

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

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

13 Plaintiff,)

14 v.)

15)
16 ACTION SPORTS IMAGE, LLC; and)
17 Defendant DOES 1 through 200, inclusive,)

18 Defendants.)
19 _____)
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Case No. CGC-08-475980

**[PROPOSED] CONSENT JUDGMENT
RE: RITE AID CORPORATION**

1 **1. INTRODUCTION**

2 **1.1** On June 4, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San
4 Francisco County Superior Court, entitled *Center for Environmental Health v. Action Sports*
5 *Image, LLC*, San Francisco County Superior Court Case Number CGC-08-475980 (the
6 “Action”), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health &
7 Safety Code §25249.5 *et seq.* (“Proposition 65”). On August 20, 2008, CEH amended the
8 complaint in the Action to name Rite Aid Corporation (“Defendant”) as a defendant.

9 **1.2** Defendant is a corporation that employs 10 or more persons and
10 manufactured, distributed and/or sold soft food and beverage containers such as lunchboxes and
11 coolers made of materials containing lead and/or lead compounds in the State of California. For
12 purposes of this Consent Judgment, the term “Products” shall mean soft food and beverage
13 containers, such as lunchboxes and coolers, that are not designed or intended primarily for
14 children 12 years of age or younger sold (including but not limited to the Summer Rite “Freeze
15 Out” Insulated Cooler & Collapsible Beach Chair, Item #939467-MMV). Upon entry of this
16 Consent Judgment, the term “Products” in the Complaint in the Action as to Defendant only
17 shall be deemed amended to mean soft food and beverage containers, such as lunchboxes and
18 coolers, that are that are not designed or intended primarily for children 12 years of age or
19 younger (including but not limited to the Summer Rite “Freeze Out” Insulated Cooler &
20 Collapsible Beach Chair, Item #939467-MMV).

21 **1.3** On or about May 15, 2008, CEH served Defendant and the
22 appropriate public enforcement agencies with the requisite 60-day notice alleging that Defendant
23 was in violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that
24 Defendant exposes people who use or otherwise handle the Products to lead and/or lead
25 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
26 California to cause cancer, birth defects and other reproductive harm, without first providing
27 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
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1 toxicity of Lead. The notice and Complaint allege that Defendant's conduct violates Health &
2 Safety Code §25249.6, the warning provision of Proposition 65.

3 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
4 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
5 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is
6 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
7 Judgment as a full and final resolution of all claims which were or could have been raised in the
8 Complaint based on the facts alleged therein.

9 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
10 certain disputed claims between the Parties as alleged in the Complaint. By executing this
11 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties'
12 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
13 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
14 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
15 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
16 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
17 any other or future legal proceedings.

18 **2. COMPLIANCE - REFORMULATION**

19 **2.1 Level.** Within ninety days of entry of this Consent Judgment (the
20 "Compliance Date"), Defendant shall not manufacture, distribute, ship, or sell, or cause to be
21 manufactured, distributed, or sold any Product that is comprised of any interior lining material
22 that contains Lead in concentrations that exceed 200 parts per million ("ppm") or of which the
23 exterior of the Products contains Lead in concentrations that exceed 600 ppm.

24 **2.2 Certification of level from suppliers.** Defendant shall issue
25 specifications to its suppliers requiring that neither the Products nor any materials of which the
26 Products are comprised contain Lead in concentrations exceeding those set forth in section 2.1.
27 For Products for which Defendant is the importer of record, Defendant shall obtain written
28 certification with corresponding test results certifying that neither the Products nor any materials

1 of which the Products are comprised contain Lead in concentrations exceeding those set forth in
2 section 2.1.

3 **2.3 Confirmatory testing by CEH.** CEH intends to conduct periodic testing
4 of the Products. Any such testing will be conducted by an independent laboratory in accordance
5 with the testing protocol attached hereto as Exhibit A (the “Test Protocol”). In the event that
6 CEH’s testing demonstrates Lead levels in excess of those set forth in section 2.1, CEH shall
7 provide Defendant with a copy of the test results and information sufficient to permit Defendant
8 to identify the Product(s). Defendant shall, within 20 days following such notice, provide CEH,
9 at the address listed in section 12, with its supplier specification and, for Products for which
10 Defendant is the importer of record, its certification and testing information, demonstrating its
11 compliance with section 2.2 of this Consent Judgment.

12 **3. SETTLEMENT PAYMENTS**

13 **3.1** Within ten days of entry of this Consent Judgment, Defendant shall pay a total of
14 \$15,000 as a settlement payment. This total shall be paid in two separate checks delivered to the
15 offices of the Lexington Law Group, LLP at the address set forth in section 12 below and made
16 payable and allocated as follows. Any failure by Defendant to comply with the payment terms
17 herein shall be subject to a stipulated late fee in the amount of \$100 for each day after the
18 delivery date the payment is received. The late fees required under this section shall be
19 recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding brought
20 pursuant to section 5 of this Consent Judgment.

21 **3.1.1 Monetary Payment in Lieu of Penalty:** \$5,000 shall be paid to
22 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
23 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
24 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
25 CEH intends to conduct periodic testing of the Products as set forth in section 2.3.

26 **3.1.2 Attorneys’ Fees and Costs:** \$10,000 shall be used to reimburse
27 CEH and its attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any
28 other costs incurred as a result of investigating, bringing this matter to Defendant’s attention,

1 litigating and negotiating a settlement in the public interest. This payment shall be made by
2 check payable to Lexington Law Group, LLP.

3 **4. MODIFICATION OF CONSENT JUDGMENT**

4 **4.1** This Consent Judgment may be modified by written agreement of
5 CEH and Defendant, or upon motion of CEH or Defendant as provided by law. Any Party
6 seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all
7 affected Parties prior to filing a motion to modify the Consent Judgment.

8 **4.2** If, with respect to Products, the Attorney General of the State of California
9 or Plaintiff permit any other reformulation standard by way of settlement or compromise with
10 any other person in the course of doing business, or any other entity, or if another reformulation
11 standard for Products is incorporated by way of final judgment as to any other person in the
12 course of doing business, or any other entity, then Defendant is entitled to seek a modification to
13 this Consent Judgment on the same terms as provided in those settlements, compromises or
14 judgments.

15 **5. ENFORCEMENT OF CONSENT JUDGMENT**

16 **5.1** CEH may, by motion or application for an order to show cause
17 before the Superior Court of the County of San Francisco, enforce the terms and conditions
18 contained in this Consent Judgment. Should CEH prevail on any motion or application under
19 this section, CEH shall be entitled to its reasonable attorneys' fees and costs associated with such
20 motion or application.

21 **6. APPLICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment shall apply to and be binding upon the
23 parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any
24 of them.

25 **6.2** This Consent Judgment shall not apply to Products manufactured,
26 distributed, or sold by Defendant for use outside of California

27 **7. CLAIMS COVERED**

28 **7.1** This Consent Judgment is a full, final and binding resolution

1 between CEH and Defendant of any violation of Proposition 65 that was or could have been
2 asserted in the Complaint against Defendant (including any claims that could be asserted in
3 connection with any of the Products covered by this Consent Judgment) or its parents,
4 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or
5 customers (collectively, "Defendant Releasees") based on failure to warn about alleged exposure
6 to Lead contained in the Products, with respect to any Products manufactured, distributed or sold
7 by Defendant on or prior to the date of entry of this Consent Judgment. This release does not
8 limit or effect the obligations of any party created under this Consent Judgment.

9 **8. SEVERABILITY**

10 **8.1** In the event that any of the provisions of this Consent Judgment are
11 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
12 adversely affected.

13 **9. GOVERNING LAW**

14 **9.1** The terms of this Consent Judgment shall be governed by the laws of
15 the State of California.

16 **10. RETENTION OF JURISDICTION**

17 **10.1** This Court shall retain jurisdiction of this matter to implement and
18 enforce the terms this Consent Judgment.

19 **11. PROVISION OF NOTICE**

20 **11.1** All notices required pursuant to this Consent Judgment and
21 correspondence shall be sent to the following:

22 For CEH:

23 Howard Hirsch
24 Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

25 For Defendant:

26 Jonathan Allan Klein, Esq.
27 Kelly, Hockel & Klein, P.C.
44 Montgomery Street, Suite 2500
28 San Francisco, CA 94104

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13. COURT APPROVAL

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

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



Dated: 2/18/09

CHARLIE PIZARRO
Printed Name

RITE AID CORPORATION

Dated: _____

Printed Name

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

Printed Name

RITE AID CORPORATION



Dated: 2/16/2009

James J. Conitals

Printed Name

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Exhibit A

(Test Protocol)

The following protocol shall be applied separately to the interior and exterior material of a finished Product.

1. Cut 5 small, discreet portions of the material to be analyzed.
2. Combine the portions into a composite sample.
3. Prepare the sample for analysis using microwave digestion. Microwave digestion protocols from the following two methods may be used provided that the samples are completely digested:
 - a. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in Foods)
 - b. NIOSH 7082 (Lead by Flame AAS) Appendix – Microwave Digestion for Lead in Paint Chips (and other matrices)
4. 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.
5. Lead content shall be expressed in parts per million (ppm).

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ORDER AND JUDGMENT

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

Dated: _____

Judge, Superior Court of the State of California