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10 CENTER FOR ENVIRONMENTAL
11 HEALTH

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN

14 CENTER FOR ENVIRONMENTAL HEALTH,)
15)
16 Plaintiff,)
17 v.)
18 AMERICAN-DE ROSA LAMPARTS, INC., *et*)
19 *al.*,)
20 Defendants.)
21)
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Case No. CV-081722

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT VAXCEL
INTERNATIONAL CO., LTD.**

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. American-De Rosa Lamparts, Inc., et al.*, Marin County Superior
5 Court Case Number CV081722 (the “Action”), for civil penalties and injunctive relief pursuant
6 to the provisions of California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”).

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

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

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

25 **1.5** For purposes of this Consent Judgment only, the parties stipulate that this
26 Court has jurisdiction over the subject matter of the violations alleged in the Complaint and
27 personal jurisdiction over Vaxcel as to the acts alleged in the Complaint, that venue is proper in
28 the County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full

1 and final resolution of all claims which were or could have been raised in the Complaint against
2 Vaxcel based on the facts alleged therein.

3 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
4 certain disputed claims between the Parties as alleged in the Complaint. By executing this
5 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
6 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
7 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
8 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
9 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
10 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
11 any other or future legal proceedings.

12 **2. COMPLIANCE - REFORMULATION**

13 **2.1 Reformulation Standard.** Within sixty days of entry of this Consent
14 Judgment (the "Compliance Date"), Vaxcel shall manufacture, distribute, ship, or sell in
15 California, or cause to be manufactured, distributed, shipped or sold in California, any Covered
16 Product that contains Lead in concentrations that exceed the Reformulation Standard set forth
17 herein. For purposes of this Consent Judgment only, the Reformulation Standard means that: (a)
18 the solder used on the Covered Products contains no more than 200 ppm Lead; and (b) any other
19 component of the Covered Products that is likely to be touched, contacted or handled by a
20 Covered Product user during ordinary installation, cleaning, maintenance, or use of the Covered
21 Products, including but not limited to the glass plates and metal frames of the Covered Products,
22 contain no more than 600 parts per million ("ppm") Lead.

23 **2.2 Certification of level from suppliers.** Vaxcel shall obtain written
24 certification with corresponding test results from its suppliers of the Covered Products certifying
25 that the Covered Products meet the Reformulation Standard.

26 **2.3 Plaintiff's Confirmatory Testing.** Plaintiff may, at its discretion,
27 conduct periodic testing of the Covered Products. Any such testing will be conducted pursuant
28 to the Test Protocol attached hereto as Exhibit A at an independent laboratory. In the event that

1 Plaintiff's testing demonstrates Lead levels in excess of the Reformulation Standard for one or
2 more Covered Products, Plaintiff shall inform Vaxcel of the violation(s), including information
3 sufficient to permit Vaxcel to identify the Covered Product(s). Plaintiff and Vaxcel shall then
4 meet and confer in an attempt to informally resolve the alleged violation. Should the parties be
5 unable to informally resolve the alleged violation within 30 days, Plaintiff may thereafter file a
6 motion to enforce this Consent Judgment pursuant to Section 5.

7 **2.4 Stipulated Penalties.** In addition to any other remedies provided by law,
8 Vaxcel shall be liable for stipulated penalties if it violates the Reformulation Standard. The
9 stipulated penalty shall be as follows for each unit of Covered Product for which Plaintiff
10 produces a test result with Lead levels exceeding the Reformulation Standard:

11 First Occurrence: \$250
12 Second Occurrence: \$500
13 Third Occurrence: \$750
14 Thereafter: \$1,000

15 **3. SETTLEMENT PAYMENTS**

16 **3.1** Within 10 days of the Court's entry of this Consent Judgment, Vaxcel
17 shall pay the sum of \$16,000 as a settlement payment. This total shall be paid in two separate
18 checks delivered to the offices of the Lexington Law Group, LLP at the address set forth in
19 section 12 below and made payable and allocated as follows. Any failure by Vaxcel to comply
20 with the payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for
21 each day after the delivery date the payment is received. The late fees required under this
22 section shall be recoverable, together with reasonable attorneys' fees, in an enforcement
23 proceeding brought pursuant to section 5 of this Consent Judgment.

24 **3.1.1 Monetary Payment in Lieu of Penalty:** \$5,250 shall be paid to
25 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
26 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
27 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
28 CEH intends to conduct periodic testing of the Products as set forth in section 2.3.

1 **3.1.2 Attorneys' Fees and Costs:** \$10,750 shall be used to reimburse
2 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
3 other costs incurred as a result of investigating, bringing this matter to Vaxcel's attention,
4 litigating and negotiating a settlement in the public interest. This payment shall be made by
5 check payable to Lexington Law Group, LLP.

6 **4. MODIFICATION OF CONSENT JUDGMENT**

7 4.1 This Consent Judgment may be modified by written agreement of Plaintiff
8 and Vaxcel, or upon motion of Plaintiff or Vaxcel as provided by law.

9 **5. ENFORCEMENT OF CONSENT JUDGMENT**

10 **5.1** Plaintiff may, by motion or application for an order to show cause before
11 the Superior Court of the County of Marin, enforce the terms and conditions contained in this
12 Consent Judgment. Should Plaintiff prevail on any motion or application under this section,
13 Plaintiff shall be entitled to its reasonable attorneys' fees and costs associated with such motion
14 or application.

15 **6. APPLICATION OF CONSENT JUDGMENT**

16 **6.1** This Consent Judgment shall apply to and be binding upon the parties
17 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
18 them.

19 **7. CLAIMS COVERED**

20 **7.1** This Consent Judgment is a full, final and binding resolution between
21 Plaintiff and Vaxcel of any violation of Proposition 65 that could have been asserted against
22 Vaxcel in the Complaint based on Vaxcel's failure to warn about exposure to Lead contained in
23 the Covered Products, with respect to any Covered Products manufactured, distributed or sold by
24 Vaxcel on or prior to the date of entry of this Consent Judgment. This release does not limit or
25 effect the obligations of any party created under this Consent Judgment.

26 **8. SEVERABILITY**

27 **8.1** In the event that any of the provisions of this Consent Judgment are held
28 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely

1 affected.

2 **9. SPECIFIC PERFORMANCE**

3 **9.1** The parties expressly recognize that Vaxcel's obligations under this
4 Consent Judgment are unique. In the event that Vaxcel is found to be in breach of this Consent
5 Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree that it
6 would be extremely impracticable to measure the resulting damages and that such breach would
7 cause irreparable damage. Accordingly, Plaintiff, in addition to any other available rights or
8 remedies, may sue in equity for specific performance, and Vaxcel expressly waives the defense
9 that a remedy in damages will be adequate.

10 **10. GOVERNING LAW**

11 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
12 State of California.

13 **11. RETENTION OF JURISDICTION**

14 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
15 the terms this Consent Judgment.

16 **12. PROVISION OF NOTICE**

17 **12.1** All notices required pursuant to this Consent Judgment and
18 correspondence shall be sent to the following:

19 For Plaintiff:

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

23 For Vaxcel:

24 Dasha Amin, P.C.
25 8700 W. Bryn Mawr, Suite 800 South
Chicago, IL 60631

26 **13. COURT APPROVAL**

27 **13.1** If this Consent Judgment is not approved by the Court, it shall be of no
28 further force or effect.

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14. EXECUTION AND COUNTERPARTS

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

15. AUTHORIZATION

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

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director
Center for Environmental Health

Dated: 8/22/08

VAXCEL INTERNATIONAL CO., LTD.

Dated: _____

Printed Name

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

VAXCEL INTERNATIONAL CO., LTD.

Dated: 9/19/08

Ann Mitkus-Chen

ANN MITKUS-CHEN
Printed Name

Product Development Manager
Title

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Plaintiff and Vaxcel, 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).