

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
Plaintiff, )  
v. )  
UNIQUE INDUSTRIES, INC., and Defendant )  
DOES 1 through 200, inclusive, )  
Defendants. )

---

Case No. CGC-09-489838

**[PROPOSED] CONSENT JUDGMENT**

1           **1. INTRODUCTION AND GENERAL TERMS**

2           **1.1** On or about June 25, 2009, 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. Unique*  
5 *Industries, Inc.*, San Francisco County Superior Court Case Number CGC-09-489838 (the  
6 “Action”), for civil penalties and injunctive relief pursuant to the provisions of California Health  
7 & Safety Code §25249.5 *et seq.* (“Proposition 65”).

8           **1.2** Defendant Unique Industries, Inc. (“Unique Industries”) is a “person in  
9 the course of doing business” under Proposition 65 and distributes and/or sells artificial leis such  
10 as Item No. 9038, SKU No. 0-11179-09038-9 (the “Products”) in the State of California. Unique  
11 Industries and CEH are referred to collectively herein as the Parties.

12           **1.3** On or about April 7, 2009, CEH served Unique Industries and the  
13 appropriate public enforcement agencies with the requisite 60-day notice that Unique Industries  
14 is in violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that  
15 Unique Industries exposes individuals who use or otherwise handle the Products to lead and/or  
16 lead compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of  
17 California to cause cancer, birth defects and other reproductive harm, without first providing  
18 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive  
19 toxicity of Lead. The notice and Complaint allege that Unique Industries’s conduct violates  
20 Health & Safety Code §25249.6, the warning provision of Proposition 65.

21           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this  
22 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
23 personal jurisdiction over Unique Industries as to the acts alleged in CEH’s Complaint, that  
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this  
25 Consent Judgment as a full and final resolution of all claims which were or could have been  
26 raised in the Complaint based on the facts alleged therein.

27           **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of  
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'  
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
7 any other or future legal proceedings. This Consent Judgment is the product of negotiation and  
8 compromise and is accepted by the Parties, for purposes of settling, compromising and resolving  
9 issues disputed in this action, including future compliance by Unique Industries with Section 2  
10 of this Consent Judgment, and shall not be used for any other purpose, or in any other matter.

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Lead Reformulation.** After the date of entry of this Consent Judgment  
13 (the "Compliance Date"), Unique Industries shall not manufacture, distribute, ship, or sell, or  
14 cause to be manufactured, distributed, or sold, any Product that contains or is comprised of any  
15 material that contains: (a) Lead in concentrations that exceed 300 parts per million ("ppm"); (b)  
16 any Surface Coating with Lead in concentrations that exceed 90 ppm; or (c) any more stringent  
17 Lead requirements established by the Consumer Products Safety Improvement Act of 2008. For  
18 purposes of this Consent Judgment, "Surface Coating" shall carry the same meaning as "Paint or  
19 other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other similar surface-  
20 coating materials means a fluid, semi-fluid, or other material, with or without a suspension of  
21 finely divided coloring matter, which changes to a solid film when a thin layer is applied to a  
22 metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include  
23 printing inks or those materials which actually become a part of the substrate, such as the  
24 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as  
25 by electroplating or ceramic glazing."). Collectively, these standards are referred to herein as the  
26 "Reformulation Standard."

27 **2.2 Certification of level from suppliers.** Unique Industries shall obtain  
28 written certification with corresponding test results from its suppliers of the Products certifying

1 that neither the Products nor any materials of which the Products are comprised contain Lead  
2 concentrations exceeding the Reformulation Standard.

3           **2.3 Testing.** In order to help ensure compliance with the requirements of  
4 Section 2.1, Unique Industries shall conduct testing to confirm that neither the Products intended  
5 for distribution or sale in California, nor any materials of which such Products are comprised,  
6 contain Lead concentrations exceeding the Reformulation Standard. Testing pursuant to this  
7 section shall be conducted pursuant to the most current version of United States Environmental  
8 Protection Agency Method 3050B or its equivalent (the "Test Protocol"). The results of all  
9 testing performed pursuant to this section shall be retained for a period of three years from the  
10 date of the test and shall be made available to CEH upon written request. After the Compliance  
11 Date, Unique Industries shall test at least one randomly selected unit of each style of Products  
12 every Calendar Half (as that term is defined in section 2.4.1 below).

13           **2.3.1 Products that exceed Reformulation Standard pursuant**  
14 **to Unique Industries Testing.** If the results of the testing required pursuant to section 2.3  
15 shows levels of lead exceeding the Reformulation Standard, Unique Industries shall notify the  
16 supplier that such Products do not comply with the supplier's certification and shall either return  
17 all of the Products that were purchased under the particular purchase order to the supplier or  
18 lawfully destroy such Products. In addition, Unique Industries shall increase the number of units  
19 tested under section 2.3 above to two (2) randomly selected units of each style of Products from  
20 the next delivered shipment from such supplier immediately following a Product test exceeding  
21 the Reformulation Standard.

22           **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing  
23 of the Products. Any such testing will be limited to Products sold in California and will be  
24 conducted pursuant to the Test Protocol at an independent laboratory. In the event that CEH's  
25 testing demonstrates Lead levels in excess of the Reformulation Standard for one or more  
26 Products sold in California, CEH shall inform Unique Industries of the result(s), including  
27 information sufficient to permit Unique Industries to identify the Product(s). Upon written  
28 request by Unique Industries, CEH shall provide Unique Industries with a sample unit of any

1 Product suspected to exceed the Reformulation Standard so that Unique Industries can conduct a  
2 separate analysis of the Product at its own expense. Unique Industries shall, within ten (10) days  
3 following such notice, provide CEH, at the address listed in section 12, with its supplier  
4 certification and testing information demonstrating its compliance with sections 2.2 and 2.3 of  
5 this Consent Judgment. Unique Industries shall then increase the frequency of testing performed  
6 on the Products supplied by the supplier of the Product(s) for which CEH demonstrates a test  
7 with Lead levels exceeding the Reformulation Standard to two (2) randomly selected units of  
8 each style of Products from the next delivered shipment from such supplier immediately  
9 following a Product test exceeding the Reformulation Standard. Unique Industries shall also be  
10 liable for stipulated payments in lieu of penalties for Products for which CEH produces tests  
11 demonstrating Lead levels exceeding the Reformulation Standard as set forth below. These  
12 payments shall be made to CEH and used for the purposes described in section 4.1 and to pay for  
13 related attorneys' fees and costs. The stipulated payments in lieu of penalties and other remedies  
14 provided for herein are in addition to any other remedies available to enforce the terms of this  
15 Consent Judgment.

16 **2.4.1 Stipulated penalty assuming compliance with sections**  
17 **2.2 and 2.3.** Assuming Unique Industries provides CEH with information demonstrating that it  
18 complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same purchase  
19 order as those with tests showing Lead concentrations exceeding the Reformulation Standard,  
20 the stipulated penalty shall be as follows for each Occurrence:

21 First Occurrence: \$250  
22 Second Occurrence: \$750  
23 Third Occurrence: \$1,500  
24 Thereafter: \$3,750

25 For purposes of this section and section 2.4.2, "Occurrence" shall mean: CEH's submission of  
26 valid, noncompliant test results demonstrating that a Product sold in California exceeds the  
27 Reformulation Standard; however, submission of multiple noncompliant test results for Products  
28 shipped under Unique Industries' purchase orders placed within a Calendar Half shall be

1 considered a single Occurrence. "Calendar Half" shall mean, for each year: September 1 to  
2 March 1; and March 2 to August 31.

3 **2.4.2 Stipulated penalty assuming non-compliance with**  
4 **sections 2.2 and 2.3.** Assuming Unique Industries fails to provide CEH with information  
5 demonstrating that it complied with sections 2.2 and 2.3 for the Products purchased pursuant to  
6 the same purchase order as those with tests showing Lead concentrations exceeding the  
7 Reformulation Standard, the stipulated penalty shall be as follows for each Occurrence:

8 First Occurrence: \$1,500

9 Second Occurrence: \$3,500

10 Third Occurrence: \$7,500

11 Thereafter: \$15,000

12 **3. SETTLEMENT PAYMENTS**

13 **3.1** Within five days of entry of this Consent Judgment, Unique Industries  
14 shall pay a total of \$25,000 as a settlement payment. This total shall be paid in three separate  
15 checks delivered to the offices of the Lexington Law Group at the address set forth in section 12  
16 below and made payable and allocated as follows. Any failure by Unique Industries to comply  
17 with the payment terms herein shall be subject to a stipulated late fee in the amount of fifty  
18 dollars (\$50) for each day after the delivery date the payment is received. The late fees required  
19 under this section shall be recoverable, together with reasonable attorneys' fees, in an  
20 enforcement proceeding brought pursuant to section 5 of this Consent Judgment.

21 **3.1.1 Penalty:** The sum of \$1,000 in penalties pursuant to Health and  
22 Safety Code § 25249.7(b). This payment shall be made by check payable to Center for  
23 Environmental Health. CEH shall apportion the penalties in accordance with Health and Safety  
24 Code § 25249.12.

25 **3.1.2 Monetary Payment in Lieu of Penalty:** The sum of \$7,850 shall  
26 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This  
27 payment shall be made by check payable to Center for Environmental Health. CEH shall use  
28 such funds to continue its work protecting people from exposures to toxic chemicals. As part of

1 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

2                   **3.1.3 Attorneys' Fees and Costs:** The sum of \$16,150 shall be used to  
3 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,  
4 and any other costs incurred as a result of investigating, bringing this matter to Unique  
5 Industries's attention, litigating and negotiating a settlement in the public interest. This payment  
6 shall be made by check payable to Lexington Law Group.

7           **4. MODIFICATION OF CONSENT JUDGMENT**

8           **4.1** This Consent Judgment may be modified by written agreement of CEH  
9 and Unique Industries, or upon motion of CEH or Unique Industries as provided by law.

10           **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

16           **6. APPLICATION OF CONSENT JUDGMENT**

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

20           **7. RELEASE**

21           **7.1** This Consent Judgment is a full, final, and binding resolution between  
22 CEH and Unique Industries and its parents, shareholders, divisions, subdivisions, subsidiaries,  
23 partners, sister companies and their successors and assigns (the "Defendant Releasees"), and all  
24 entities to whom they distribute or sell the Products, including, but not limited to, distributors,  
25 wholesalers, customers (specifically including, but not limited to, Kmart Corporation), retailers,  
26 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of any  
27 violation of Proposition 65 or any other statutory or common law claims that have been or could  
28 have been asserted in the public interest against Unique Industries, Defendant Releasees, and

1 Downstream Defendant Releasees, regarding the failure to warn about exposure to Lead arising  
2 in connection with Products manufactured, distributed, shipped, or sold by Unique Industries  
3 prior to the Compliance Date.

4           **7.2** CEH, for itself and acting on behalf of the public interest pursuant to  
5 Health and Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims  
6 against Unique Industries, Defendant Releasees, and Downstream Defendant Releasees, arising  
7 from any violation of Proposition 65 or any other statutory or common law claims that have been  
8 or could have been asserted in the public interest regarding the failure to warn about exposure to  
9 Lead arising in connection with Products manufactured, distributed or sold by Unique Industries  
10 prior to the Compliance Date.

11           **7.3** Compliance with the terms of this Consent Judgment by Unique  
12 Industries and its Defendant Releasees shall constitute compliance with Proposition 65 by  
13 Unique Industries, its Defendant Releasees and their Downstream Defendant Releasees with  
14 respect to any alleged failure to warn about Lead in Products distributed or sold by Unique  
15 Industries after the Effective Date.

16           **8. SEVERABILITY**

17           **8.1** In the event that any of the provisions of this Consent Judgment are held  
18 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
19 affected.

20           **9. SPECIFIC PERFORMANCE**

21           **9.1** The Parties expressly recognize that Unique Industries's obligations under  
22 this Consent Judgment are unique. In the event that Unique Industries is found to be in breach of  
23 this Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties  
24 agree that it would be extremely impracticable to measure the resulting damages and that such  
25 breach would cause irreparable damage. Accordingly, CEH, in addition to any other available  
26 rights or remedies, may sue in equity for specific performance, and Unique Industries expressly  
27 waives the defense that a remedy in damages will be adequate.  
28

1           **10. GOVERNING LAW**

2           **10.1** The terms of this Consent Judgment shall be governed by the laws of the  
3 State of California.

4           **11. RETENTION OF JURISDICTION**

5           **11.1** This Court shall retain jurisdiction of this matter to implement and enforce  
6 the terms this Consent Judgment.

7           **12. PROVISION OF NOTICE**

8           **12.1** All notices required pursuant to this Consent Judgment and  
9 correspondence shall be sent to the following:

10 For CEH:

11 Howard Hirsch

12 Lexington Law Group

13 1627 Irving Street

14 San Francisco, CA 94122

For Unique Industries:

Glenn Wattenmaker

General Counsel

Unique Industries, Inc.

4750 League Island Boulevard

Philadelphia, PA 19112

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. The Parties agree to support a Motion for Approval of this Consent  
19 Judgment.

20           **14. EXECUTION AND COUNTERPARTS**

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

24           **15. AUTHORIZATION**

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

1 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
2 costs.

3 **AGREED TO:**

4 CENTER FOR ENVIRONMENTAL HEALTH

5  
6   
7 Michael Green, Executive Director  
Center for Environmental Health

8 UNIQUE INDUSTRIES, INC.

9  
10  
11 \_\_\_\_\_  
Signature

12  
13 \_\_\_\_\_  
Printed Name

14  
15 \_\_\_\_\_  
Title

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
2 costs.

3 **AGREED TO:**

4 CENTER FOR ENVIRONMENTAL HEALTH

5

6 \_\_\_\_\_  
7 Michael Green, Executive Director  
8 Center for Environmental Health

9 UNIQUE INDUSTRIES, INC.

10 \_\_\_\_\_  
11   
12 Signature

13 \_\_\_\_\_  
14 Craig Novak  
15 Printed Name

16 \_\_\_\_\_  
17 President  
18 Title

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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