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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH,)
Plaintiff,)
v.)
AMERICAN-DE ROSA LAMPARTS, INC., et)
al.,)
Defendants.)

Case No. CV-081722
**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT MINKA
LIGHTING, INC.**

B

1 **1. INTRODUCTION**

2 **1.1** On April 9, 2008, plaintiff Center for Environmental Health (“Plaintiff”),
3 acting in the public interest, filed a complaint in Marin County Superior Court, entitled *Center*
4 *for Environmental Health v. Minka Lighting, Inc., et al.*, Marin County Superior Court Case
5 Number CV081722 (the “Action”), for civil penalties and injunctive relief pursuant to the
6 provisions of California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”).

7 **1.2** Minka Lighting, Inc. (identified herein as “Minka”) is a corporation that
8 employs 10 or more persons and that manufactured, distributed and/or sold light fixtures in the
9 State of California. Plaintiff and Minka are referred to collectively herein as the “Parties.”

10 **1.3** For purposes of this Consent Judgment, the term “Covered Product” shall
11 mean any lighting fixture that contains lead solder or other lead-containing materials in a manner
12 such that the lead would be touched during ordinary installation, cleaning, maintenance, or use.
13 For purposes of this definition, a “fixture” is any piece of lighting equipment that has been
14 attached to the inside or outside of a building or otherwise attached to real estate.

15 **1.4** On or about January 8, 2008, Plaintiff served Minka and the appropriate
16 public enforcement agencies, including the California Attorney General, the District Attorneys
17 of every county in California, and the City Attorneys of every California city with a population
18 greater than 750,000, with the requisite 60-day notice that Minka was in violation of Proposition
19 65. Plaintiff’s notice and the Complaint in this Action allege that Minka exposes individuals
20 who use or otherwise handle the Covered Products to lead and/or lead compounds (referred to
21 interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer,
22 birth defects and other reproductive harm, without first providing clear and reasonable warning
23 to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notice and
24 Complaint allege that Minka’s conduct violates Health & Safety Code §25249.6, the warning
25 provision of Proposition 65.

26 **1.5** For purposes of this Consent Judgment only, the parties stipulate that this
27 Court has jurisdiction over the subject matter of the violations alleged in the Complaint and
28 personal jurisdiction over Minka as to the acts alleged in the Complaint, that venue is proper in

1 the County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full
2 and final resolution of all claims which were or could have been raised in the Complaint against
3 Minka based on the facts alleged therein.

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

13 **2. COMPLIANCE - REFORMULATION**

14 **2.1 Reformulation Standard.** Within sixty days of entry of this Consent
15 Judgment (the "Compliance Date"), Minka shall not manufacture, distribute, ship, or sell, or
16 cause to be manufactured, distributed, shipped or sold, any Covered Product that contains Lead
17 in concentrations that exceed the Reformulation Standard set forth herein. For purposes of this
18 Consent Judgment only, the Reformulation Standard means that: (a) the solder used on the
19 Covered Products contains no more than 200 ppm Lead; and (b) any other component of the
20 Covered Products that is likely to be touched, contacted or handled by a Covered Product user
21 during ordinary installation, cleaning, maintenance, or use of the Covered Products, including
22 but not limited to the glass plates and metal frames of the Covered Products, contain no more
23 than 600 parts per million ("ppm") Lead. This requirement shall not apply to any Covered
24 Product that was manufactured, distributed, shipped or sold by Minka before the date of service
25 of the 60-day notice described in paragraph 1.4.

26 **2.2 Certification of level from suppliers.** Minka shall obtain written
27 certification with corresponding test results from its suppliers of the Covered Products certifying
28 that the Covered Products meet the Reformulation Standard. Within 60 days following the

1 Compliance Date, Minka shall not distribute, ship, or sell any Covered Product unless Minka has
2 obtained the certification for such Covered Product as required under this section.

3 **2.3 Plaintiff's Confirmatory Testing.** Plaintiff may, at its discretion,
4 conduct periodic testing of the Covered Products. Any such testing will be conducted pursuant
5 to the Test Protocol attached hereto as Exhibit A at an independent laboratory. In the event that
6 Plaintiff's testing demonstrates Lead levels in excess of the Reformulation Standard for one or
7 more Covered Products, Plaintiff shall inform Minka of the violation(s), including information
8 sufficient to permit Minka to identify the Covered Product(s). Plaintiff and Minka shall then
9 meet and confer in an attempt to informally resolve the alleged violation. Should the parties be
10 unable to informally resolve the alleged violation within 30 days, Plaintiff may thereafter file a
11 motion to enforce this Consent Judgment pursuant to Section 5.

12 **2.4 Stipulated Penalties.** In addition to any other remedies provided by law,
13 Minka shall be liable for stipulated penalties if it violates the Reformulation Standard. The
14 stipulated penalty shall be as follows for each sale of Covered Product for which Plaintiff
15 produces a test result with Lead levels exceeding the Reformulation Standard and a receipt
16 indicating that the Covered Product was purchased more than sixty days after the Compliance
17 Date:

18	First Occurrence:	\$1000
19	Second Occurrence:	\$1500
20	Third Occurrence:	\$2000
21	Thereafter:	\$2,500

22 For purposes of this section 2.4, a "sale" and an "occurrence" shall mean a sales transaction by
23 Minka with a specific customer after the Compliance Date regardless of the number of units that
24 were sold in such particular sales transaction. Submission of multiple test results for the same
25 style of product sold pursuant to a single purchase order shall be considered a single sale and a
26 single occurrence. Minka shall not be in violation of this Consent Judgment if the product for
27 which Plaintiff may produce a noncompliant test result was manufactured, distributed, shipped
28 or sold by Minka before the date of service of the 60-day notice described in paragraph 1.4.

1 **3. SETTLEMENT PAYMENTS**

2 **3.1** Within 20 days of the Court's entry of this Consent Judgment, Minka shall
3 pay the sum of \$30,000 as a settlement payment. This total shall be paid in two separate checks
4 delivered to the offices of the Lexington Law Group, LLP at the address set forth in section 12
5 below and made payable and allocated as follows. Any failure by Minka to comply with the
6 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
7 after the delivery date the payment is received. The late fees required under this section shall be
8 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
9 pursuant to section 5 of this Consent Judgment.

10 **3.1.1 Monetary Payment in Lieu of Penalty:** \$9,750 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 2.3.

15 **3.1.2 Attorneys' Fees and Costs:** \$20,250 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 Minka'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 Plaintiff
22 and Minka, or upon motion of Plaintiff or Minka as provided by law.

23 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

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6. APPLICATION OF CONSENT JUDGMENT

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

7. CLAIMS COVERED

7.1 This Consent Judgment is a full, final and binding resolution between Plaintiff and Minka of any violation of Proposition 65 that could have been asserted against Minka in the Complaint based on Minka’s failure to warn about exposure to Lead contained in the Covered Products, with respect to any Covered Products manufactured, distributed or sold by Minka on or prior to the date of entry of this Consent Judgment. This release does not limit or effect the obligations of any party created under this Consent Judgment.

8. SEVERABILITY

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

9. SPECIFIC PERFORMANCE

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

10. GOVERNING LAW

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

11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement and enforce



1 the terms this Consent Judgment.

2 **12. PROVISION OF NOTICE**

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

5 For Plaintiff:

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

9 For Minka:

10 Minka Lighting, Inc.
11 Attn: Peter Decsy
12 1151 Bradford Court
13 Corona, CA 92882

12 With a copy to:

13 Gregory P. Goonan
14 The Affinity Law Group APC
15 600 West Broadway, Suite 400
16 San Diego, CA 92101-3352

16 **13. COURT APPROVAL**

17 **13.1** If this Consent Judgment is not approved by the Court, it shall be of no
18 further force or effect.

19 **14. EXECUTION AND COUNTERPARTS**

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

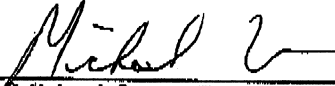
23 **15. AUTHORIZATION**

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

1 costs.

2 **AGREED TO:**

3 CENTER FOR ENVIRONMENTAL HEALTH

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5 
6 Michael Green, Executive Director
Center for Environmental Health

Dated: 7/29/08

7 MINKA LIGHTING, INC.

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11 Printed Name _____

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13 Title _____

Dated: _____

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1 costs.

2 **AGREED TO:**

3 CENTER FOR ENVIRONMENTAL HEALTH

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Michael Green, Executive Director
Center for Environmental Health

Dated: _____

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MINKA LIGHTING, INC.

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Printed Name

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VAGM

Dated: 7/25/08

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ORDER AND JUDGMENT

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

Dated: _____

Judge, Superior Court of the State of California



Exhibit A
(Test Methodology)

The following protocol shall be applied separately to each component of the Covered
Product: _____

- a) Comminute a small, representative, and discreet portion of the material to be analyzed.
- b) Prepare the sample for analysis using microwave digestion. Microwave digestion protocols from either of the following two methods may be used provided that the samples are completely digested:
 1. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in Foods)
 2. NIOSH 7082 (Lead by Flame AAS) Appendix – Microwave Digestion for Lead in Paint Chips (and other matrices)
- c) Analyze the sample for total Lead (Pb) content using Graphite Furnace Atomic Absorption Spectrophotometry (GFAAS) or Inductively Coupled Plasma Mass Spectrometry (ICP-MS) using standard operating procedures.
- d) Lead content shall be expressed in parts per million (ppm).

