

1 LEXINGTON LAW GROUP, LLP  
Eric S. Somers, State Bar No. 139050  
2 Mark N. Todzo, State Bar No. 168389  
Howard Hirsch, State Bar No. 213209  
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

7  
8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11

12  
13 CENTER FOR ENVIRONMENTAL HEALTH, )  
14 a non-profit corporation, )

15 Plaintiff, )

16 v. )

17 ALEXX, 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. )  
23  
24  
25  
26  
27  
28

Case No. RG-08-399102

**[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANT PURE & SIMPLE  
SOLUTIONS, LLP**

1           **1. INTRODUCTION**

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

8           **1.2** Defendant Pure & Simple Solutions, LLP (“Pure & Simple”) is a “person  
9 in the course of doing business” under Proposition 65 and manufactures, distributes and/or sells  
10 keychains and charms (the “Products”) in the State of California. Pure & Simple and CEH are  
11 referred to collectively herein as the Parties.

12           **1.3** On or about December 6, 2007, CEH served Pure & Simple and the  
13 appropriate public enforcement agencies with the requisite 60-day notice that Pure & Simple is  
14 in violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that Pure &  
15 Simple exposes individuals 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 Pure & Simple’s conduct violates Health  
20 & Safety Code §25249.6, the warning provision of Proposition 65.

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

27           **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of  
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

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

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Lead Reformulation.** After December 1, 2008 (the "Compliance Date"),  
13 Pure & Simple shall not manufacture, distribute, ship, or sell, or cause to be manufactured,  
14 distributed, or sold, any Product unless such Product contains less than 100 parts per million  
15 lead.

16 **2.2 Certification of level from suppliers.** Pure & Simple shall obtain written  
17 certification with corresponding test results from its suppliers of the Products certifying that the  
18 Products meet the requirements of Section 2.1.

19 **2.3 Pre-market testing.** On or before the Compliance Date, Pure & Simple  
20 shall test each style of Product it is currently offering for sale to ensure that such Products meet  
21 the requirements of Section 2.1. Such testing shall be conducted by an independent laboratory  
22 using the most recent version of United States Environmental Protection Agency Method 3050B  
23 (the "Test Protocol"). Pure & Simple shall conduct such testing each time it offers a new style  
24 of Product for sale or changes suppliers or ingredients with respect to an existing style of  
25 Product.

26 **2.4 Ongoing testing.** After the Compliance Date, Pure & Simple shall test at  
27 least 1 randomly selected Product from each delivered shipment of each of the Products. Such  
28 testing shall be conducted by an independent laboratory using the Test Protocol. If the results of

1 the testing required pursuant to this section shows levels of Lead exceeding the requirements of  
2 Section 2.1 for a Product, Pure & Simple shall return all of the Products that were purchased  
3 under the particular purchase order to the supplier with a letter explaining that such Products do  
4 not comply with the supplier's certification. In addition, Pure & Simple shall increase the  
5 number of units tested to at least 2 randomly selected Products from each delivered shipment of  
6 each of the Products from such supplier for the two shipments purchased immediately following  
7 a Product test exceeding the requirements of Section 2.1. Should the testing of Products  
8 purchased from a particular supplier demonstrate Lead levels exceeding the requirements of  
9 Section 2.1 more than once, Pure & Simple shall cease purchasing Products from such supplier  
10 for a period of at least five years.

11           **2.5 Confirmatory testing by CEH.** CEH intends to conduct periodic testing  
12 of the Products. Such testing shall be conducted by an independent laboratory using the Test  
13 Protocol. In the event that CEH's testing demonstrates Lead levels in excess of the requirements  
14 of Section 2.1, CEH shall inform Pure & Simple of the violation(s), including information  
15 sufficient to permit Pure & Simple to identify the Product(s). Pure & Simple shall, within 10  
16 days following such notice, provide CEH, at the address listed in section 12, with its supplier  
17 certification and testing information demonstrating its compliance with sections 2.2, 2.3, and 2.4  
18 of this Consent Judgment. Pure & Simple shall then increase the amount of testing performed on  
19 the Products supplied by the supplier of the Product(s) for which CEH demonstrates a test with  
20 Lead levels exceeding the requirements of Section 2.1 to at least 5 randomly selected Products  
21 from each delivered shipment from each purchase order of each of the Products from such  
22 supplier for the two purchase orders following a Product test exceeding the requirements of  
23 Section 2.1. Pure & Simple shall also be liable for stipulated payments in lieu of penalties for  
24 Products for which CEH produces tests demonstrating Lead levels exceeding the requirements of  
25 Section 2.1 as set forth below. These payments shall be made to CEH and used for the purposes  
26 described in section 4.1 and to pay for related attorneys' fees and costs. The stipulated payments  
27 in lieu of penalties and other remedies provided for herein are in addition to any other remedies  
28 available to enforce the terms of this Consent Judgment.

1                                   **2.5.1 Stipulated penalty assuming compliance with sections 2.2, 2.3,**  
2 **and 2.4.** Assuming Pure & Simple provides CEH with information demonstrating that it  
3 complied with sections 2.2, 2.3, and 2.4 for the Products purchased pursuant to the same  
4 purchase order as those with tests showing Lead levels exceeding the requirements of Section  
5 2.1, the stipulated penalty shall be as follows for each unit of Product for which CEH produces a  
6 test result with Lead levels exceeding the requirements of Section 2.1:

7                                   First Occurrence:     \$500  
8                                   Second Occurrence:  \$1,000  
9                                   Third Occurrence:    \$2,000  
10                                  Thereafter:           \$5,000

11                                   **2.5.2 Stipulated penalty assuming non-compliance with sections 2.2**  
12 **and 2.3.** Assuming Pure & Simple fails to provide CEH with information demonstrating that it  
13 complied with sections 2.2, 2.3, and 2.4 for the Products purchased pursuant to the same  
14 purchase order as those with tests showing Lead levels exceeding the requirements of Section  
15 2.1, the stipulated penalty shall be as follows for each unit of Product for which CEH produces a  
16 test result with Lead levels exceeding the requirements of Section 2.1:

17                                   First Occurrence:     \$2,000  
18                                   Second Occurrence:  \$5,000  
19                                   Third Occurrence:    \$10,000  
20                                  Thereafter:           \$20,000

21                   **3. SETTLEMENT PAYMENTS**

22                   **3.1** Pure & Simple shall pay a total of \$30,000 as a settlement payment  
23 according to the following schedule: (a) \$10,000 shall be paid by December 1, 2008; (b) \$10,000  
24 shall be paid by January 20, 2009; and (c) \$10,000 shall be paid by February 20, 2009. Each of  
25 these payments shall be made check payable to “Lexington Law Group” and delivered to the  
26 offices of the Lexington Law Group, LLP at the address set forth in section 12 below. Any  
27 failure by Pure & Simple to comply with the payment terms herein shall be subject to a  
28 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is

1 received. The late fees required under this section shall be recoverable, together with reasonable  
2 attorneys' fees, in an enforcement proceeding brought pursuant to section 5 of this Consent  
3 Judgment. The total \$30,000 settlement payment shall be allocated as follow.

4 **3.1.1 Penalty:** The sum of \$1,000 shall be allocated as penalties  
5 pursuant to Health and Safety Code § 25249.7(b). CEH shall apportion the penalties in  
6 accordance with Health and Safety Code § 25249.12.

7 **3.1.2 Monetary Payment in Lieu of Penalty:** The sum of \$9500 shall  
8 be paid allocated to CEH as a payment in lieu of penalty pursuant to Health and Safety Code  
9 § 25249.7(b). CEH shall use such funds to continue its work protecting people from exposures  
10 to toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products  
11 as set forth in section 2.5.

12 **3.1.3 Attorneys' Fees and Costs:** The sum of \$19,500 shall be allocated  
13 to reimburse CEH and its attorneys for a portion of their reasonable investigation fees and costs,  
14 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to  
15 Pure & Simple's attention, litigating and negotiating a settlement in the public interest.

16 **4. MODIFICATION OF CONSENT JUDGMENT**

17 **4.1** This Consent Judgment may be modified by written agreement of CEH  
18 and Pure & Simple, or upon motion of CEH or Pure & Simple as provided by law.

19 **5. ENFORCEMENT OF CONSENT JUDGMENT**

20 **5.1** CEH may, by motion or application for an order to show cause before the  
21 Superior Court of the County of Alameda, enforce the terms and conditions contained in this  
22 Consent Judgment. Should CEH prevail on any motion or application under this section, CEH  
23 shall be entitled to recover its reasonable attorneys' fees and costs associated with such motion  
24 or application.

25 **6. APPLICATION OF CONSENT JUDGMENT**

26 **6.1** This Consent Judgment shall apply to and be binding upon the Parties  
27 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
28 them.

////

1           **7.     RELEASE**

2           **7.1**    This Consent Judgment is a full, final and binding resolution  
3 between CEH and Pure & Simple of any violation of Proposition 65 that was or could have been  
4 asserted in the Complaint against Pure & Simple or its parents, subsidiaries, affiliates, directors,  
5 officers, employees, agents, attorneys, distributors, or customers based on failure to warn about  
6 alleged exposure to Lead contained in the Products, with respect to any Products manufactured,  
7 distributed or sold by Pure & Simple on or prior to the date of entry of this Consent Judgment.  
8 This release does not limit or effect the obligations of any party created under this Consent  
9 Judgment.

10           **8.     SEVERABILITY**

11           **8.1**    In the event that any of the provisions of this Consent Judgment are held  
12 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
13 affected.

14           **9.     SPECIFIC PERFORMANCE**

15           **9.1**    The Parties expressly recognize that Pure & Simple’s obligations under  
16 this Consent Judgment are unique. In the event that Pure & Simple is found to be in breach of  
17 this Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties  
18 agree that it would be extremely impracticable to measure the resulting damages and that such  
19 breach would cause irreparable damage. Accordingly, CEH, in addition to any other available  
20 rights or remedies, may sue in equity for specific performance, and Pure & Simple expressly  
21 waives the defense that a remedy in damages will be adequate.

22           **10.    GOVERNING LAW**

23           **10.1**   The terms of this Consent Judgment shall be governed by the laws of the  
24 State of California.

25           **11.    RETENTION OF JURISDICTION**

26           **11.1**   This Court shall retain jurisdiction of this matter to implement and enforce  
27 the terms this Consent Judgment.

28    ////

1           **12. PROVISION OF NOTICE**

2                   **12.1** All notices required pursuant to this Consent Judgment and  
3 correspondence shall be sent to the following:

4 For CEH:

5                               Howard Hirsch  
6                               Lexington Law Group, LLP  
7                               1627 Irving Street  
8                               San Francisco, CA 94122

9 For Pure & Simple:

10                               Nathan A. White  
11                               The White Law Group PLLC  
12                               811 N. Main Street, Suite 201  
13                               Royal Oak, MI 48067

14           **13. COURT APPROVAL**

15                   **13.1** If this Consent Judgment is not approved by the Court, it shall be of no  
16 further force or effect. The Parties agree to support a Motion for Approval of this Consent  
17 Judgment.

18           **14. EXECUTION AND COUNTERPARTS**

19                   **14.1** The stipulations to this Consent Judgment may be executed in  
20 counterparts and by means of facsimile, which taken together shall be deemed to constitute one  
21 document.

22           **15. AUTHORIZATION**

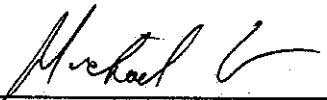
23                   **15.1** Each signatory to this Consent Judgment certifies that he or she is fully  
24 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter  
25 into and execute the Consent Judgment on behalf of the party represented and legally bind that  
26 party. The undersigned have read, understand and agree to all of the terms and conditions of this  
27 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
28 costs.

////



1 **AGREED TO:**

2  
3 **CENTER FOR ENVIRONMENTAL HEALTH**

4   
5 \_\_\_\_\_  
6 **Michael Green, Executive Director**  
**Center for Environmental Health**

7 **PURE & SIMPLE SOLUTIONS, LLP**

8  
9 \_\_\_\_\_  
10 **Signature**

11 \_\_\_\_\_  
12 **Printed Name**

13 \_\_\_\_\_  
14 **Title**

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**AGREED TO:**

CENTER FOR ENVIRONMENTAL HEALTH

\_\_\_\_\_  
Michael Green, Executive Director  
Center for Environmental Health

PURE & SIMPLE SOLUTIONS, LLP

\_\_\_\_\_  
  
Signature

TIMOTHY W. DOWNEY  
Printed Name

VICE-PRESIDENT OF OPERATIONS  
Title

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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