

1 LEXINGTON LAW GROUP, LLP  
Mark N. Todzo, State Bar No. 168389  
2 Eric S. Somers, State Bar No. 139050  
Ryan D. Cabinte, State Bar No. 230792  
3 1627 Irving Street  
San Francisco, CA 94122  
4 Telephone: (415) 759-4111  
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff  
6 CENTER FOR ENVIRONMENTAL HEALTH

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

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11 CENTER FOR ENVIRONMENTAL HEALTH, ) Lead Case No. CGC-05-444522  
12 a non-profit corporation, )

13 Plaintiff, )

14 ) [PROPOSED] CONSENT JUDGMENT  
RE: CUDLIE ACCESSORIES, LLC

15 v. )

16 ROSS STORES, INC., *et al*, )

17 Defendants. )

18 \_\_\_\_\_ )  
19 And consolidated actions. )  
20 \_\_\_\_\_ )

1           **1. INTRODUCTION**

2           **1.1**     On August 31, 2005, plaintiff Center for Environmental Health  
3 (“CEH”), a non-profit corporation acting in the public interest, filed this action for civil penalties  
4 and injunctive relief alleging defendants’ distribution and sale of soft food and beverage  
5 containers in the State of California (“Products”) that contain lead and lead compounds (“Lead”)  
6 in violation of Cal. Health & Safety Code §25249.5 *et seq.* (“Proposition 65”). On May 16,  
7 2006, CEH filed the First Amended Complaint in this action.

8           **1.2**     On June 4, 2007, CEH served defendant Cudlie Accessories, LLC  
9 (“Defendant”) and the appropriate public enforcement agencies with the requisite 60-day notice  
10 alleging that Defendant was in violation of Proposition 65 (the “Notice”). On August 24, 2007,  
11 CEH amended the First Amended Complaint in this action to name Cudlie Accessories, LLC as  
12 a defendant.

13           **1.3**     CEH’s Notice and First Amended Complaint each allege that Defendant  
14 exposes people who use or otherwise handle Defendant’s Products to Lead, chemicals known to  
15 the State of California to cause cancer, birth defects and other reproductive harm, without first  
16 providing clear and reasonable warning to such persons regarding the carcinogenicity and  
17 reproductive toxicity of Lead. The Notice and First Amended Complaint allege that Defendant’s  
18 conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.  
19 Defendant disputes such allegations and asserts that all of its Products are safe and comply with  
20 all applicable laws.

21           **1.4**     Defendant is a corporation that employs 10 or more persons and  
22 manufactured, distributed the Products in the State of California.

23           **1.5**     For purposes of this Consent Judgment only, CEH and Defendant (the  
24 “Parties”) stipulate that this Court has jurisdiction over the subject matter of the violations  
25 alleged in CEH’s First Amended Complaint in this action and personal jurisdiction over  
26 Defendant as to the acts alleged in CEH’s First Amended Complaint, that venue is proper in the  
27 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a  
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1 full and final resolution of all claims which were or could have been raised in the First Amended  
2 Complaint based on the facts alleged therein.

3           **1.6**     The Parties enter into this Consent Judgment pursuant to a settlement of  
4 certain disputed claims between the Parties as alleged in the First Amended Complaint. By  
5 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is  
6 the Parties' intent that nothing in this Consent Judgment shall be construed as an admission by  
7 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
8 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
9 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
10 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
11 any other or future legal proceedings.

12           **2.     COMPLIANCE - REFORMULATION**

13           **2.1     Level.** As of 180 days following entry of this Consent Judgment (the  
14 "Compliance Date"), Defendant shall not manufacture, distribute, ship, or sell or cause to be  
15 manufactured, distributed or sold, any Product that is comprised of any interior lining material or  
16 PVC material used for the exterior of the Product that contains Lead in concentrations that  
17 exceed 200 parts per million ("ppm") or in which the exterior surface-coating contains Lead  
18 concentrations exceeding 600 ppm.

19           **2.2     Certification of level from suppliers.** Defendant shall issue  
20 specifications to its suppliers requiring that the interior lining of the Products and exterior  
21 surface-coating of the Products do not contain materials which contain Lead concentrations  
22 exceeding 200 ppm and 600 ppm, respectively, and that the exterior of the Products do not  
23 contain PVC material with Lead concentrations exceeding 200 ppm. Defendant shall obtain  
24 written certification from its suppliers of the Products certifying that the interior lining does not  
25 contain Lead concentrations exceeding 200 ppm, that the exterior surface-coating does not  
26 contain Lead exceeding 600 ppm, and that the exterior of the Product does not contain PVC  
27 material with Lead concentrations exceeding 200 ppm.

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1                   **2.3 Testing.** In order to ensure compliance with the requirements of Section  
2 2.1, Defendant shall conduct (or cause to be conducted) testing to confirm that the interior lining  
3 of the Products contains less than 200 ppm Lead, that the exterior surface-coating of the Products  
4 contains less than 600 ppm Lead, and that the exterior of the Products do not contain PVC  
5 material with Lead concentrations exceeding 200 ppm. At all times that Defendant uses PVC for  
6 the interior lining of its Products, testing shall be conducted in compliance with Section 2.3.1.  
7 At any time that Defendant uses a material other than PVC for the interior lining of its Products,  
8 testing shall be conducted in accordance with Section 2.3.2. All testing pursuant to this Section  
9 shall be performed by an independent laboratory in accordance with EPA Method 3050B for the  
10 interior lining and for any PVC material used in the exterior of the Product, and either EPA  
11 Method 3050B or ASTM F-963 for the exterior surface coating (the "Test Protocol"). At the  
12 request of CEH, the results of the testing performed pursuant to this Section shall be made  
13 available to CEH on a confidential basis.

14                   **2.3.1 Testing Frequency Where Interior Lining Contains PVC.** For  
15 each of the first two orders of Products purchased from Defendant's suppliers after the  
16 Compliance Date, Defendant shall randomly select and test the greater of 0.1% (one-tenth of one  
17 percent) or two, but in no case more than four, of the total Products purchased from each supplier  
18 of the Products intended for sale in California. Following the first two orders, Defendant shall  
19 perform testing of the Products on randomly selected units in accordance with Section 2.3.2.

20                   **2.3.2 Random Testing.** Testing pursuant to this Section 2 shall be  
21 performed on randomly selected units in accordance with Defendant's usual testing practices.  
22 Defendant's usual testing practices include testing as required by its various retailers. At a  
23 minimum, during each calendar year, Defendant shall randomly select and test the greater of  
24 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total Products  
25 purchased from each supplier of the Products intended for sale in California.

26                   **2.3.3 Products that Exceed Stipulated Levels Pursuant to**  
27 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3 show levels of  
28 lead exceeding 200 ppm for the interior lining of a Product, 600 ppm for the exterior surface-

1 coating of a Product, or 200 ppm for PVC material used for the exterior of a Product, Defendant  
2 shall: (1) refuse to accept all of the Products that were purchased under the particular purchase  
3 order; (2) send a notice to the supplier explaining that such Products do not comply with the  
4 suppliers' certification; and (3) apply the testing frequency set forth in 2.3.1 as though the next  
5 shipment from the supplier were the first one following the Compliance Date.

6 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing  
7 of the Products. Any such testing will be conducted by CEH at an independent laboratory, in  
8 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in  
9 excess of 200 ppm for the interior lining, 600 ppm for the exterior surface-coating, or 200 ppm  
10 for exterior PVC material of two or more Products, CEH shall inform Defendant of the test  
11 results, including information sufficient to permit Defendant to identify the Product(s).  
12 Defendant shall, within thirty days following such notice, provide CEH, at the address listed in  
13 Section 12, with the certification and testing information demonstrating its compliance with  
14 Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with  
15 information demonstrating that it complied with Sections 2.2 and/or 2.3, Defendant shall be  
16 liable for stipulated payments in lieu of penalties for Products for which CEH produces tests  
17 demonstrating Lead levels exceeding 200 ppm for the interior lining, 600 ppm for exterior  
18 surface-coating, or 200 ppm for exterior PVC material, as set forth below. In addition,  
19 Defendant shall then apply the testing frequency set forth in 2.3 as though the next shipment  
20 from the supplier were the first one following the Compliance Date. The payments shall be  
21 made to CEH and used for the purposes described in Section 3.1.

22 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated  
23 payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount for  
24 each such violation of this Consent Judgment shall be as follows:

25	First Occurrence:	\$1,250
26	Second Occurrence:	\$1,500
27	Third Occurrence:	\$1,750
28	Thereafter:	\$2,500

1 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,  
2 regardless of the number of units of Product tested by CEH with exceedances of the Lead levels  
3 set forth in this Consent Judgment, shall be \$3,500.

4 **2.4.2 Products in the stream of commerce.** Defendant's Products that  
5 have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to  
6 the Compliance Date shall be released from any claims that were brought or that could have been  
7 brought by CEH in its First Amended Complaint, as though they were Covered Claims within  
8 the meaning of Section 7.1, below.

9 **3. SETTLEMENT PAYMENTS**

10 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
11 five thousand dollars (\$5,000) in lieu of any penalty pursuant to Health and Safety Code  
12 §25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to  
13 toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as  
14 set forth in section 2.4. The payment required under this section shall be made payable to Center  
15 for Environmental Health.

16 **3.2 Attorneys' Fees and Costs.** Ten thousand dollars (\$10,000) shall be paid  
17 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys'  
18 fees, and any other costs incurred as a result of investigating, bringing this matter to Defendant's  
19 attention, litigating and negotiating a settlement in the public interest. The payment required  
20 under this section shall be made payable to Lexington Law Group, LLP.

21 **3.3 Timing of payments.** The payments required under Sections 3.1 and 3.2  
22 shall be made payable within 10 days of entry of judgment. All of the payments made pursuant  
23 to this Section 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in  
24 section 12.1.

25 **4. MODIFICATION OF CONSENT JUDGMENT**

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

28 **4.2** CEH intends to enter into agreements with other entities that

1 manufacture, distribute and/or sell Products. Should Defendant determine that the provisions of  
2 any such Consent Judgment with a similarly situated manufacturer or distributor of products are  
3 less stringent, Defendant may request a modification of this Consent Judgment to conform with  
4 the terms of the later entered Consent Judgment. Upon 30 days prior written notice of  
5 Defendant's request for a modification, CEH shall inform Defendant whether it will agree to  
6 such modification. If CEH does not agree, Defendant may move the Court for a modification  
7 pursuant to this section.

8 **5. ENFORCEMENT OF CONSENT JUDGMENT**

9 **5.1** Either party may, by motion or application for an order to show cause,  
10 enforce the terms and conditions contained in this Consent Judgment.

11 **6. APPLICATION OF CONSENT JUDGMENT**

12 **6.1** This Consent Judgment shall apply to and be binding upon the  
13 Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any  
14 of them.

15 **7. CLAIMS COVERED**

16 **7.1** This Consent Judgment is a full, final and binding resolution between  
17 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in  
18 the Notice or First Amended Complaint against Defendant (including any claims that could be  
19 asserted in connection with any of the Products covered by this Consent Judgment) or its parents,  
20 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or  
21 customers (collectively, "Defendant Releasees") based on failure to warn about alleged  
22 Proposition 65 exposures with respect to any Products manufactured, distributed or sold by  
23 Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment.  
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
25 for purposes of Lead exposures from the Products.

26 **7.2** Further, CEH hereby releases all retailers, distributors, and licensors of  
27 Defendant's products from any claims related to the Notice, the First Amended Complaint and  
28 this Judgment and CEH agrees to dismiss any such claims that it has asserted or could assert

1 against any retailers, distributors or licensors of Defendant's Products. If CEH has filed a  
2 complaint against a retailer, distributor or licensor of Defendant's Products, then CEH shall,  
3 within 10 days of entry of this Consent Judgment file a dismissal, with prejudice, as to those  
4 claims relating to Defendant's Products. CEH shall provide Defendant with a conformed copy  
5 of the dismissal. As to each of Defendant's retailers, distributors or licensors which have not  
6 been served with a 60-day notice letter or a complaint by CEH, CEH agrees not to serve a 60-  
7 day notice on said retailer, distributor, or licensor which includes within its scope, whether  
8 directly or indirectly, any of Defendant's products. For purposes of the release provided in this  
9 Section, the term "retailer, distributor or licensor" shall include their respective related entities,  
10 predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, partners, directors,  
11 stockholders, shareholders, attorneys, representatives, agents and employees, past, present and  
12 future.

#### 13 **8. SEVERABILITY**

14 **8.1** In the event that any of the provisions of this Consent Judgment are  
15 held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
16 adversely affected.

#### 17 **9. SPECIFIC PERFORMANCE**

18 **9.1** The Parties expressly recognize that Defendant's obligations  
19 under this Consent Judgment are unique. In the event that any Defendant is found to be in  
20 breach of this Consent Judgment for failure to comply with the provisions of Section 2 hereof,  
21 the Parties agree that it would be extremely impracticable to measure the resulting damages and  
22 that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other  
23 available rights or remedies, may sue in equity for specific performance, and Defendant  
24 expressly waive the defense that a remedy in damages will be adequate.

#### 25 **10. GOVERNING LAW**

26 **10.1** The terms of this Consent Judgment shall be governed by the laws of  
27 the State of California.

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**11. RETENTION OF JURISDICTION**

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

11.2 This Consent Judgment shall automatically terminate and be of no further force, validity or effect as of August 1, 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  
Lexington Law Group, LLP  
1627 Irving Street  
San Francisco, CA 94122

For Defendant:

Malcolm Weiss, Esq.  
Jeffer, Mangels, Butler & Marmaro LLP  
1900 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067

**13. COURT APPROVAL**

13.1 CEH will comply with the settlement notice provisions of Health and 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 and effect. If this Consent Judgment is appealed, with the exception of the injunctive relief provisions in Section 2, above, which remain in effect during any appeal, it does not become effective and has no force or effect until all issues on appeal are resolved.

**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



Dated: 10/8/07

Charlie Pizarro, Associate Director  
Center for Environmental Health

CUDLIE ACCESSORIES, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]

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**AGREED TO:**

CENTER FOR ENVIRONMENTAL HEALTH

\_\_\_\_\_ Dated: \_\_\_\_\_  
Charlie Pizarro, Associate Director  
Center for Environmental Health

CUDLIE ACCESSORIES, LLC

 \_\_\_\_\_ Dated: 10/11/07

Paul Sutton  
[Name]

President  
[Title]

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**ORDER AND JUDGMENT**

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Superior Court of the State of California