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6 CENTER FOR ENVIRONMENTAL
HEALTH
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION
10

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

12 Plaintiff,

13 vs.

14 ROSS STORES, INC., et al.,

15 Defendants.
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17 AND CONSOLIDATED CASES
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Case No. CGC-05-444522

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT WALGREEN
COMPANY**

Action filed: August 31, 2005

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1. INTRODUCTION

1.1 On August 31, 2005, Plaintiff, the Center for Environmental Health (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco County Superior Court, entitled *Center for Environmental Health v. Ross Stores, Inc., et al.*, San Francisco County Superior Court Case No. CGC 05-444522 (the “Action”), for civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). On May 17, 2006, CEH filed the operative First Amended Complaint (“FAC”).

1.2 Defendant Walgreen Company (“Defendant”) is a corporation that employs 10 or more persons and are retail sellers of soft food and beverage containers such as lunchboxes and coolers made of materials containing lead and/or lead compounds (the “Products”) in the State of California. CEH and Defendant are referred to herein as the “Parties.”

1.3 On or about May 19, 2005, CEH served Defendant and the appropriate public enforcement agencies with the requisite 60-day notice that Defendant was in violation of Proposition 65. CEH’s notices and the FAC in this Action allege that Defendant exposes individuals who use or otherwise handle the Products to lead and/or lead compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer, birth defects and other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notices and FAC allege that Defendant’s conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

1.4 On June 16, 2006, the Court granted CEH’s Motion to Consolidate the instant action with seven other cases that were pending against vendors of Products, including some who supply Products to Defendant. The Court has now entered judgments against a number of these vendors, including some of Defendant’s suppliers. Those judgments released all claims against Defendant with regard to Products manufactured and/or distributed by the settling vendors. However, two of Defendant’s vendors, Global Advantage and

1 American Studios, employ fewer than 10 employees and are thus not subject to the consolidated
2 action. The provisions of Sections 2 and 3 of this Consent Judgment relate solely to
3 Defendant's sale of Products manufactured, distributed and/or sold by Global Advantage and
4 American Studios ("Defendant's Products").

5 **1.5** For purposes of this Consent Judgment only, the Parties stipulate
6 that this Court has jurisdiction over the subject matter of the violations alleged in the FAC and
7 personal jurisdiction over Defendant as to the acts alleged in the FAC, that venue is proper in
8 the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment
9 as a full and final resolution of all claims which were or could have been raised in the FAC
10 based on the facts alleged therein.

11 **1.6** The Parties enter into this Consent Judgment pursuant to a
12 settlement of certain disputed claims between the Parties as alleged in the FAC. By executing
13 this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the
14 Parties' intent that nothing in this Consent Judgment shall be construed as an admission by the
15 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
16 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
17 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
18 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this
19 or any other or future legal proceedings.

20 **1.7** CEH has entered into agreements with certain entities that supply
21 some of the Products that are sold by Defendant. Those agreements explicitly release Defendant
22 from any liability relating to such Products. None of the provisions of this Consent Judgment
23 are meant to apply in any way to Products manufactured, distributed and/or sold by an entity
24 that has previously signed a Consent Judgment with CEH concerning Products.

1 **2. COMPLIANCE**

2 **2.1 Level.** Within 90 days of entry of this Consent Judgment,
3 Defendant shall not manufacture, distribute, ship, or sell, or cause to be manufactured,
4 distributed, or sold, any of Defendant's Products that contain Lead concentrations exceeding
5 200 parts per million ("ppm") in or on the interior lining, and Lead concentrations exceeding
6 600 ppm Lead in or on the exterior.

7 **2.2 Issuance of Product Specifications to Suppliers.** In order to
8 help ensure compliance with section 2.1, Defendant shall, within 30 days of entry of this
9 Consent Judgment, give notice to Global Advantage and American Studios that the interior
10 lining of Defendant's Products may not contain Lead concentrations exceeding 200 ppm and
11 that the exterior of the Products may not contain Lead concentrations exceeding 600 ppm.

12 **2.3 Certification of Level By Suppliers.** Defendant shall obtain
13 written certification from Global Advantage and American Studios that Defendant's Products
14 are in compliance with the Product specifications for all orders of Defendant's Products
15 received 60 days or more following entry of the Consent Judgment.

16 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct
17 periodic testing of Defendant's Products. Any such testing will be conducted pursuant to the
18 test protocol attached hereto as Exhibit A at an independent laboratory. In the event that
19 CEH's testing demonstrates Lead levels in excess of 200 ppm for the interior lining of one or
20 more of Defendant's Products, or 600 ppm for the exterior of one or more of Defendant's
21 Products, CEH shall inform the Defendant of the violation(s), including information sufficient
22 to permit the Defendant to identify the Defendant's Product(s). Defendant shall, within 10
23 days following such notice, demonstrate compliance with sections 2.2 and 2.3 of this Consent
24 Judgment by providing CEH, at the address listed in section 12, with a copy of the notice sent
25 to, and certification received from its supplier of the Defendant's Product that tested above the
26 level(s) set in this Consent Judgment. If Defendant fails to provide CEH with the information
27 demonstrating its compliance with sections 2.2 and 2.3 for the Product(s) purchased from the
28 same supplier as those with tests showing Lead levels exceeding the levels set forth in this

1 Consent Judgment, Defendant shall be liable for stipulated penalties. The stipulated penalty
2 shall be as follows for each unit of Product for which CEH produces a test result with Lead
3 levels exceeding the levels set in this Consent Judgment for which Defendant has not
4 complied with both sections 2.2 and 2.3:

5 First Occurrence: \$1,250

6 Second Occurrence: \$1,500

7 Third Occurrence: \$1,750

8 Thereafter: \$2,500

9 **3. SETTLEMENT PAYMENTS**

10 **3.1 Monetary Payment in Lieu of Penalty:** Defendant shall pay
11 \$2,500 to CEH as a payment in lieu of any penalty pursuant to Health and Safety Code §
12 25249.7(b). The payment made pursuant to this section shall be made payable to CEH. CEH
13 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
14 As part of this work, CEH intends to conduct periodic reviews of the Products as set forth in
15 section 2.4.

16 **3.2 Attorneys' Fees and Costs:** Defendant shall pay \$7,500 in order
17 to help reimburse CEH and its attorneys for their reasonable investigation fees and costs,
18 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
19 Defendant's attention, litigating and negotiating a settlement in the public interest. The
20 payments required under this section shall be made payable to Lexington Law Group, LLP.

21 **3.3 Timing of Payments.** The payments required under this section
22 shall be delivered to the address set forth in section 12 below within 15 days of entry of this
23 Consent Judgment by the Court.

24 **4. MODIFICATION OF CONSENT JUDGMENT**

25 **4.1** This Consent Judgment may be modified by written agreement of
26 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

27 **4.2** CEH intends to enter into agreements with other entities that sell
28 the Products. Should Defendant determine that the provisions of any such Consent Judgment

1 with a similarly situated retail seller of the Products are less stringent, Defendant may request a
2 modification of this Consent Judgment to conform to the terms of the later entered Consent
3 Judgment. Upon 30 days prior written notice of Defendant's request for a modification, CEH
4 shall inform Defendant whether it will agree to such modification. If CEH does not agree,
5 Defendant may move the Court for a modification pursuant to this section. Following such
6 motion, if the Court determines that CEH acted unreasonably by not agreeing to the
7 modification, Defendant shall be entitled to its attorneys fees and costs associated with such
8 motion.

9 **4.3** If a court of competent jurisdiction renders a final judgment in
10 this or any other action that the Products do not require a Proposition 65 warning or
11 reformulation as provided herein, Defendant shall cease to have any obligations under this
12 Consent Judgment to the extent Defendant's Products fall within the scope of such judgment.
13 If CEH agrees in any other settlement or judicially entered injunction or consent judgment that
14 the Products do not require a Proposition 65 warning or reformulation as provided herein,
15 Defendant shall cease to have any obligations under this Consent Judgment to the extent
16 Defendant's Products fall within the scope of such settlement. CEH agrees to provide
17 Defendant with notice of any such judgment or settlement within ten (10) days of becoming
18 aware of the same.

19 **4.4** If a court of competent jurisdiction renders a final judgment in a
20 case that modifies the reformulation standards provided herein for the Products, or that
21 imposes injunctive relief concerning the distribution, marketing and/or sale of the Products
22 that differs from that imposed in this Consent Judgment, Defendant may, at its sole option,
23 adopt such modified or different obligations without seeking judicial modification of this
24 Consent Judgment or consent of CEH, to the extent Defendant's products fall within the scope
25 of such judgment and the provision thereof shall be deemed compliance with Proposition 65
26 and this Consent Judgment. Defendant shall provide CEH with notice accordingly.

27 **5. ENFORCEMENT OF CONSENT JUDGMENT**

28 **5.1** CEH may, by motion or application for an order to show cause

1 before the Superior Court of the County of San Francisco, enforce the terms and conditions
2 contained in this Consent Judgment. Should CEH prevail on any motion or application under
3 this section, CEH shall be entitled to its reasonable attorneys' fees and costs associated with
4 such motion or application.

5 **6. APPLICATION OF CONSENT JUDGMENT**

6 **6.1** This Consent Judgment shall apply to and be binding upon the
7 Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of
8 any of them.

9 **7. CLAIMS COVERED**

10 **7.1** This Consent Judgment is a full, final and binding resolution
11 between CEH and Defendant of any violation of Proposition 65 that were or could have been
12 asserted against Defendant in the FAC based on Defendant's failure to warn about exposure to
13 Lead contained in the Products, with respect to any Products sold by Defendant on or prior to
14 the date of entry of this Consent Judgment. This release does not extend to the entities
15 responsible for supplying Defendant with the Products. Nor does this release limit or affect
16 the obligations of any party created under this Consent Judgment.

17 **8. SEVERABILITY**

18 **8.1** In the event that any of the provisions of this Consent Judgment
19 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be
20 adversely affected.

21 **9. SPECIFIC PERFORMANCE**

22 **9.1** The parties expressly recognize that Defendant's obligations
23 under this Consent Judgment are unique. In the event that any Defendant is found to be in
24 breach of this Consent Judgment for failure to comply with the provisions of Section 2 hereof,
25 the parties agree that it would be extremely impracticable to measure the resulting damages
26 and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any
27 other available rights or remedies, may sue in equity for specific performance, and Defendant
28 expressly waives the defense that a remedy in damages will be adequate.

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10. GOVERNING LAW

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

11. RETENTION OF JURISDICTION AND TERMINATION OF JUDGMENT

11.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment while it remains in effect.

11.2 This Consent Judgment shall automatically terminate and be of no further force, validity or effect as of October 31, 2011.

12. PROVISION OF NOTICE

12.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:

Mark N. Todzo, Esq.
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For Defendant Walgreen Company:

Renée D. Wasserman, Esq.
Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104

13. NOTICE OF THE ATTORNEY GENERAL AND COURT APPROVAL

13.1 CEH will comply with the settlement notice provisions of Health & Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

13.2 If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

14. EXECUTION AND COUNTERPARTS

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

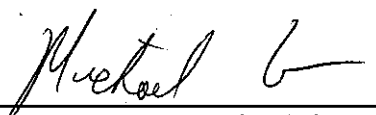
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15. AUTHORIZATION

15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director
Center for Environmental Health

Dated: 12/12/06

WALGREEN COMPANY

Dated: _____

Printed Name

15. AUTHORIZATION

15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

WALGREEN COMPANY

Shannon Castellano as Attorney

Dated: 12-18-06

Shannon Castellano
Printed Name

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JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Walgreen Company, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California