the period between the date Plaintiff filed the instant action and the date
14 Plaintiff notifies Defendants that it is re-instituting the action for the additional Covered
15 Products.

16 **5. SEVERABILITY**

17 In the event that any of the provisions of this Consent Judgment are held by a court to be
18 unenforceable, the validity of the enforceable provisions remaining shall not be adversely
19 affected thereby.

20 **6. MODIFICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may be modified only upon the written agreement of the Parties,
22 or pursuant to court order issued upon motion of a Party, and upon entry of a modified Consent
23 Judgment by this Court.

24 **7. ENFORCEMENT OF CONSENT JUDGMENT**

25 7.1 The Parties may, by motion or order to show cause before this Court, and upon
26 notice having been given to all Parties in accordance with Paragraph 9 below, unless waived,
27 enforce the terms and conditions of this Consent Judgment and seek whatever fines, costs,
28 penalties, or remedies (including reasonable attorneys' fees and costs) are provided by law.

1 7.2 The Parties may enforce the terms and conditions of this Consent Judgment
2 pursuant to paragraph 7.1 only after the complaining party has first given thirty (30) days notice
3 to the Party failing to comply with the terms and conditions of the Consent Judgment and has
4 attempted, in an open and good faith manner, to resolve such Party's failure to comply.

5 **8. GOVERNING LAW**

6 8.1 The terms of this Consent Judgment shall be governed by, and construed in
7 accordance with, the laws of the State of California.

8 8.2 The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
10 Consent Judgment was subject to revision and modification by the Parties and has been accepted
11 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
12 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
13 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
14 agrees that any statute or rule of construction providing that ambiguities are to be resolved
15 against the drafting party should not be employed in the interpretation of this Consent Judgment
16 and, in this regard, the Parties hereby waive California Civil Code Section 1654.

17 **9. ENTIRE AGREEMENT**

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

1 **10. NOTICES**

2 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
3 writing and shall be personally delivered or sent by first-class, registered, certified mail,
4 overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission
5 confirmation) addressed to the Parties as follows:

6 For Plaintiffs: Ecological Rights Foundation
7 867 B Redwood Drive
8 Garberville, CA 95542

8 With a copy to: Brian Gaffney
9 LAW OFFICES OF BRIAN GAFFNEY
605 Market Street, Suite 505
10 San Francisco, CA 94105

11 For Defendants: Royal Cabinets, Inc.
12 Clay R Smith, President
1299 East Phillips Blvd
Pomona, CA 91766

13 Royal Industries, Inc.
14 Gus Danjoi, Chief Financial Officer
1299 East Phillips Blvd
15 Pomona, CA 91766

16 With a copy to: M. Elizabeth McDaniel
17 SHEPPARD MULLIN RICHTER & HAMPTON LLP
Four Embarcadero Center, 17th Floor
18 San Francisco, CA 94111-4106

19 The contacts and/or addresses stated immediately above may be amended by giving
20 notice to all Parties to this Consent Judgment.

21 **11. COMPLIANCE WITH REPORTING REQUIREMENTS/ATTORNEY GENERAL
22 OFFICE REVIEW AND COMMENT**

23 The parties agree to comply with the reporting form requirements referenced in
24 Health & Safety Code § 25249.7(f). Within a reasonable time of receiving all necessary
25 signatures to this Consent Judgment, and consistent with Health & Safety Code §25249.7(f),
26 Plaintiff shall notice a Motion to Approve Settlement and for Entry of Consent Judgment
27 (“Motion”) in the San Francisco Superior Court for a hearing scheduled not earlier than forty-
28 five (45) days later. Plaintiff shall serve this Consent Judgment and the noticed Motion to the

1 California Attorney General's office within a reasonable time of receiving all necessary
2 signatures.

3 It is expressly understood and agreed by the Parties hereto that the rights and obligations
4 contained in this Consent Judgment are expressly conditioned on the non-opposition by the
5 California Attorney General's Office to this Consent Judgment. Should the Attorney General
6 object to the Consent Judgment, the Parties shall negotiate in good faith to modify the Consent
7 Judgment in a manner that resolves the objection of the Attorney General. If the Parties cannot
8 agree on appropriate modifications within thirty (30) days of receiving the Attorney General's
9 objections, this Consent Judgment shall, at any Party's option, be deemed null and void as to
10 that Party, shall not bind that Party, and shall not be construed as an admission or waiver of any
11 claim or defense and cannot be used for any purpose.

12 **12. COURT APPROVAL/EFFECTIVE DATE**

13 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
14 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
15 counsel. Defendants agree to support the motion to approve this Consent Judgment in full, and
16 shall take all reasonable measures to ensure that it is entered without delay. In the event that the
17 Court fails to approve and order entry of the Consent Judgment without any change whatsoever
18 (unless otherwise so stipulated by the Parties), this Consent Judgment shall become null and void
19 upon the election of either Party and upon written notice to all of the Parties to the Action
20 pursuant to the notice provisions herein.

21 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days
22 after the Effective Date, electronically provide or otherwise serve a copy of it and the report
23 required pursuant to 11 Cal. Code Regs. § 3004 to/on the California Attorney General's Office.

24 The Effective Date of this Consent Judgment shall be the date it is entered by the Court.

25 **13. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood, and agree to all of the terms and conditions of this
28 Consent Judgment.

1 **14. COUNTERPARTS/FACSIMILE SIGNING**

2 This Consent Judgment may be executed in one or more counterparts, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same document. All signatures need not appear on the same page of the document and
5 signatures of the Parties transmitted by facsimile shall be deemed binding.

6 **APPROVED AS TO FORM:**

7 Dated: _____, 2005

LAW OFFICES OF BRIAN GAFFNEY

8
9 By: _____
10 Brian Gaffney

11 Attorney for Plaintiff
12 ECOLOGICAL RIGHTS FOUNDATION

13 Dated: _____, 2005

14 By: _____
15 M. Elizabeth McDaniel

16 Attorney for Defendants
17 ROYAL CABINETS, INC.
18 ROYAL INDUSTRIES, INC.

19 **IT IS SO STIPULATED:**

20 ECOLOGICAL RIGHTS FOUNDATION

21 By: _____
22 James Lamport
23 Executive Director

24 Dated: _____

25 ROYAL CABINETS, INC.
26 ROYAL INDUSTRIES, INC.

27 By: _____
28 Gus Danjoi
Chief Financial Officer

Dated: _____

1 In accordance with the stipulation of Plaintiff Ecological Rights Foundation and
2 Defendants Royal Cabinets, Inc. and Royal Industries, Inc.

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

4
5 Dated: _____

6 _____
7 JUDGE OF THE SUPERIOR COURT
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