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6 CENTER FOR ENVIRONMENTAL HEALTH

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

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

12 Plaintiff,

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v.

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15 GAMING PARTNERS INTERNATIONAL,
INC., *et al.*,

16 Defendants.

Case No. RG 07336796

**[PROPOSED] CONSENT JUDGMENT RE:
BLUE CHIP COMPANY, LLC**

17

18 **1. INTRODUCTION**

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20 **1.1** On July 20, 2007, Plaintiff Center for Environmental Health (“CEH”), a
21 nonprofit corporation acting in the public interest, filed a complaint in Alameda County Superior
22 Court, entitled *CEH v. Gaming Partners International, Inc., et al.*, Alameda County Superior
23 Court Case Number RG 07336796 (the “Action”), for civil penalties and injunctive relief pursuant
24 to the provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).

25

26 **1.2** Defendant Blue Chip Company, LLC (“Manufacturer Defendant”) is a
27 corporation that employs 10 or more persons and that manufactured, distributed and/or sold
28 gaming chips (also referred to as casino chips or poker chips) in the State of California. The
gaming chips manufactured, distributed and/or sold by Manufacturer Defendant are referred to
herein as the “Products.”

1 **1.3** CEH and the Manufacturer Defendant are referred to collectively herein as
2 the “Parties.”

3 **1.4** On or about August 18, 2006, CEH served Manufacturer Defendant and the
4 appropriate public enforcement agencies with a 60-day notice (the “Notices”) that Manufacturer
5 Defendant was in violation of Proposition 65 for failing to warn individuals that gaming chips
6 (also known as casino chips and poker chips) expose persons to Proposition 65 Listed Chemicals.
7 Specifically, CEH’s Notices and the Complaint in this Action (“Complaint”) allege that
8 Manufacturer Defendant exposes individuals who use or otherwise handle gaming chips to lead
9 and/or lead compounds (referred to interchangeably herein as “Lead”), chemicals known to the
10 State of California to cause cancer, birth defects and other reproductive harm, without first
11 providing a clear and reasonable warning to such persons regarding the carcinogenicity and
12 reproductive toxicity of Lead. The Notices and Complaint allege that Manufacturer Defendant’s
13 conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

14 **1.5** For purposes of this Consent Judgment only, the parties stipulate that this
15 Court has jurisdiction over the subject matter of the Complaint and personal jurisdiction over
16 Manufacturer Defendant as to the acts alleged in the Complaint, that venue is proper in the County
17 of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
18 resolution of all claims which were or could have been raised in the Complaint, by any person or
19 entity other than the Attorney General of the State of California, based in whole or in part, directly
20 or indirectly, against the Manufacturer Defendant based on the facts alleged therein.

21 **1.6** The Parties enter into this Consent Judgment as a full and final settlement of
22 all claims that were raised in the Complaint, or which could have been raised in the Complaint,
23 based in whole or in part, directly or indirectly, arising out of the facts alleged therein. By
24 executing this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
25 any facts or conclusions of law. Manufacturer Defendant denies the material factual and legal
26 allegations contained in Plaintiff’s Notices and Complaint and maintain that all products that they
27 manufactured, distributed, used or offered for distribution and use or sale in California have been
28 and are in compliance with all laws including without limitation Proposition 65. This Consent

1 Judgment is a compromise of disputed claims, and nothing in this Consent Judgment shall be
2 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
3 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
4 by Manufacturer Defendant of any fact, conclusion of law, issue of law, or violation of law.

5 **2. COMPLIANCE**

6 **2.1 Reformulation.**

7 **2.1.1 Initial Reformulation.** No later than ninety (90) days after entry of
8 this Consent Judgment (“Initial Reformulation Date”), Manufacturer Defendant shall not
9 manufacture, distribute, ship, or sell, or cause to be manufactured, distributed, shipped or sold in
10 California, any Product that contains Lead in concentrations that exceed the Initial Reformulation
11 Standard. For purposes of this Consent Judgment only, the Initial Reformulation Standard means
12 that the total concentration of Lead in the chip, when tested using X-ray fluorescence, contains no
13 more than 200 parts per million (“ppm”) Lead.

14 **2.1.2 Final Reformulation.** No later than one hundred and eighty (180)
15 days after entry of this Consent Judgment (the “Final Reformulation Date”), Manufacturer
16 Defendant shall not manufacture, distribute, ship, or sell, or cause to be manufactured, distributed,
17 shipped or sold in California, any Product that contains Lead in concentrations that exceed the
18 Final Reformulation Standard. For purposes of this Consent Judgment only, the Final
19 Reformulation Standard means that the total concentration of Lead in the chip, when tested using
20 X-ray fluorescence, contains no more than 50 ppm Lead

21 **2.2 CEH’s Confirmatory Testing.** CEH may, at its discretion and sole
22 expense, conduct periodic testing of the Products reformulated pursuant to the provisions of this
23 Consent Judgment. Any such testing will be conducted using X-ray fluorescence. In the event
24 that CEH’s testing demonstrates Lead levels in excess of either the Initial or Final Reformulation
25 Standard at any time after the Initial or Final Reformulation Date, respectively, for one or more of
26 the Manufacturer Defendant’s Products, CEH shall inform Manufacturer Defendant of the
27 violation(s). CEH must include information sufficient to permit Manufacturer Defendant to
28 identify the Product(s) with the notification of violation(s). CEH and Manufacturer Defendant

1 feet of any cashier or other location solely devoted to the sale of gaming chips. The letter shall
2 further describe that the warning must be displayed with such conspicuousness, as compared with
3 other words, statements, or designs as to render it likely to be read and understood by an ordinary
4 individual. The parties agree that the sample letter attached hereto as Exhibit B satisfies this
5 requirement.

6 **3. SETTLEMENT PAYMENTS**

7 **3.1 Settlement Payment by Manufacturer Defendant.** Manufacturer
8 Defendant shall pay the sum of \$15,000 as a settlement payment. The settlement payment shall be
9 distributed as follows:

10 **3.1.1** The sum of \$5,000 as a payment in lieu of penalty. This payment
11 shall be made payable to the Center for Environmental Health and shall be used by CEH to help
12 fund CEH's lead and chemical exposure reduction programs.

13 **3.1.2** The sum of \$10,000 as reimbursement of a portion of CEH's
14 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
15 investigating, bringing this matter to Manufacturer Defendant's attention, litigating and
16 negotiating a settlement in the public interest. This payment shall be made payable to Lexington
17 Law Group.

18 **3.2 Timing of payments.** The payments required under this section shall be
19 delivered to the address set forth in section 12 below in accordance with the following schedule:
20 (1) the payment required by Section 3.1.1 shall be delivered within 10 days of entry of this
21 Consent Judgment together with the first \$2,500 of the payment required under Section 3.1.2; and
22 (2) the final \$7,500 of the payment required pursuant to Section 3.1.2 shall be delivered on or
23 before March 1, 2009.

24 **4. MODIFICATION OF CONSENT JUDGMENT**

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

27 **4.2** Should any court enter a final judgment in a case brought by CEH or the
28 People of the State of California involving gaming chips that sets forth standards defining when

1 Proposition 65 warnings will or will not be required (“Alternative Standards”), Manufacturer
2 Defendant shall be entitled to seek a modification of this Consent Judgment on forty five (45) days
3 notice to CEH so as to be able to utilize and rely on such Alternative Standards in lieu of those set
4 forth in section 2.1 of this Consent Judgment. CEH shall not unreasonably contest any proposed
5 application to effectuate such a modification.

6 **5. ENFORCEMENT OF CONSENT JUDGMENT**

7 **5.1** In the event that CEH or Manufacturer Defendant believes in good faith that
8 a Party is not in compliance with the terms of this Consent Judgment, CEH or Manufacturer
9 Defendant shall provide written notice to that Party, pursuant to Paragraph 12.1 below, setting
10 forth its belief and the reasons therefore. The Party receiving such notice shall meet and confer
11 with the noticing party within fifteen (15) days of receiving the written notice to attempt to
12 address the concerns raised in the notice. If the Parties are unable to resolve the concerns raised in
13 the notice within the fifteen (15) day period, CEH or Manufacturer Defendant may, by motion or
14 application for an order to show cause before the Superior Court of the County of Alameda,
15 enforce the terms and conditions contained in this Consent Judgment. The terms of this Consent
16 Judgment shall be enforced exclusively by the parties hereto. The prevailing Party on any motion
17 or application under this section shall be entitled to its reasonable attorneys’ fees and costs
18 associated with such motion or application. CEH may only seek enforcement regarding alleged
19 violations of this Consent Judgment based on testing performed pursuant to Section 2.2 where
20 such testing demonstrates Lead levels as follows: (1) where the testing is performed on a single
21 Product, the testing must demonstrate Lead in excess of three times the applicable reformulation
22 standard; (2) where the testing is performed on between two and four of the Products, the testing
23 must demonstrate Lead in excess of two times the applicable reformulation standard for each of
24 the Products tested; and (3) where the testing is performed on more than four of the Products, the
25 testing must demonstrate Lead in excess of the applicable reformulation standard for each of the
26 Products tested.

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1 **6. APPLICATION OF CONSENT JUDGMENT**

2 **6.1** This Consent Judgment shall apply to and be binding upon the parties
3 hereto, their divisions, subdivisions, parents, subsidiaries and affiliates, and the successors or
4 assigns of any of them.

5 **7. CLAIMS COVERED**

6 **7.1** This Consent Judgment is a full, final and binding resolution between CEH,
7 acting on behalf of itself and the general public, and Manufacturer Defendant, and its divisions,
8 subdivisions, parents, subsidiaries and affiliates, of any violation of Proposition 65, Business &
9 Professions Code sections 17200, *et seq.*, or any other statutory or common law claims that have
10 been or could have been asserted in the public interest or on behalf of the general public against
11 Manufacturer Defendant in the Complaint regarding the failure to warn about exposure to Lead
12 arising in connection with gaming chips manufactured, distributed, sold or used or offered for sale
13 or use by Manufacturer Defendant, and is intended by the Parties to have preclusive effect with
14 respect to: (i) any violation of Proposition 65 alleged in the Complaint, or that could have been
15 brought, pursuant to the Notices or (ii) any other statutory or common law claim, to the fullest
16 extent that such claims arise out of the operative facts alleged in the Complaint or Notices,
17 whether based on actions committed by Manufacturer Defendant, or by any other entity within the
18 downstream chain of distribution, including, but not limited to, wholesale or retail sellers or
19 distributors. Compliance with the terms of this Consent Judgment constitutes compliance with
20 Proposition 65 for purposes of Lead exposures from the Products. In further consideration of the
21 promises and agreement herein contained, and for the payments to be made pursuant to Section 3,
22 CEH, on behalf of itself, its past and current agents, representatives, attorneys, successor and/or
23 assignees, and in the interest of the general public (“CEH Releasers”), hereby waive all rights to
24 institute or participate in, directly or indirectly, any form of legal action arising under or derived
25 from Proposition 65, related to Manufacturer Defendant’s alleged failure to warn about exposures
26 to gaming chips as set forth in the Notices and the Complaint. Further, CEH Releasers release all
27 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,
28 liabilities, demands, obligations (including, but not limited to, investigation fees, expert fees and

1 attorney's fees) of any nature whatsoever, ("Claims"), against Manufacturer Defendant, its
2 divisions, subdivisions, parents, subsidiaries and affiliates, and its and their respective officers,
3 directors, attorneys, representatives, shareholders, agents and employees arising under or derived
4 from Proposition 65, related to Manufacturer Defendant's alleged failure to warn about exposures
5 to gaming chips as set forth in the Notices and the Complaint. This release does not limit or effect
6 the obligations of any party created under this Consent Judgment. Nothing in this Paragraph shall
7 be read to limit the obligations of Manufacturer Defendant as set forth under this Consent
8 Judgment.

9 In furtherance of the foregoing, as to alleged exposures to Lead from use of gaming chips,
10 CEH waives any and all rights and benefits which it now has, or in the future may have, conferred
11 upon it by virtue of the provisions of Section 1542 of the California Civil Code, which provides as
12 follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
14 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
15 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
16 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
17 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

18 CEH understands and acknowledges that the significance and consequence of this waiver
19 of California Civil Code Section 1542 is that even if CEH suffers future damages arising out of or
20 resulting from, or related directly or indirectly to, in whole or in part, gaming chips manufactured,
21 distributed, sold or used or offered for sale or use by Manufacturer Defendant, including but not
22 limited to any exposure to, or failure to warn with respect to exposure to, the Products, CEH will
23 not be able to make any claim for those damages against Manufacturer Defendant, or its divisions,
24 subdivisions, parents, subsidiaries and affiliates. Nothing in this Paragraph shall be read to limit
25 the obligations of Manufacturer Defendant as set forth under this Consent Judgment.

26 7.2 Manufacturer Defendant waives all rights to institute any form of legal
27 action against Plaintiff, or its attorneys or representatives, for all actions taken or statements made
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1 by Plaintiff or its attorneys or representatives, in the course of investigating and/or seeking
2 enforcement of Proposition 65, against them in this matter with respect to the Product.

3 **8. SEVERABILITY**

4 **8.1** In the event that any of the provisions of this Consent Judgment are held by
5 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
6 affected.

7 **9. SPECIFIC PERFORMANCE**

8 **9.1** The parties expressly recognize that Manufacturer Defendant's obligations
9 under this Consent Judgment are unique. In the event that Manufacturer Defendant is found to be
10 in breach of this Consent Judgment for failure to comply with the provisions of Section 2 hereof,
11 the parties agree that it would be extremely impracticable to measure the resulting damages and
12 that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other
13 available rights or remedies, may sue in equity for specific performance, and Manufacturer
14 Defendant expressly waives the defense that a remedy in damages will be adequate.

15 **10. GOVERNING LAW**

16 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
17 State of California.

18 **11. RETENTION OF JURISDICTION**

19 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
20 the terms this Consent Judgment.

21 **12. PROVISION OF NOTICE**

22 **12.1** All notices required pursuant to this Consent Judgment and correspondence
23 shall be sent to the following:

24 For CEH:

25 Mark N. Todzo
26 Lexington Law Group, LLP
27 1627 Irving Street
28 San Francisco, CA 94122

For Manufacturer Defendant:

1 Richard T. Coffin
2 Barg Coffin Lewis & Trapp
3 350 California Street, 22nd Floor
4 San Francisco, CA 94104-1435

5 **13. COURT APPROVAL**

6 **13.1** This Consent Judgment shall become effective thirty (30) calendar days
7 after entry by the Court (the "Effective Date").

8 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
9 further force or effect.

10 **14. EXECUTION AND COUNTERPARTS**

11 **14.1** The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile, which taken together shall be deemed to constitute one document.

13 **15. AUTHORIZATION**

14 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into
16 and execute the Consent Judgment on behalf of the party represented and legally bind that party.
17 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
18 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

19 **AGREED TO:**

20 **CENTER FOR ENVIRONMENTAL HEALTH**

21 Dated: 11/9/08

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23 

24 **Michael Green**

25 *Charlie Pizarro*

1 BLUE CHIP COMPANY, LLC

2 Dated: November 8, 2008

3 Michael C. Endy

4 Michael C. Endy

5 Printed Name

6 Operations Manager

7 Title

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Center for Environmental Health and Blue Chip Company, LLC, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California

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Exhibit A

(Sample Warning Sign)

WARNING: Gaming chips used at this establishment contain lead, a chemical known to cause cancer, birth defects and other reproductive harm. Wash hands after handling the chips.

Exhibit B

(Sample Customer Warning Letter)

Dear <<Name>>:

According to our records, your gaming room or casino has purchased Blue Chip brand gaming chips from Blue Chip Company, LLC ("Blue Chip"). We are writing to advise you of a settlement being entered into by Blue Chip as a result of a claim brought under the California Safe Drinking Water and Toxic Enforcement Act, commonly known as "Proposition 65".

Proposition 65 is a "citizen's right-to-know" law that requires certain businesses to provide a clear and reasonable warning before exposing anyone in California to chemicals known to the State of California to cause cancer and/or reproductive harm ("Listed Chemicals").

In July 2007, the Center for Environmental Health ("CEH") filed a Proposition 65 action against Blue Chip. CEH alleged that the poker chips manufactured by Blue Chip and distributed in California may contain lead, which is a Listed Chemical and, as such, a warning was required to be posted.

Blue Chip took various actions in response to the claim including reformulating its gaming chips to reduce the level of lead to the point where no warning will be required in the future. Due in large part to Blue Chip's effective response, CEH has entered into a settlement agreement with Blue Chip.

One of the terms of the settlement requires each of Blue Chip's California customers using older versions of Blue Chip gaming chips to post a Proposition 65 warning sign in their gaming rooms or casinos. We recommend that you post a warning sign if your facility uses Blue Chip gaming chips that were purchased prior to September 2008. We believe this notification will meet your obligation to provide a warning and avoid the possibility that your facility will be subject to a Proposition 65 enforcement claim.

Warning signs should be posted at a prominent location at or near the entrance to each gaming room where the gaming chips are used and within five (5) feet of any cashier or other location solely devoted to the sale of gaming chips. The warning signs must be displayed such that it is likely to be read and understood by an ordinary individual, and are to be a minimum of 8



1 ½ by 11 inches. The warning signs should include the following statement, in a minimum of 16
2 point font:

3 **“WARNING: The gaming chips used at this establishment contain lead, a**
4 **chemical known to cause cancer, birth defects and other reproductive harm.**
5 **Wash hands after handling the chips.”**

6 Finally, if you have questions regarding this matter, please contact me at your
7 convenience.

8
9 Very truly yours,

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11
12 Michael Endy

13 cc: Richard C. Coffin, Esq.
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