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6 CENTER FOR ENVIRONMENTAL HEALTH

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

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12 CENTER FOR ENVIRONMENTAL) No. RG 08-399102
HEALTH, a non-profit corporation,)
13)
Plaintiff,) **[PROPOSED] CONSENT**
14) **JUDGMENT AS TO DEFENDANT**
vs.) **SAN FRANCISCO BASEBALL**
15) **ASSOCIATES L.P.**
ALEX, INC.; BUILD-A-BEAR)
16 WORKSHOP, INC.; THE FAITH)
COLLECTION, INC.; DRAKE DESIGN;) Complaint Filed: July 18, 2008
17 PURE & SIMPLE SOLUTIONS, LLP; SAN)
FRANCISCO BASEBALL ASSOCIATES)
18 L.P.; and Defendant DOES 1 through 200,)
inclusive,)
19)
Defendants.)
20)
21)
22)

23 **1. INTRODUCTION**

24 **1.1** On July 18, 2008, plaintiff the Center for Environmental Health
25 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in
26 Alameda County Superior Court, entitled *Center for Environmental Health v. Alex, Inc., et*
27 *al.*, Alameda County Superior Court Case Number RG-08-399102 (the “Action”), for civil
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1 penalties and injunctive relief pursuant to the provisions of California Health & Safety
2 Code § 25249.5 et seq. (“Proposition 65”).

3 **1.2** Defendant San Francisco Baseball Associates L.P. (“SFBA”) is a
4 “person in the course of doing business” under Proposition 65 and distributes and/or sells
5 keychains and charms (collectively, the “Products”) in the State of California. SFBA and
6 CEH are referred to collectively herein as the Parties.

7 **1.3** On or about December 6, 2007, CEH served SFBA and the
8 appropriate public enforcement agencies with the requisite 60-day notice that SFBA is in
9 violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that
10 SFBA exposes individuals who use or otherwise handle the Products to lead and/or lead
11 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
12 California to cause cancer, birth defects and other reproductive harm, without first
13 providing clear and reasonable warning to such persons regarding the carcinogenicity and
14 reproductive toxicity of Lead. The notice and Complaint allege that SFBA’s conduct
15 violates Health & Safety Code § 25249.6, the warning provision of Proposition 65. SFBA
16 disputes all allegations raised in the Complaint.

17 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that
18 this Court has jurisdiction over the subject matter of the violations alleged in CEH’s
19 Complaint and personal jurisdiction over SFBA as to the acts alleged in CEH’s Complaint,
20 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter
21 this Consent Judgment as a full and final resolution of all claims which were or could have
22 been raised in the Complaint based on the facts alleged therein.

23 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement
24 of certain disputed claims between the Parties as alleged in the Complaint. By executing
25 this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the
26 Parties’ intent that nothing in this Consent Judgment shall be construed as an admission by
27 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
28 compliance with the Consent Judgment constitute or be construed as an admission by the

1 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
2 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
3 the Parties may have in this or any other or future legal proceedings. This Consent
4 Judgment is the product of negotiation and compromise and is accepted by the Parties, for
5 purposes of settling, compromising and resolving issues disputed in this action, including
6 future compliance by SFBA with Section 2 of this Consent Judgment, and shall not be used
7 for any other purpose, or in any other matter.

8 **2. COMPLIANCE – REFORMULATION**

9 **2.1 Lead Reformulation.** Within sixty (60) days from the date of
10 approval of this Consent Judgment by the Court, SFBA shall not manufacture, distribute,
11 ship, or sell, or cause to be manufactured, distributed, shipped, or sold, any Product unless
12 such Product contains less than 300 parts per million lead. Subject to the following, on or
13 after August 14, 2011, SFBA shall not distribute, ship, or sell, or cause to be distributed or
14 sold, any charm unless such charm contains less than 100 parts per million lead. In the
15 event the Consumer Product Safety Commission (CPSC) determines prior to August 14,
16 2011 that it is not technically feasible for manufacturers of charms to meet this limit, the
17 maximum lead limit of those charms shall be the level so mandated by the CPSC in
18 conjunction with, or following, its determination.

19 **2.2 Confirmatory testing by CEH.** CEH intends to conduct periodic
20 testing of the Products. Testing shall be conducted by an independent laboratory using the
21 most recent version of United States Environmental Protection Agency Method 3050B, the
22 most recent version of National Food Laboratory Method MN5013, or any replacements
23 thereof (the “Test Protocol”). In the event that CEH’s testing demonstrates Lead levels in
24 excess of the requirements of Section 2.1, pursuant to Section 6.1 below, CEH shall inform
25 SFBA of the violation(s), including information sufficient to permit SFBA to identify the
26 offending Product(s). Within forty-five (45) days of receipt of such a notice from CEH,
27 SFBA shall respond in writing with a plan of correction to address the alleged violations.
28 These remedies are in addition to any other remedies available to enforce the terms of this

1 Consent Judgment.

2 **3. SETTLEMENT PAYMENTS**

3 **3.1** Within five days of entry of this Consent Judgment, SFBA shall pay
4 a total of \$37,500 as a settlement payment. This total shall be paid to the offices of the
5 Lexington Law Group at the address set forth in Section 13 below and made payable and
6 allocated as follows.

7 **3.1.1 Penalty:** The sum of \$1,000 in penalties pursuant to Health
8 and Safety Code § 25249.7(b). This payment shall be made by check payable to Center for
9 Environmental Health. CEH shall apportion the penalties in accordance with Health and
10 Safety Code § 25249.12. CEH shall provide \$750 of this amount (75% of the civil penalty)
11 to the Safe Drinking Water and Toxic Enforcement Fund in accordance with Health and
12 Safety Code § 25249.12.

13 **3.1.2 Monetary Payment in Lieu of Penalty:** \$12,000 shall be
14 paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This
15 payment shall be made by check payable to Center for Environmental Health. CEH shall
16 use such funds to continue its work protecting people from exposures to toxic chemicals.
17 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in
18 Section 2.2. In addition, as part of its Community Environmental Action and Justice Fund,
19 CEH will use four percent of such funds to award grants to grassroots environmental justice
20 groups working to educate and protect people from exposures to toxic chemicals. The
21 method of selection of such groups can be found at the CEH web site at
22 www.ceh.org/justicefund.

23 **3.1.3 Attorneys' Fees and Costs:** \$24,500 shall be used to
24 reimburse CEH and its attorneys for a portion of their reasonable investigation fees and
25 costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this
26 matter to SFBA's attention, litigating and negotiating a settlement in the public interest.
27 This payment shall be made by check payable to Lexington Law Group.

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1 **4. MODIFICATION OF CONSENT JUDGMENT**

2 **4.1** This Consent Judgment may be modified by written stipulation
3 subject to approval of the court or upon motion of CEH or SFBA as provided by law.

4 **5. ENFORCEMENT OF CONSENT JUDGMENT**

5 **5.1** Any Party seeking to enforce this Consent Judgment by motion,
6 application for an order to show cause before this Court, or other court proceeding, shall be
7 entitled to recover from the Party or Parties against whom enforcement was sought its
8 reasonable attorneys' fees and costs incurred in connection with such enforcement provided
9 that it prevails in any such enforcement proceeding. Should the Party initiating proceedings
10 pursuant to this Consent Judgment not prevail on any motion or application under this
11 Section, the Party against whom such enforcement was sought shall be entitled to recover
12 its reasonable attorneys' fees and costs associated with such motion or application, where
13 such motion or application is found to have had no substantial basis. In determining the
14 appropriate remedy arising from any alleged violations of the Lead reformulation
15 requirements imposed by Section 2.1, the Court shall consider: whether SFBA obtained
16 written certifications and/or corresponding test results from its suppliers of the Products
17 demonstrating that the Products meet the requirements of Section 2.1; test results
18 demonstrating that the Products meet the requirements of Section 2.1 otherwise obtained by
19 SFBA; and any other relevant evidence presented to the Court by the Parties.

20 **6. DISPUTES UNDER THE CONSENT JUDGMENT**

21 **6.1 Disputes.** In the event that a dispute arises with respect to either
22 Party's compliance with the terms of this Consent Judgment, the dissatisfied Party shall
23 provide the other Party with written notice (pursuant to Section 13.1 of this Consent
24 Judgment) of the alleged noncompliance within forty-five (45) days of the alleged
25 noncompliance. The Parties shall then meet and confer, either in person or by telephone,
26 and endeavor to resolve the dispute in an amicable manner within forty-five (45) days of
27 the written notice, or such time thereafter as is mutually agreed by the Parties. No action
28 may be taken to enforce the provisions of this Consent Judgment absent such a good faith

1 effort to resolve the dispute prior to the taking of such action.

2 **7. TERMINATION OF CONSENT JUDGMENT**

3 **7.1** Any and all obligations arising out of this Consent Judgment will
4 terminate on June 30, 2014, excluding the Release provided for under Section 9.1.

5 **8. APPLICATION OF CONSENT JUDGMENT**

6 **8.1** This Consent Judgment shall apply to and be binding upon the
7 Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns
8 of any of them.

9 **9. RELEASE**

10 **9.1** This Consent Judgment is a full, final and binding resolution between
11 CEH and SFBA of any violation of Proposition 65 that was or could have been asserted in
12 the Complaint against SFBA or its parents, subsidiaries, affiliates, directors, officers,
13 employees, agents, attorneys, distributors, or customers based on failure to warn about
14 alleged exposure to Lead contained in the Products, with respect to any Products
15 distributed, shipped, or sold by SFBA on or prior to the date of entry of this Consent
16 Judgment.

17 **9.2** Compliance with the terms of this Consent Judgment by SFBA shall
18 constitute compliance with Proposition 65 by SFBA with respect to any alleged failure to
19 warn about exposure to Lead contained in the Products.

20 **9.3** This release does not limit or effect the obligations of any party
21 created under this Consent Judgment.

22 **10. SEVERABILITY**

23 **10.1** In the event that any of the provisions of this Consent Judgment are
24 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
25 adversely affected.

26 **11. GOVERNING LAW**

27 **11.1** The terms of this Consent Judgment shall be governed by the laws of
28 the State of California.

1 **12. RETENTION OF JURISDICTION**

2 **12.1** Subject to section 7.1, this Court shall retain jurisdiction of this
3 matter to implement and enforce the terms of this Consent Judgment.

4 **13. PROVISION OF NOTICE**

5 **13.1** All notices required pursuant to this Consent Judgment and
6 correspondence shall be sent to the following:

7 For CEH: Howard Hirsch
8 Lexington Law Group
9 1627 Irving Street
10 San Francisco, CA 94122

11 For SFBA: Elizabeth R. Murphy
12 San Francisco Giants
13 24 Willie Mays Plaza
14 San Francisco, CA 94107

15 With Copy to:
16 Mark Elliott
17 Pillsbury Winthrop Shaw Pittman
18 725 S. Figueroa St Suite 2800
19 Los Angeles, CA 90017

20 **14. COURT APPROVAL**

21 **14.1** If this Consent Judgment is not approved by the Court, it shall be of
22 no further force or effect. The Parties agree to support a Motion for Approval of this
23 Consent Judgment.

24 **15. EXECUTION AND COUNTERPARTS**

25 **15.1** The stipulations to this Consent Judgment may be executed in
26 counterparts and by means of facsimile, which taken together shall be deemed to constitute
27 one document.

28 **16. AUTHORIZATION**

16.1 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

1 and conditions of this Consent Judgment. Except as explicitly provided herein, each party
2 is to bear its own fees and costs.

3 **AGREED TO:**

4 CENTER FOR ENVIRONMENTAL HEALTH

5
6 
Signature

7
8 MICHAEL GREEN
Printed Name

9
10 EXECUTIVE DIRECTOR
Title

11
12 SAN FRANCISCO BASEBALL ASSOCIATES L.P.

13
14 _____
Signature

15
16 _____
Printed Name

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18 _____
Title

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1 and conditions of this Consent Judgment. Except as explicitly provided herein, each party
2 is to bear its own fees and costs.

3 **AGREED TO:**

4 CENTER FOR ENVIRONMENTAL HEALTH

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Signature

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8

Printed Name

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10

Title

11

12 SAN FRANCISCO BASEBALL ASSOCIATES L.P.

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14

Lawrence M. Baer

Signature

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16

Lawrence M. Baer

Printed Name

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President + COO

Title

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ORDER AND JUDGMENT

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

Dated: _____

Judge, Superior Court of the State of California