

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

9 Attorneys for Plaintiff
10 CENTER FOR ENVIRONMENTAL HEALTH

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

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

15 Plaintiff,)

16 v.)

17 BABY BOOM CONSUMER PRODUCTS,)
18 INC.; BETESH GROUP HOLDING)
19 CORPORATION; CUDLIE ACCESSORIES,)
20 INC.; CUDLIE ACCESSORIES, LLC; DOLLY,)
21 INC.; EASTSPORT, INC.; THE FIRST)
22 YEARS, INC.; INFANTINO, LLC;)
23 KALENCOM CORPORATION; LEARNING)
24 CURVE BRANDS, INC.; RC2 BRANDS, INC.;)
25 STEP2 COMPANY, LLC; WILLIAM CARTER)
26 COMPANY; and Defendant DOES 1 through)
27 200, inclusive,)

28 Defendants.)

Case No. CV083678

**[PROPOSED] CONSENT JUDGMENT
RE: CUDLIE ACCESSORIES, INC.
AND CUDLIE ACCESSORIES, LLC**

1 **1. INTRODUCTION**

2 **1.1** On July 29, 2008, Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint in Marin County Superior
4 Court entitled *Center for Environmental Health v. Baby Boom Consumer Products, Inc., et al.*,
5 Marin County Superior Court Case Number CV-08-83678 (the “Action”), for civil penalties and
6 injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.*
7 (“Proposition 65”). On April 21, 2009, CEH filed the operative First Amended Complaint
8 naming Cudlie Accessories, LLC and Cudlie Accessories, Inc. (collectively, “Defendant”) as
9 defendants in the Action.

10 **1.2** Defendant employs 10 or more persons and manufactured, distributed,
11 and/or sold infant accessory bags, including but not limited to bags for breast pumps, baby
12 bottles, and pacifiers, diaper bags, and stroller bags (the “Products”) in the State of California.

13 **1.3** More than sixty days prior to naming them as defendants in the Action,
14 CEH served Defendant and the appropriate public enforcement agencies with the requisite 60-
15 day notice alleging that Defendant was in violation of Proposition 65 (the “Notice”).

16 **1.4** CEH’s Notice and Complaint each allege that Defendant exposes people
17 who use or otherwise handle Defendant’s Products to Lead, chemicals known to the State of
18 California to cause cancer, birth defects and other reproductive harm, without first providing
19 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
20 toxicity of Lead. The Notice and Complaint allege that Defendant’s conduct violates Health &
21 Safety Code §25249.6, the warning provision of Proposition 65. Defendant disputes such
22 allegations and asserts that all of its Products are safe and comply with all applicable laws.

23 **1.5** For purposes of this Consent Judgment only, CEH and Defendant (the
24 “Parties”) stipulate that this Court has jurisdiction over the subject matter of the violations
25 alleged in CEH’s Complaint in this action and personal jurisdiction over Defendant as to the acts
26 alleged in CEH’s Complaint, that venue is proper in the County of Marin, and that this Court has
27 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
28 or could have been raised in the Complaint based on the facts alleged therein.

1 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
2 certain disputed claims between the Parties as alleged in the Complaint. By executing this
3 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
4 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
5 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
6 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
8 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
9 any other or future legal proceedings.

10 **2. COMPLIANCE - REFORMULATION**

11 **2.1 Level.** As of October 1, 2009 (the "Compliance Date"), Defendant shall
12 not manufacture, distribute, ship, or sell or cause to be manufactured, distributed or sold, any
13 Product that is comprised of any material that contains Lead in concentrations that exceed 200
14 parts per million ("ppm"). As of May 1, 2010, Defendant shall not manufacture, distribute, ship,
15 or sell or cause to be manufactured, distributed or sold, any Product that is comprised of any
16 material that contains Lead in concentrations that exceed 100 ppm. The 200 ppm and 100 ppm
17 standards shall be referred to collectively herein as the "Reformulation Standard."

18 **2.2 Certification of level from suppliers.** Defendant shall issue
19 specifications to its suppliers requiring that the Products do not contain materials which contain
20 Lead concentrations exceeding the Reformulation Standard. Defendant shall obtain written
21 certification from its suppliers of the Products certifying that the Products do not contain
22 materials which contain Lead in concentrations exceeding the Reformulation Standard.

23 **2.3 Testing.** In order to ensure compliance with the requirements of Section
24 2.1, Defendant shall conduct (or cause to be conducted) testing to confirm that the Products
25 contain less than the Reformulation Standard. All testing pursuant to this Section shall be
26 performed by an independent laboratory in accordance with EPA Method 3050B (the "Test
27 Protocol"). At the request of CEH, the results of the testing performed pursuant to this Section
28 shall be made available to CEH on a confidential basis.

1 **2.3.1 Testing Frequency.** For each of the first two orders of Products
2 purchased from Defendant's suppliers after the Compliance Date, Defendant shall randomly
3 select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case more than
4 four, of the total Products purchased from each supplier of the Products intended for sale in
5 California. Following the first two orders, Defendant shall perform testing of the Products on
6 randomly selected units in accordance with Section 2.3.2.

7 **2.3.2 Random Testing.** Testing pursuant to this Section 2 shall be
8 performed on randomly selected units in accordance with Defendant's usual testing practices.
9 Defendant's usual testing practices include testing as required by its various retailers. At a
10 minimum, during each calendar year, Defendant shall randomly select and test the greater of
11 0.1% (one-tenth of one percent) or two, but in no case more than four, of the total Products
12 purchased from each supplier of the Products intended for sale in California.

13 **2.3.3 Products that Exceed Stipulated Levels Pursuant to**
14 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3 show levels of
15 lead exceeding the Reformulation Standard, Defendant shall: (1) refuse to accept all of the
16 Products that were purchased under the particular purchase order; (2) send a notice to the
17 supplier explaining that such Products do not comply with the suppliers' certification; and (3)
18 apply the testing frequency set forth in 2.3.1 as though the next shipment from the supplier were
19 the first one following the Compliance Date.

20 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing
21 of the Products. Any such testing will be conducted by CEH at an independent laboratory, in
22 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
23 excess of the Reformulation Standard for two or more Products, CEH shall inform Defendant of
24 the test results, including information sufficient to permit Defendant to identify the Product(s).
25 Defendant shall, within thirty days following such notice, provide CEH, at the address listed in
26 Section 12, with the certification and testing information demonstrating its compliance with
27 Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with
28 information demonstrating that it complied with Sections 2.2 and/or 2.3, Defendant shall be

1 liable for stipulated payments in lieu of penalties for Products for which CEH produces tests
2 demonstrating Lead levels exceeding the Reformulation Standard, as set forth below. In
3 addition, Defendant shall then apply the testing frequency set forth in 2.3 as though the next
4 shipment from the supplier were the first one following the Compliance Date. The payments
5 shall be made to CEH and used for the purposes described in Section 3.1.

6 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
7 payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount for
8 each such violation of this Consent Judgment shall be as follows:

9	First Occurrence:	\$1,250
10	Second Occurrence:	\$1,500
11	Third Occurrence:	\$1,750
12	Thereafter:	\$2,500

13 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,
14 regardless of the number of units of Product tested by CEH with exceedances of the Lead levels
15 set forth in this Consent Judgment, shall be \$3,500.

16 **2.4.2 Products in the stream of commerce.** Defendant's Products that
17 have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to
18 the Compliance Date shall be released from any claims that were brought or that could have been
19 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of
20 Section 7.1, below.

21 **3. SETTLEMENT PAYMENTS**

22 **3.1** Within ten days of entry of this Consent Judgment, Defendant shall pay a
23 total of \$16,250 as a settlement payment. This total shall be paid in two separate checks
24 delivered to the offices of the Lexington Law Group, LLP at the address set forth in section 12
25 below and made payable and allocated as follows. Any failure by Defendant to comply with the
26 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
27 after the delivery date the payment is received. The late fees required under this section shall be
28 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought

1 pursuant to section 5 of this Consent Judgment.

2 **3.1.1 Monetary Payment in Lieu of Penalty:** The sum of \$5,250 shall
3 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This
4 payment shall be made by check payable to Center for Environmental Health. CEH shall use
5 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
6 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

7 **3.1.2 Attorneys' Fees and Costs:** The sum of \$11,000 shall be used to
8 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,
9 and any other costs incurred as a result of investigating, bringing this matter to Defendant's
10 attention, litigating and negotiating a settlement in the public interest. This payment shall be
11 made by check payable to Lexington Law Group, LLP.

12 **4. MODIFICATION OF CONSENT JUDGMENT**

13 **4.1** This Consent Judgment may be modified by written agreement of
14 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

15 **4.2** CEH intends to enter into agreements with other entities that manufacture,
16 distribute and/or sell Products. Should Defendant determine that the provisions of any such
17 Consent Judgment with a similarly situated manufacturer or distributor of products are less
18 stringent, Defendant may request a modification of this Consent Judgment to conform with the
19 terms of the later entered Consent Judgment. Upon 30 days prior written notice of Defendant's
20 request for a modification, CEH shall inform Defendant whether it will agree to such
21 modification. If CEH does not agree, Defendant may move the Court for a modification
22 pursuant to this section.

23 **5. ENFORCEMENT OF CONSENT JUDGMENT**

24 **5.1** Either party may, by motion or application for an order to show cause,
25 enforce the terms and conditions contained in this Consent Judgment.

26 **6. APPLICATION OF CONSENT JUDGMENT**

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

1 of them.

2 **7. CLAIMS COVERED**

3 **7.1** This Consent Judgment is a full, final and binding resolution between
4 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
5 the Notice or Complaint against Defendant (including any claims that could be asserted in
6 connection with any of the Products covered by this Consent Judgment) or its parents,
7 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or
8 customers (collectively, “Defendant Releasees”) based on failure to warn about alleged
9 Proposition 65 exposures with respect to any Products manufactured, distributed or sold by
10 Defendant (“Covered Claims”) on or prior to the date of entry of this Consent Judgment.
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
12 for purposes of Lead exposures from the Products.

13 **7.2** Further, CEH hereby releases all retailers, distributors, and licensors of
14 Defendant’s products from any claims related to the Notice, the Complaint and this Judgment,
15 and CEH agrees to dismiss any such claims that it has asserted or could assert against any
16 retailers, distributors or licensors of Defendant’s Products. If CEH has filed a complaint against
17 a retailer, distributor or licensor of Defendant’s Products, then CEH shall, within 10 days of
18 entry of this Consent Judgment file a dismissal, with prejudice, as to those claims relating to
19 Defendant’s Products. CEH shall provide Defendant with a conformed copy of the dismissal.
20 As to each of Defendant’s retailers, distributors or licensors which have not been served with a
21 60-day notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said
22 retailer, distributor, or licensor which includes within its scope, whether directly or indirectly,
23 any of Defendant’s products. For purposes of the release provided in this Section, the term
24 “retailer, distributor or licensor” shall include their respective related entities, predecessors,
25 successors, assigns, parents, subsidiaries, affiliates, officers, partners, directors, stockholders,
26 shareholders, attorneys, representatives, agents and employees, past, present and future.

27 **8. SEVERABILITY**

28 **8.1** In the event that any of the provisions of this Consent Judgment are

1 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
2 adversely affected.

3 **9. SPECIFIC PERFORMANCE**

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

11 **10. GOVERNING LAW**

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

14 **11. RETENTION OF JURISDICTION**

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

17 **12. PROVISION OF NOTICE**

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

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

24 For Defendant: David Waite
25 Jeffer, Mangels, Butler & Marmaro LLP
26 1900 Avenue of the Stars, 7th Floor
27 Los Angeles, CA 90067

27 **13. COURT APPROVAL**

28 **13.1** CEH will comply with the settlement notice provisions of Health and

1 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

2 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
3 further force and effect. If this Consent Judgment is appealed, with the exception of the
4 injunctive relief provisions in Section 2, above, which remain in effect during any appeal, it does
5 not become effective and has no force or effect until all issues on appeal are resolved.

6 **14. EXECUTION AND COUNTERPARTS**

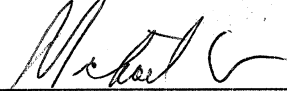
7 **14.1** The stipulations to this Consent Judgment may be executed in
8 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
9 document.

10 **15. AUTHORIZATION**

11 **15.1** Each signatory to this Consent Judgment certifies that he or she is
12 fully authorized by the party he or she represents to stipulate to this Consent Judgment and to
13 enter into and execute the Consent Judgment on behalf of the party represented and legally bind
14 that party. The undersigned have read, understand and agree to all of the terms and conditions of
15 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
16 and costs.

17
18 **AGREED TO:**

19 CENTER FOR ENVIRONMENTAL HEALTH

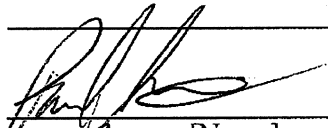
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21 
22 _____
23 Michael Green, Executive Director
24 Center for Environmental Health

Dated: 6/26/09

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1 CUDLIE ACCESSORIES, LLC and
2 CUDLIE ACCESSORIES, INC.

Dated: 6/25/09

3 _____
4 
5 _____ [Name]
6 Pres. _____
7 [Title]

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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