

1 LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
2 Eric S. Somers, State Bar No. 139050
3 Howard Hirsch, State Bar No. 213209
1627 Irving Street
4 San Francisco, CA 94122
Telephone: (415) 759-4111
5 Facsimile: (415) 759-4112

6 Attorneys for CENTER FOR ENVIRONMENTAL HEALTH
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11 **SETTLEMENT AND RELEASE AGREEMENT AS**
12 **TO PREGRA, LLC**
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1 **1. INTRODUCTION**

2 1.1. On June 23, 2008, the Center for Environmental Health (“CEH”), a non-profit
3 corporation acting in the public interest, served a 60-day notice, pursuant to the provisions of Cal.
4 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Pregra, LLC (“Pregra”). On March
5 3, 2009, CEH served a Proposition 65 60-day notice on Costco Wholesale Corporation (“Costco”).

6 1.2. The 60-day Notices allege that Pregra and Costco were in violation of Proposition 65
7 for Pregra, LLC (“Pregra”) with regard to sales of Pregra’s artificial turf products (the “Covered
8 Products”). CEH’s Notice alleges that the Covered Products, expose people who touch, use or
9 otherwise handle the Covered Products to lead and lead compounds (collectively, “Lead”),
10 chemicals known to the State of California to cause cancer, birth defects and other reproductive
11 harm, without first providing clear and reasonable warning to such persons regarding the
12 carcinogenicity and reproductive toxicity of Lead. The Notices allege that Costco and Pregra’s
13 conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65. Pregra
14 disputes such allegations and asserts that all of their Covered Products are safe and comply with all
15 applicable laws.

16 1.3. Pregra is a limited liability corporation that employs fewer than 10 or more persons.
17 Costco is a company that employs 10 or more persons. On September 17, 2010, CEH amended its
18 complaint to name Coscto as a defendant in the action entitled *Center for Environmental Health v.*
19 *Beaulieu, et al.*, Alameda County Case No. RG 08-400091 (the “Action”).

20 1.4. Pregra distributes and/or sells Covered Products in the State of California or has
21 done so in the past.

22 1.5. Pregra asserts that prior to Costco’s receipt of the 60 day notice, Pregra had already
23 reformulated the Covered Products Sold In California so that the levels of Lead are no higher than
24 50 parts per million, and in most instances lower than 15 parts per million.

25 1.6. The ASTM voluntary standard, F 2765, for total Lead in artificial grass yarn fibers
26 is 300 parts per million until August 2011 when the Lead levels will decrease to 100 parts per
27 million. Pregra asserts that it is already in compliance with the reduced levels set forth in the
28

1 ASTM standard and will continue to produce the Covered Products at levels below 50 parts per
2 million.

3 1.7. Further, in the Consent Judgment entered into between the State of California and
4 Astroturf, LLC in People of the State of California v. Beaulieu Group, LLC, et al., the acceptable
5 lead levels in artificial yarn grass fibers are 100 ppm and, as of June, 15, 2010, the acceptable lead
6 levels are 50 ppm except that field lines and markings may have lead levels up to 100 ppm. Prega
7 asserts that it is already in compliance with the June 15, 2010 reduced levels and will continue to
8 produce products with lead levels lower than 50 ppm.

9 1.8. The Parties enter into this Settlement and Release Agreement pursuant to a
10 settlement of all claims between the Parties as described herein. This Settlement and Release
11 Agreement shall also explicitly apply to all claims against Costco arising out of or related to the
12 Covered Products. By executing this Settlement and Release Agreement, the Parties do not admit
13 any facts or conclusions of law. It is the Parties' intent that nothing in this Settlement and Release
14 Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of
15 law or violation of law, nor shall compliance with the Settlement and Release Agreement constitute
16 or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or
17 violation of law. Nothing in this Settlement and Release Agreement shall prejudice, waive or
18 impair any right, remedy, argument or defense the Parties may have in this or any other or future
19 legal proceedings.

20 **2. DEFINITIONS**

21 2.1. The "Effective Date" of this Settlement and Release Agreement shall be the date on
22 which the Settlement and Release Agreement is fully executed by the Parties.

23 2.2. "Covered Products" shall mean (a) the products listed in Exhibit A to this Settlement
24 and Release Agreement and (b) any other artificial turf products that Prega or the entities listed in
25 Exhibit C may manufacture or sell after the Effective Date.

26 2.3. "Old Covered Products" shall mean Covered Products that were Sold In California
27 before the Effective Date of this Settlement and Release Agreement.

1 2.4. “Sold in California” means any Covered Product that is sold in the State of
2 California by Pregra or Costco or by any, distributor, wholesaler or retailer that is authorized by
3 Pregra or by any of the entities listed on Exhibit C to this Agreement, to sell the Covered Products.
4 For purposes of this Settlement and Release Agreement, the date of sale shall be the later of the
5 following: (a) the date of the sales contract; (b) the date that Pregra or any of the entities listed in
6 Exhibit C transport or dispatch the Covered Product into California; (3) the date that Pregra or any
7 of the entities listed in Exhibit C deliver, or cause the delivery of, the Covered Product to the
8 installation site.

9 **3. INJUNCTIVE RELIEF: LEAD REDUCTION**

10 3.1. As of the Effective Date, Pregra shall not manufacture, distribute, sell or cause to be
11 manufactured, distributed or sold any Covered Products unless such Covered Products contain Lead
12 levels that are at or below 50 parts per million as determined pursuant to the testing protocol in
13 Exhibit B.

14 **4. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

15 4.1. CEH alleges that warnings are necessary as to the Old Covered Products because
16 these products cause continuing exposures to Lead. Without admitting such allegations and
17 specifically denying the same, Pregra agrees to implement the following program to provide clear
18 and adequate warnings to persons who come into contact with turf products that were installed
19 before the Effective Date of this Agreement.

20 4.1.1. Without admitting such allegations and specifically denying the same, Pregra
21 shall provide the mailed warnings and informational materials attached hereto as Exhibit D to all
22 parties who purchased Old Covered Products directly from Pregra on or after March 3, 2006, for
23 sale or use within the State of California.

24 4.1.2. Pregra will establish a website that shall provide the following information
25 about its products:

- 26 • Range of Lead content for each Covered Product.
- 27 • Date Lead was phased out of each Covered Product.

- 1 • Proposition 65 and other regulatory levels applicable to Lead in consumer products.
- 2 • Links to specified sites.
- 3 • Good maintenance practices to minimize lead transfer from Covered Products to
- 4 consumers.
- 5 • Actions consumers can take to minimize lead transfer from Covered Products to
- 6 consumers.

7 Changes to the website will be subject to the advance approval of CEH, which shall not be
8 unreasonably withheld.

9 **5. SETTLEMENT PAYMENTS**

10 5.1. Civil Penalty. Defendant shall pay to CEH \$6,000 as a civil penalty pursuant to
11 Health and Safety Code § 25249.7(b). CEH will apportion the penalty in accordance with §
12 25249.12. The payment required under this section shall be made payable to CEH.

13 5.2. Monetary Payment in Lieu of Penalty. Defendant shall pay to CEH \$17,500 in lieu
14 of any additional civil penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
15 such funds to continue its work protecting people from exposures to toxic chemicals. The payment
16 required under this section shall be made payable to CEH.

17 5.3. Attorneys' Fees and Costs. Defendant shall pay \$36,500 to reimburse CEH and its
18 attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs
19 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and
20 negotiating a settlement in the public interest. The payment required under this section shall be
21 made payable to Lexington Law Group, LLP.

22 5.4. Delivery of Payments. All payments made pursuant to this Section 5 shall be
23 delivered to the Lexington Law Group, LLP at the address set forth in Section 11 below and shall be
24 delivered as follows: (1) the first payment of \$30,000, consisting of the payments required under
25 Sections 5.1 and 5.2 as well as \$6,500 of the payment required under Section 5.3 shall be due on
26 January 15, 2011; (2) the final payment of \$30,000, consisting of the remainder of the payment
27 required under Section 6.3 shall be due on March 15, 2011.

1 **6. MODIFICATION OF SETTLEMENT AND RELEASE AGREEMENT**

2 6.1. This Settlement and Release Agreement may be modified from time to time by
3 express written agreement of the Parties.

4 **7. ENFORCEMENT**

5 7.1. CEH may, by instituting an action, enforce the terms and conditions contained in this
6 Settlement and Release Agreement. In any such proceeding, CEH may seek whatever fines, costs,
7 penalties, or remedies are provided by law for failure to comply with the Settlement and Release
8 Agreement and, where said violations of this Settlement and Release Agreement constitute
9 subsequent violations of Proposition 65 or other laws independent of the Settlement and Release
10 Agreement and/or those alleged in the Complaint, CEH is not limited to enforcement of the
11 Settlement and Release Agreement, but may seek in another action whatever fines, costs, penalties,
12 or remedies are provided for by law for failure to comply with Proposition 65 or other laws. In any
13 action brought by CEH or another enforcer alleging subsequent violations of Proposition 65 or other
14 laws, Pregra may assert any and all defenses that are available, including the *res judicata* or
15 collateral estoppel effect of this Settlement and Release Agreement.

16 **8. CLAIMS COVERED**

17 8.1. Full and Binding Resolution. This Settlement and Release Agreement is a full, final,
18 and binding resolution between CEH and Pregra, and all its affiliates listed in Exhibit C and Costco,
19 of any violation of Proposition 65, or any other statutory or common law claims that have been or
20 could have been asserted against Pregra or Costco for failure to provide clear and reasonable
21 warnings of exposure to Lead from the use of the Covered Products, or any other claim based on the
22 facts or conduct alleged in the Notice, whether based on actions committed by Pregra or by any
23 entity to whom Pregra distributes or sells Covered Products, or any entity that sells the Covered
24 Products to consumers, including, but not limited to, Costco. Compliance with the terms of this
25 Settlement and Release Agreement resolves any issue now, in the past, and in the future, concerning
26 compliance by Pregra, its parents, shareholders, divisions, subdivisions, subsidiaries, sister
27 companies, affiliates, franchisees, cooperative members, and licensees; its distributors, wholesalers,

1 and retailers who sell Covered Products; and the predecessors, successors, and assigns of any of
2 them, with the requirements of Proposition 65 arising from exposures to Lead in or from the
3 Covered Products. This Settlement and Release Agreement does not resolve any claims that CEH
4 may assert with respect to (i) products other than the Covered Products, or (ii) chemicals other than
5 lead.

6 8.2. Affiliates and Subsidiaries. A list of Pregra's current subsidiaries, sister
7 corporations, and affiliates is attached hereto as Exhibit C. Pregra unconditionally guarantees that
8 the companies listed on Exhibit C will fully comply with the applicable provisions of this
9 Settlement and Release Agreement, including the provisions of Sections 3 (Injunctive Relief: Lead
10 Reduction) and 4 (Injunctive Relief: Clear and Reasonable Warnings) to this Settlement and
11 Release Agreement. If any such company fails to so comply with the applicable provisions of this
12 Settlement and Release Agreement, then in addition to CEH's other remedies, CEH reserves the
13 right to bring action, seeking penalties, injunctive and other relief, directly against such company to
14 redress that company's non-compliance.

15 8.3. Further Reservations: Without limiting the rights reserved to CEH in the preceding
16 paragraphs, CEH also reserves the right to bring actions, seeking penalties, injunctive and other
17 relief, against the following persons:

18 (a) Downstream Sellers. Distributors, wholesalers, and/or retailers, other than
19 Costco, who, after the Effective Date of this Settlement: (i) sell Covered Products that
20 contain Lead levels in excess of the applicable levels set forth in Section 3.1 of this
21 Agreement (Injunctive Relief: Lead Reduction), or (ii) otherwise fail to comply with, or
22 impede the efforts of others to comply with, the applicable terms of this Settlement and
23 Release Agreement; and

24 (b) Undisclosed Affiliates. Any affiliate or subsidiary of Pregra that is not listed
25 on Exhibit C.

26 8.4. Not Applicable to Cushioning and Infill Products. This Settlement and Release
27 Agreement does not apply to any cushioning or infill products that are installed under or in

1 connection with the Covered Products but are not attached to the Covered Products (“Cushioning
2 Products”), including, without limitation: granular products, such as crumb and tire crumb, and
3 layered materials such as foam. CEH expressly reserve the right to bring claims against Pregra,
4 the companies listed on Exhibit C, or any distributors, wholesalers, or retailers of Cushioning
5 Products, for any violation of Proposition 65, the Unfair Competition Law or any other applicable
6 law or regulation, arising from the sale, use of, or exposure to the Cushioning Products.

7 8.5. Dismissal of Costco. Within 30 days following the Effective Date, CEH will
8 dismiss Costco from the Action without prejudice.

9 **9. PROVISION OF NOTICE**

10 9.1. When any party is entitled to receive any notice under this Settlement and Release
11 Agreement, the notice shall be sent by overnight courier service to the person and address set forth
12 in this section. Any party may modify the person and address to whom the notice is to be sent by
13 sending each other party notice by certified mail, return receipt requested. Said change shall take
14 effect for any notice mailed at least five days after the date the return receipt is signed by the party
15 receiving the change.

16 9.2. Notices shall be sent by Certified Mail or overnight delivery to the following when
17 required:

18 For Center for Environmental Health:

19 Mark N. Todzo
20 Lexington Law Group LLP
21 1627 Irving Street
22 San Francisco, CA 94122

23 For Pregra, LLC:

24 Christopher A. Guldjian
25 Guldjian Law Group, APC
26 3200 Bristol Street Suite 650
27 Costa Mesa, California 92626

1 9.3. Written Certification. Within 15 days of completing any action required by this
2 Settlement and Release Agreement, and also on CEH's written request, Pregra will provide CEH
3 with written certification that the required action has been completed.

4 **10. SEVERABILITY**

5 10.1. In the event that any of the provisions of this Settlement and Release Agreement are
6 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
7 affected.

8 **11. GOVERNING LAW**

9 11.1. The terms of this Settlement and Release Agreement shall be governed by the laws
10 of the State of California.

11 **12. COURT APPROVAL**

12 12.1. CEH will comply with the settlement notice provisions of Health and Safety Code §
13 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

14 **13. ENTIRE AGREEMENT**

15 13.1. This Settlement and Release Agreement contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
17 discussions, negotiations, commitments and understandings related hereto. No representations, oral
18 or otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
20 to exist or to bind any of the Parties.

21 **14. EXECUTION IN COUNTERPARTS**

22 14.1. The stipulations to this Settlement and Release Agreement may be executed in
23 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
24 document.

25 **15. AUTHORITY TO STIPULATE TO SETTLEMENT AND RELEASE AGREEMENT**


26 15.1. Each signatory to this Settlement and Release Agreement certifies that he or she is
27 fully authorized by the party he or she represents to stipulate to this Settlement and Release
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1 Agreement and to enter into and execute the Settlement and Release Agreement on behalf of the
2 party represented and legally to bind that party.

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Associate Director

Dated: 1/11/11

PREGRA, LLC

Steve Linville

Dated: _____

1 Agreement and to enter into and execute the Settlement and Release Agreement on behalf of the
2 party represented and legally to bind that party.

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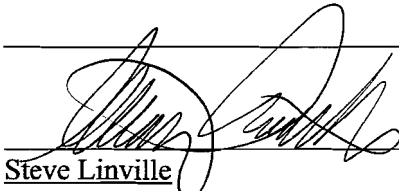
AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro, Associate Director

Dated: _____

PREGRA, LLC



Steve Linville

Dated: 01/07/11

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Exhibit A
Covered Products

Pregra	Alpha DF
Pregra	MBS
Pregra	DF-200
Pregra	MBS-250
Pregra	MBS-315
Pregra	MBS-335
Pregra	MBS-350
Pregra	E- Series E-425
Pregra	E- Series E-425 Deluxe
Pregra	Putting Green
Pregra	Fringe
Playfield	Varsity
Playfield	Guardian
Playfield	Doral
Playfield	Titan
Playfield	Spartan
Playfield	Athletic Turf

Exhibit B

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Testing Protocol for Use in Determining Compliance Level

ASTM voluntary standard, F 2765, for total Lead in artificial grass yarn fibers.

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Exhibit C

List of Affiliated Companies

Customer Parent	Costco Landis LLC
Company Company	Pregra LLC Pregra West
Company Company	Playfield LLC Playfield USA LLC
Company Company	Green Vision LLC Sportfield LLC
Company	RealGrass LLC
Company	White Label Turf

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Exhibit D

Dear Customer:

Our records show that you purchased Pregra products during the past __ years. This letter is written to inform you that certain Pregra products contain lead. Specifically, the following Pregra products contained lead at levels in excess of 100 parts per million (ppm):

[List Products]

WARNING – The artificial turf products listed above, contain lead which is a chemical known to the state of California to cause cancer and reproductive harm.

Lead was phased out of these products on the following dates:

<u>Product</u>	<u>Date</u>
----------------	-------------

The following products have never contained lead in excess of 100 ppm.

[List of Pregra Products – same as Exhibit A – confirm]

Good maintenance practices can reduce exposures to lead from these products. These practices include the following:

- a. Keeping turf fields well-maintained and groomed and reducing surface dust and particles that could be ingested
- b. Students and players should wash their hands after playing on a field.
- c. Food, beverages and other ingestible items should not be allowed on the field
- d. Equipment and clothing used when playing on the turf should be cleaned after use.

For other information about this issue, please check the following links:

[Link to website]