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6 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

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13 CENTER FOR ENVIRONMENTAL HEALTH, )  
14 a non-profit corporation, )  
15 Plaintiff, )  
16 v. )  
17 ALEX, INC., BUILD-A-BEAR WORKSHOP, )  
18 INC.; THE FAITH COLLECTION, INC.; )  
19 DRAKE DESIGN; PURE & SIMPLE )  
20 SOLUTIONS, LLP; SAN FRANCISCO )  
BASEBALL ASSOCIATES, L.P.; and )  
21 Defendant DOES 1 through 200, inclusive; )  
22 Defendants. )

Case No. RG-08-399102  
**[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANT ALEX, INC.**

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**1. INTRODUCTION**

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

1.2 Defendant Alexx, Inc. (“Alexx”) is a “person in the course of doing business” under Proposition 65 and manufactures, distributes and/or sells keychains and charms that are not designed or intended primarily for children 12 years of age or younger (the “Products”) in the State of California. Alexx and CEH are referred to collectively herein as the Parties.

1.3 On or about December 6, 2007, CEH served Alexx and the appropriate public enforcement agencies with the requisite 60-day notice that Alexx is in violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that Alexx 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 notice and Complaint allege that Alexx’s conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

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

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 Complaint. By executing this  
2 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'  
3 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
4 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
5 Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
6 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
7 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
8 any other or future legal proceedings. This Consent Judgment is the product of negotiation and  
9 compromise and is accepted by the parties, for purposes of settling, compromising and resolving  
10 issues disputed in this action, including future compliance by Alexx with Section 2 of this  
11 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

12 **2. COMPLIANCE - REFORMULATION**

13 **2.1 Interim Warning.** Until Alexx has satisfied the reformulation  
14 requirements of Section 2.2 below, Alexx shall not manufacture, distribute, ship, or sell, or cause  
15 to be manufactured, distributed, or sold, any Product with lead levels exceeding those set forth in  
16 Section 2.2 below unless such Product bears a label containing the following warning language:

17 **WARNING: This product contains chemicals known to the State of**  
18 **California to cause cancer and birth defects or other reproductive harm.**

19 The warning statement shall be prominently displayed apart from any other print that appears,  
20 and shall be displayed with no other language and with such conspicuousness, as compared with  
21 other words, statements, or designs as to render it likely to be read and understood by an  
22 ordinary individual. The warning statement shall not be preceded, followed, or surrounded by  
23 words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies,  
24 qualifies, or explains the required text, such as "legal notice required by law."

25 **2.2 Lead Reformulation.** On or before September 1, 2008 (the "Compliance  
26 Date"), Alexx shall not manufacture, distribute, ship, or sell, or cause to be manufactured,  
27 distributed, or sold, any Product unless such Product is made entirely from Class 1 and Class 2  
28 Components, or any combination thereof, as those terms are defined below, unless already in the

1 custody of Alexx as of the Compliance Date.

2                   **2.2.1 Class 1 Components.** A “Class 1 Component” is any part of a  
3 Product that contains metal alloys with less than 3000 parts per million (“ppm”) lead that are  
4 electroplated with suitable under and finish coats and that are plated utilizing the Best  
5 Management Practices described in Exhibit A.

6                   **2.2.2 Class 2 Components.** A “Class 2 Component” is any part of a  
7 Product that is not a Class 1 Component. Class 2 Components must contain less than 200 ppm  
8 lead.

9                   **2.3 Specifications to suppliers.** Alexx shall provide the requirements of the  
10 Consent Judgment to its suppliers of the Products before the Compliance Date, and shall request  
11 each supplier to provide compliant Product. Alexx shall also provide each of its suppliers of the  
12 Products with a copy of the electroplating Best Management Practices described in Exhibit A.

13                   **2.4 Pre-market testing.** On or before the Compliance Date, Alexx shall test  
14 each design of Product it is currently offering for sale to ensure that such Products are comprised  
15 of only Class 1 and/or Class 2 Components. Such testing shall be conducted by an independent  
16 laboratory using the most recent version of United States Environmental Protection Agency  
17 Method 3050B, the most recent version of National Food Laboratory Method MN5013, or any  
18 replacements thereof (the “Test Protocol”). Alexx shall conduct such testing each time it offers a  
19 new design of Product for sale or changes suppliers or ingredients with respect to an existing  
20 design of Product.

21                   **2.5 Ongoing testing.** After the Compliance Date, Alexx shall, at least once  
22 every six months, test 6 randomly selected designs of the Products. Such testing shall be  
23 conducted by an independent laboratory using the Test Protocol. The 6 designs to be tested shall  
24 include at least 3 of the top 20 selling designs during the previous 6 months. If the results of the  
25 testing required pursuant to this Section shows levels of Lead exceeding the requirements of  
26 Section 2.2 for a Product, Alexx shall return all of the Products still in its custody that were  
27 purchased under the particular purchase order to the supplier with a letter explaining that such  
28 Products do not comply with the supplier’s certification. In addition, Alexx shall increase the

1 frequency of testing of the Products from such supplier such that Alexx shall test 6 randomly  
2 selected designs of the Products from such supplier at least once every three months for the six  
3 months following a Product test exceeding the requirements of Section 2.2. Such increased  
4 testing shall include the design of Product that previously exceeded the requirements of Section  
5 2.2.

6           **2.6 Confirmatory testing by CEH.** CEH intends to conduct periodic testing  
7 of the Products. Such testing shall be conducted by an independent laboratory using the Test  
8 Protocol. In the event that CEH's testing demonstrates Lead levels in excess of the requirements  
9 of Section 2.2, CEH shall inform Alexx of the violation(s), including information sufficient to  
10 permit Alexx to identify the Product(s). Alexx shall, within 10 days following such notice,  
11 provide CEH, at the address listed in Section 11, with information demonstrating its compliance  
12 with Sections 2.3, 2.4, and 2.5 of this Consent Judgment. Alexx shall return all of the Products  
13 still in its custody that were purchased under the same purchase order as those tested by CEH to  
14 the supplier with a letter explaining that such Products do not comply with the supplier's  
15 certification. In addition, Alexx shall increase the frequency of testing of the Products from such  
16 supplier such that Alexx shall test 6 randomly selected designs of the Products from such  
17 supplier at least once every three months for the six months following a Product test exceeding  
18 the requirements of Section 2.2. Such increased testing shall include the design of Product that  
19 previously exceeded the requirements of Section 2.2. This remedy is in addition to any other  
20 remedies available to enforce the terms of this Consent Judgment.

21           **2.7 Electroplating Requirements.** Notwithstanding any of the foregoing,  
22 other than providing a copy of Exhibit A to each of its suppliers of the Products, Alexx shall not  
23 be responsible for ensuring that any Products that are not manufactured by Alexx are  
24 electroplated in accordance with Exhibit A.

25           **2.8 Documentation.** The certifications and results of all testing performed  
26 pursuant to this Consent Judgment shall be retained by Alexx for a period of three years from the  
27 date of the certification or testing and shall be made available to CEH upon request.  
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1           **3. SETTLEMENT PAYMENTS**

2           **3.1**     Within five days of entry of this Consent Judgment, Alexx shall pay a  
3 total of \$65,000 as a settlement payment. This total shall be paid in three separate checks  
4 delivered to the offices of the Lexington Law Group, LLP at the address set forth in Section 11  
5 below and made payable and allocated as follows.

6                   **3.1.1 Penalty:** The sum of \$1,000 in penalties pursuant to Health and  
7 Safety Code § 25249.7(b). This payment shall be made by check payable to Center for  
8 Environmental Health. CEH shall apportion the penalties in accordance with Health and Safety  
9 Code § 25249.12.

10                   **3.1.2 Monetary Payment in Lieu of Penalty:** \$21,250 shall be paid to  
11 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment  
12 shall be made by check payable to Center for Environmental Health. CEH shall use such funds  
13 to continue its work protecting people from exposures to toxic chemicals. As part of this work,  
14 CEH intends to conduct periodic testing of the Products as set forth in Section 2.6.

15                   **3.1.3 Attorneys' Fees and Costs:** \$42,750 shall be used to reimburse  
16 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any  
17 other costs incurred as a result of investigating, bringing this matter to Alexx's attention,  
18 litigating and negotiating a settlement in the public interest. This payment shall be made by  
19 check payable to Lexington Law Group, LLP.

20           **4. MODIFICATION OF CONSENT JUDGMENT**

21           **4.1**     This Consent Judgment may be modified by written agreement of CEH  
22 and Alexx, or upon motion of CEH or Alexx as provided by law.

23           **5. ENFORCEMENT OF CONSENT JUDGMENT**

24           **5.1**     CEH may, by motion or application for an order to show cause before the  
25 Superior Court of the County of Alameda, enforce the terms and conditions contained in this  
26 Consent Judgment. Should CEH prevail on any motion or application under this Section, CEH  
27 shall be entitled to recover its reasonable attorneys' fees and costs associated with such motion  
28 or application.

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 and subsidiaries, and the successors or assigns of any of  
4 them.

5           **7. RELEASE**

6           **7.1** This Consent Judgment is a full, final and binding resolution  
7 between CEH and Alexx of any violation of Proposition 65 that was or could have been asserted  
8 in the Complaint against Alexx or its parents, subsidiaries, affiliates, directors, officers,  
9 employees, agents, attorneys, distributors, or customers based on failure to warn about alleged  
10 exposure to Lead contained in the Products, with respect to any Products manufactured,  
11 distributed or sold by Alexx on or prior to the date of entry of this Consent Judgment.  
12 Compliance with the terms of this Consent Judgment by Alexx shall constitute compliance with  
13 Proposition 65 by Alexx with respect to any alleged failure to warn about exposure to Lead  
14 contained in the Products. This release does not limit or effect the obligations of any party  
15 created under this Consent Judgment.

16           **8. SEVERABILITY**

17           **8.1** In the event that any of the provisions of this Consent Judgment are held  
18 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
19 affected.

20           **9. GOVERNING LAW**

21           **9.1** The terms of this Consent Judgment shall be governed by the laws of the  
22 State of California.

23           **10. RETENTION OF JURISDICTION**

24           **10.1** This Court shall retain jurisdiction of this matter to implement and enforce  
25 the terms this Consent Judgment.

26           **11. PROVISION OF NOTICE**

27           **11.1** All notices required pursuant to this Consent Judgment and  
28 correspondence shall be sent to the following:

1 For CEH: Howard Hirsch  
Lexington Law Group, LLP  
2 1627 Irving Street  
3 San Francisco, CA 94122

4 For Alexx: Brett A. Lovejoy  
Jones Day  
5 555 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104

6 **12. COURT APPROVAL**

7 **12.1** If this Consent Judgment is not approved by the Court, it shall be of no  
8 further force or effect. The Parties agree to support a Motion for Approval of this Consent  
9 Judgment.

10 **13. EXECUTION AND COUNTERPARTS**

11 **13.1** The stipulations to this Consent Judgment may be executed in  
12 counterparts and by means of facsimile, which taken together shall be deemed to constitute one  
13 document.

14 **14. AUTHORIZATION**

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

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1 **AGREED TO:**

2 CENTER FOR ENVIRONMENTAL HEALTH  
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4   
5 \_\_\_\_\_  
Signature

6  
7 CONNIE PIZZANO  
Printed Name

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9 ASSOCIATE DIRECTOR  
Title

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11 ALEX, INC.

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13 \_\_\_\_\_  
Signature

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16 \_\_\_\_\_  
Printed Name

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Title

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1 **AGREED TO:**

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12 Title

11 ALEX, INC.

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14 Signature

15 SANDY STEIN  
16 \_\_\_\_\_  
17 Printed Name

18 Owner / President  
19 \_\_\_\_\_  
20 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

1           **EXHIBIT A (BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)**

2   **PRE-PLATING PROCEDURE**

3           The pieces must be cleaned. Any polishing compound must be removed before plating  
4 by cleaning with aqueous cleaning solution or solvent and rinsed with water.

5                           The pieces must be activated.

6                           The pieces must be rinsed in clean water before plating.

7   **PLATING BATH MAINTENANCE**

8           The temperature of each plating bath must be controlled to the appropriate temperature in  
9 accordance with the recommendations of the equipment and plating chemical suppliers.

10          The nickel and nickel-substitute tanks must be agitated or aerated in accordance with the  
11 chemical suppliers' recommendations.

12          All baths must be filtered continuously during plating and filters changed at least than  
13 monthly.

14          pH must be measured each day of plating and adjusted within the chemical supplier's  
15 recommendations.

16          All plating employees must be trained on the use of the equipment in accordance with  
17 recommendation of equipment manufacturer and plating chemical suppliers.

18          The plating baths must be maintained in accordance with the plating chemical suppliers  
19 recommendations.

20                       Plating tanks must be swept at least weekly.

21          Anodes must be inspected monthly in accordance with the anode supplier's  
22 recommendations.

23                       Racks must be stripped at least annually.

24          The electrical equipment must be sized appropriately for each tank in accordance with  
25 equipment manufacturer's recommendations and calibrated annually.

26   **PLATING PROCEDURES**

27          Substantial pieces such as pendants, drops, and rings without prongs or other such feature  
28 shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid

1 copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between  
2 plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite,  
3 imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces can  
4 be treated to produce other finishes such as matt, oxidized, or smut black finishes.

5 Mechanical, functional (e.g., lobster claws, spacers, mechanical closures, connectors), or fine  
6 pieces such as prongs and fine chains may be plated to cover the exposed surface consistent with  
7 good manufacturing practices for appearance and function. Components that articulate closely  
8 together such as snake chain and tight hinges or that need to be manipulated into position will be  
9 plated to prevent binding, stiffness, and cracking of plating.

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