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LEXINGTON LAW GROUP, LLP  
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Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
  
Plaintiff, )  
  
v. )  
  
SASSAFRAS ENTERPRISES, INC.; and )  
Defendant DOES 1 through 200, inclusive, )  
  
Defendants. )

Case No. CGC-08-475982

**[PROPOSED] CONSENT JUDGMENT  
AS TO SASSAFRAS ENTERPRISES,  
INC.**

1           **1. INTRODUCTION**

2           **1.1**     On June 4, 2008, plaintiff Center for Environmental Health (“CEH”), a  
3 non-profit corporation acting in the public interest, filed a complaint in San Francisco County  
4 Superior Court, entitled *Center for Environmental Health v. Sassafras Enterprises, Inc.*, San  
5 Francisco County Superior Court Case Number CGC-08-475982 (the “CEH Action”), for civil  
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
7 §25249.5, *et seq.* (“Proposition 65”).

8           **1.2**     Defendant Sassafras Enterprises, Inc. (“Defendant”) is a corporation that  
9 employed 10 or more persons during the relevant statute of limitations period and manufactured,  
10 distributed and/or sold soft vinyl bags, including but not limited to lunch boxes, lunch bags,  
11 coolers, and backpacks (the “Products”) in the State of California.

12           **1.3**     On or about October 10, 2007, CEH served Defendant and public  
13 enforcement agencies with the requisite 60-day notice alleging that Defendant was in violation  
14 of Proposition 65 (“Notice”). CEH’s Notice and the Complaint in this Action allege that  
15 Defendant exposes people who use or otherwise handle the Products to lead and/or lead  
16 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of  
17 California to cause cancer, birth defects and other reproductive harm, without first providing  
18 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive  
19 toxicity of Lead. The Notice and Complaint allege that Defendant’s conduct violates Proposition  
20 65, including Cal. Health & Safety Code §25249.6. Defendant disputes such allegations and  
21 asserts that all of its Products are safe and comply with all applicable laws.

22           **1.4**     For purposes of this Consent Judgment only, the Parties stipulate that this  
23 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
24 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is  
25 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
26 Judgment as a full and final resolution of all claims which were or could have been raised in the  
27 Complaint and Notice based on the facts alleged therein.

28           **1.5**     The Parties enter into this Consent Judgment pursuant to a settlement of

1 certain disputed claims between the Parties as alleged in the Notice and/or Complaint. By  
2 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is  
3 the Parties' intent that nothing in this Consent Judgment shall be construed as an admission by  
4 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
5 with the Consent Judgment constitute or be construed as an admission of any fact, conclusion of  
6 law, issue of law, or violation of law.

## 7           **2. COMPLIANCE - REFORMULATION**

8           **2.1 Level.** Upon entry of this Consent Judgment (the "Compliance Date"),  
9 Defendant shall not manufacture, distribute, ship, or sell, or cause to be manufactured,  
10 distributed, or sold, any Product with Lead concentrations exceeding 200 parts per million  
11 ("ppm") (the "Reformulation Standard"). Effective August 14, 2011, the Reformulation  
12 Standard shall be 100 ppm unless the Consumer Product Safety Commission determines that  
13 such standard is technologically infeasible.

14           **2.2 Certification of Level From Suppliers.** After the Compliance Date,  
15 Defendant shall obtain written certification from its suppliers of the Products certifying that the  
16 Products do not contain Lead concentrations exceeding the Reformulation Standard. Such  
17 supplier certifications shall be obtained annually for three successive years. If Defendant begins  
18 purchasing Products from a new supplier, certifications shall be obtained annually from that  
19 supplier for three consecutive years after the Defendant's initial purchase order from that  
20 supplier.

21           **2.3 Testing.** In order to ensure compliance with the requirements of Section  
22 2.1, after the Compliance Date Defendant shall conduct (or cause to be conducted) testing to  
23 confirm that the Products do not contain Lead concentrations exceeding the Reformulation  
24 Standard. All testing pursuant to this Section shall be performed by an independent laboratory in  
25 accordance with EPA Method 3050B for the fabric of the Products, and either EPA Method  
26 3050B or ASTM F963 for the exterior surface coating, or other method approved by the  
27 Consumer Product Safety Commission for such products (the "Test Protocol"). The results of all  
28 testing performed pursuant to this Section 2 shall be made available to both CEH and Defendant

1 on a confidential basis.

2                   **2.3.1 Random Testing.** Testing pursuant to this Section 2 shall be  
3 performed on randomly selected units in accordance with Defendant's usual testing practices.  
4 Defendant's usual testing practices include testing as required by their various retailers. At a  
5 minimum, during each calendar year, Defendant shall randomly select and test the greater of  
6 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total Products  
7 purchased from each supplier of the Products intended for sale in California.

8                   **2.3.2 Products that Exceed Stipulated Levels Pursuant to**  
9 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3.1 show levels  
10 of lead exceeding the Reformulation Standard, Defendant shall: (1) refuse to accept all of the  
11 Products that were purchased under the particular purchase order; (2) send a notice to the  
12 supplier explaining that such Products do not comply with the supplier's certification; and (3) for  
13 the next two orders of Products intended for sale in California that are purchased from that  
14 supplier, randomly select and test the greater of 0.2% (two-tenth of one percent) or four, but in  
15 no case more than eight, of the total Products purchased in each purchase order. Following those  
16 two orders, Defendant shall apply the testing frequency set forth in Section 2.3.1.

17                   **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing  
18 of the Products. Any such testing will be conducted by CEH at an independent laboratory, in  
19 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in  
20 excess of the Reformulation Standard for two or more Products, CEH shall inform Defendant of  
21 the test results, including information sufficient to permit Defendant to identify the Product(s).  
22 Within thirty (30) days following such notice, Defendant shall provide CEH, at the address listed  
23 in Section 11, with the certification and testing information demonstrating its compliance with  
24 Sections 2.2 and 2.3 of this Consent Judgment. In addition, Defendant shall thereafter apply the  
25 testing frequency set forth in Section 2.3.2 for the next two orders of Products from the  
26 supplier(s) of the Products at issue.

27                   **2.5 Products in the Stream of Commerce.** Defendant's Products that have  
28 been manufactured, shipped, sold, or that are otherwise in the stream of commerce prior to the

1 Compliance Date shall be released from any claims that were brought or that could have been  
2 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of  
3 Section 7, below.

4           **2.6 Interim Warning.** Prior to the Compliance Date, Defendant shall not  
5 distribute, ship, or sell, or cause to be distributed, shipped or sold, any Product that contains  
6 Lead in concentrations that exceed the Reformulation Standard unless such Product bears a label  
7 containing the following warning language:

8 **“WARNING! This product contains chemicals known to the State of California to**  
9 **cause cancer and/or birth defects or other reproductive harm.”**

10 The warning statement shall be prominently displayed in at least 14 point font on the front of the  
11 outside of the packaging, and shall be displayed in a separate outlined box set apart from any  
12 other print and that contains no other language. The warning must be displayed with such  
13 conspicuousness, as compared with other words, statements, or designs as to render it likely to  
14 be read and understood by an ordinary individual. The warning statement shall not be preceded,  
15 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or  
16 that introduces, modifies, qualifies, or explains the required text, such as “legal notice required  
17 by law.” Defendant shall maintain documentation demonstrating its compliance with this  
18 section, which documentation shall be made available to CEH upon request.

19           **3. SETTLEMENT PAYMENTS**

20           **3.1** Within ten days of entry of this Consent Judgment, Defendant shall pay a  
21 total of \$12,500 as a settlement payment. This total shall be paid in two separate checks  
22 delivered to the offices of the Lexington Law Group, LLP at the address set forth in Section 11  
23 below and made payable and allocated as follows. Any failure by Defendant to comply with the  
24 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day  
25 after the delivery date the payment is received. The late fees required under this Section shall be  
26 recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding brought  
27 pursuant to Section 5 of this Consent Judgment.

28           **3.1.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to

1 CEH \$4,000 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). This  
2 payment shall be made by check payable to Center for Environmental Health. CEH shall use  
3 such funds to continue its work protecting people from exposures to toxic chemicals. As part of  
4 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.

5 **3.1.2 Attorneys' Fees and Costs.** Defendant shall pay \$8,500 to the  
6 Lexington Law Group, LLP to reimburse CEH for its reasonable investigation fees and costs,  
7 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to  
8 Defendant's attention, litigating, and negotiating a settlement in the public interest. This  
9 payment shall be made by check payable to Lexington Law Group, LLP.

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 **4.1** This Consent Judgment may be modified by written agreement of CEH  
12 and Defendant, or upon motion of CEH or Defendant as provided by law.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 **5.1** Any Party may, by motion or application for an order to show cause,  
15 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on  
16 any motion or application shall be entitled to its reasonable investigation fees and costs,  
17 attorneys' fees, and any other costs associated with such motion or application.

18 **6. APPLICATION OF CONSENT JUDGMENT**

19 **6.1** This Consent Judgment shall apply to and be binding upon the Parties  
20 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
21 them.

22 **7. CLAIMS COVERED**

23 **7.1** This Consent Judgment is a full, final and binding resolution between  
24 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in  
25 the Notice or Complaint against Defendant (including any claims that could be asserted in  
26 connection with any of the Products covered by this Consent Judgment) or its parents,  
27 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or  
28 customers (collectively, "Defendant Releasees") based on failure to warn about alleged

1 Proposition 65 exposures, with respect to any Products manufactured, distributed or sold by  
2 Defendant (“Covered Claims”) on or prior to the date of entry of this Consent Judgment.  
3 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
4 for purposes of Lead exposures from the Products.

5 **8. SEVERABILITY**

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

9 **9. GOVERNING LAW**

10 **9.1** The terms of this Consent Judgment shall be governed by the laws of the  
11 State of California.

12 **10. RETENTION OF JURISDICTION**

13 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce  
14 the terms this Consent Judgment, while it is in effect.

15 **11. PROVISION OF NOTICE**

16 **11.1** All notices required pursuant to this Consent Judgment and  
17 correspondence shall be sent to the following:

18 For CEH:

19 Howard Hirsch  
20 Lexington Law Group, LLP  
21 1627 Irving Street  
22 San Francisco, CA 94122

23 For Defendant:

24 Carol Brophy  
25 Sedgwick, Detert, Moran & Arnold LLP  
26 One Market Plaza  
27 Steuart Tower, 8<sup>th</sup> Floor  
28 San Francisco, CA 94105

**12. COURT APPROVAL**

**12.1** 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.

1                   12.2 If this Consent Judgment is not approved by the Court, it shall be of no  
2 further force or effect. If this Consent Judgment is appealed, with the exception of the  
3 injunctive relief provisions in Section 2, above, which remain in effect during any appeal, it does  
4 not become effective and has no force or effect until all issues on appeal are resolved.

5                   **13. EXECUTION AND COUNTERPARTS**

6                   13.1 The stipulations to this Consent Judgment may be executed in  
7 counterparts and by means of facsimile, which taken together shall be deemed to constitute one  
8 document.

9                   **14. AUTHORIZATION**

10                   14.1 Each signatory to this Consent Judgment certifies that he or she is fully  
11 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter  
12 into and execute the Consent Judgment on behalf of the Party represented and legally bind that  
13 Party. The undersigned have read, understand and agree to all of the terms and conditions of this  
14 Consent Judgment. Except as explicitly provided herein, each Party is to bear its own fees and  
15 costs.

16  
17 **AGREED TO:**

18 CENTER FOR ENVIRONMENTAL HEALTH

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20   
21 \_\_\_\_\_  
Charlie Pizarro, Associate Director  
Center for Environmental Health

Dated: 2/4/9

22  
23 SASSAFRAS ENTERPRISES, INC.

24  
25 \_\_\_\_\_  
Nancy Schwab, Vice President  
26 SassafRAS Enterprises, Inc.

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

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2 further force or effect. If this Consent Judgment is appealed, with the exception of the  
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15 costs.

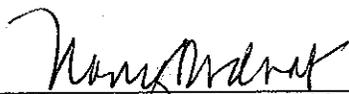
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17 **AGREED TO:**

18 CENTER FOR ENVIRONMENTAL HEALTH

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20 \_\_\_\_\_  
21 Charlie Pizarro, Associate Director  
22 Center for Environmental Health

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

23 SASSAFRAS ENTERPRISES, INC.

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26 \_\_\_\_\_  
27 Nancy Schwab, Vice President  
28 Sassafras Enterprises, Inc.

Dated: 1/30/09

1 APPROVED AS TO FORM:

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Dated: 1/26/09

LEXINGTON LAW GROUP, LLP

By: 

Howard Hirsch  
Attorneys for Plaintiff Center for Environmental Health

Dated: January 26, 2009

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 

Carol Brophy  
Attorneys for Defendant Sassafras Enterprises, Inc.

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Sassafras Enterprises, Inc., the settlement is approved and the clerk is hereby directed to enter judgment according to the terms herein.

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

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