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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

vs.

ADVANCE PUBLISHERS, L.C., et al.,

Defendants.

) Case No. CIV-1101717

) [PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Advance Publishers, L.C. (“Defendant”), to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Advance Publishers, L.C.*, Marin County Superior Court Case No. CIV-1101717 (the “Action”).

1.2 On January 11, 2011, CEH provided a “Notice of Violation of Proposition 65” to the California Attorney General, the District Attorneys of every county in

1 California, the City Attorneys of every California city with a population greater than
2 750,000, and to Defendant regarding the presence of lead in children’s vinyl reusable
3 carrying bags with Disney Pixar designs.

4 1.3 On April 4, 2011, CEH filed the complaint against Defendant in the Action.

5 1.4 Defendant is a corporation that employs 10 or more persons, and which
6 manufactures, distributes and/or sells Covered Products in the State of California.

7 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
8 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations
9 contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged
10 in the Complaint, that venue is proper in the County of Marin, and that this Court has
11 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims
12 which were or could have been raised in the Complaint based on the facts alleged therein
13 with respect to Covered Products manufactured, distributed, and/or sold by Defendant.

14 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
15 settlement of all claims that were raised in the Complaint, or which could have been
16 raised in the Complaint, arising out of the facts or conduct related to Defendant alleged
17 therein. By execution of this Consent Judgment and agreeing to comply with its terms,
18 the Parties do not admit any facts or conclusions of law including, but not limited to, any
19 facts or conclusions of law suggesting or demonstrating any violations of Proposition 65
20 or any other statutory, common law or equitable requirements. Nothing in this Consent
21 Judgment is or shall be construed as an admission by the Parties of any fact, conclusion
22 of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
23 constitute or be construed as an admission by the Parties of any fact, conclusion of law,
24 issue of law, or violation of law. Defendant denies the material, factual and legal
25 allegations in CEH’s Complaint and expressly denies any wrong doing whatsoever.
26 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
27 argument or defense the Parties may have in this or any other pending or future legal
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1 proceedings. This Consent Judgment is the product of negotiation and compromise and
2 is accepted by the Parties solely for purposes of settling, compromising, and resolving
3 issues disputed in this action.

4 **2. DEFINITIONS**

5 2.1 The term “Covered Product” means children’s vinyl reusable carrying bags
6 with Disney Pixar Designs.

7 2.2 The term “Effective Date” means the date of entry of this Consent
8 Judgment.

9 **3. INJUNCTIVE RELIEF**

10 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant
11 shall not manufacture, ship, sell or offer for sale in California or anywhere else any
12 Covered Product unless such Covered Product complies with the following Lead Limits:

13 3.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
14 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

15 3.1.2 All other materials: no more than 0.03 percent Lead by weight (300
16 ppm). Effective August 14, 2011, the Lead Limit established by this Section 3.1.2 shall
17 be no more than 0.01 percent Lead by weight (100 ppm), unless the Consumer Product
18 Safety Commission (“CPSC”) determines, in accordance with Section 101(a)(2)(C) of the
19 Consumer Product Safety Improvement Act of 2008 (“CPSIA”), that it is not
20 technologically feasible to meet this limit as to a product category that includes the
21 Covered Products. If CPSC makes such a determination, the maximum Lead Limit under
22 this Section 3.1.2 shall remain 300 ppm.

23 3.2 **Market Withdrawal of Covered Products.** On or before the Effective
24 Date, Defendant shall cease shipping: (a) Toy Story 3 Carry Bag, SKU No. 0-27506-
25 97524-3, and (b) Cars Carry Bag, SKU No. 0-27506-97526-7, as identified in CEH’s pre-
26 suit Notice of Violation to Defendant (the “Recall Covered Products”), to stores and/or
27 customers in California, and Defendant shall withdraw the Recall Covered Products from
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1 the market in California, and, at a minimum, send instructions to any of its stores and/or
2 customers that offer the Recall Covered Products for sale in California to cease offering
3 such Recall Covered Products for sale and to either return all Recall Covered Products to
4 Defendant for destruction, or to directly destroy the Recall Covered Products. Any
5 destruction of the Recall Covered Products shall be in compliance with all applicable
6 laws. Defendant shall keep and make available to CEH for inspection and copying
7 records and correspondence regarding the market withdrawal and destruction of the
8 Recall Covered Products. If there is a dispute over the corrective action, the Parties shall
9 meet and confer before seeking any remedy in court. Defendant represents that this
10 market withdrawal was already implemented and completed in mid-January 2011.

11 **4. ENFORCEMENT**

12 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
13 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
14 provide the violating party thirty (30) days advanced written notice of the alleged
15 violation. The Parties shall meet and confer during such thirty (30) day period in an
16 effort to try to reach agreement on an appropriate cure for the alleged violation. After
17 such thirty (30) day period, the Party seeking to enforce may, by new action, motion or
18 order to show cause before the Superior Court of Marin, seek to enforce the terms and
19 conditions contained in this Consent Judgment. Should the Party seeking to enforce
20 prevail on any motion or application under this section, such Party shall be entitled to
21 recover its reasonable attorneys' fees and costs associated with such motion, order to
22 show cause or procedure from the other Party.

23 **5. PAYMENTS**

24 5.1 **Payments From Defendant.** Within five (5) days of the entry of this
25 Consent Judgment, Defendant shall pay the total sum of \$35,000 as a settlement payment.

26 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall
27 be paid in three separate checks delivered to the offices of the Lexington Law Group
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1 (Attn: Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117 and made
2 payable and allocated as follows:

3 5.2.1 Defendant shall pay the sum of \$3,500 as a penalty pursuant to
4 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance
5 with Health & Safety Code §25249.12. The penalty check shall be made payable to the
6 Center For Environmental Health.

7 5.2.2 Defendant shall pay the sum of \$9,500 as payment to CEH in lieu of
8 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of
9 Regulations, Title 11, §3202(b). CEH will use such funds to continue its work educating
10 and protecting people from exposures to toxic chemicals, including heavy metals. CEH
11 may also use a portion of such funds to monitor compliance with the reformulation
12 requirements of this and other similar Consent Judgments and to purchase and test
13 Covered Products to confirm compliance with such reformulation requirements. In
14 addition, as part of its Community Environmental Action and Justice Fund, CEH will use
15 four percent of such funds to award grants to grassroots environmental justice groups
16 working to educate and protect people from exposures to toxic chemicals. The method of
17 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
18 The payment in lieu of penalty check shall be made payable to the Center for
19 Environmental Health.
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21 5.2.3 Defendant shall pay the sum of \$22,000 as reimbursement of
22 reasonable attorneys' fees and costs. The attorneys fees and cost reimbursement check
23 shall be made payable to the Lexington Law Group.

24 **6. MODIFICATION AND DISPUTE RESOLUTION**

25 6.1 **Modification.** This Consent Judgment may be modified from time to time
26 by express written agreement of the Parties, with the approval of the Court, or by an order
27 of this Court upon motion and in accordance with law.

28 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent

1 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to
2 filing a motion to modify the Consent Judgment.

3 **7. CLAIMS COVERED AND RELEASE**

4 7.1 This Consent Judgment is a full, final, and binding resolution between CEH
5 and Defendant and Defendant’s parents, shareholders, licensors, divisions, subdivisions,
6 subsidiaries, partners, sister companies and their successors and assigns (“Defendant
7 Releasees”), and all to whom they distribute or sell Covered Products including, but not
8 limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative
9 members, and licensees (“Downstream Defendant Releasees”), of any violation of
10 Proposition 65 or any other statutory or common law claims that have been or could have
11 been asserted in the public interest against Defendant, Defendant Releasees, and
12 Downstream Defendant Releasees, regarding the failure to warn about exposure to lead
13 arising in connection with Covered Products manufactured, distributed, or sold by
14 Defendant prior to the Effective Date.

15 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health
16 & Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims
17 against Defendant, Defendant Releasees, and Downstream Defendant Releasees, arising
18 from any violation of Proposition 65 or any other statutory or common law claims that
19 have been or could have been asserted in the public interest regarding the failure to warn
20 about exposure to lead arising in connection with Covered Products manufactured,
21 distributed or sold by Defendant prior to the Effective Date. Accordingly, CEH will
22 dismiss the action without prejudice as to Safeway Inc. promptly following the Effective
23 Date.

24 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
25 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
26 Defendant Releasees and their Downstream Defendant Releasees with respect to any
27 alleged failure to warn about lead in Covered Products manufactured, distributed or sold
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1 by Defendant after the Effective Date.

2 **8. PROVISION OF NOTICE**

3 8.1 When any Party is entitled to receive any notice under this Consent
4 Judgment, the notice shall be sent by first class and electronic mail as follows:

5 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
6 pursuant to this Consent Judgment shall be:

7 Trenton H. Norris
8 Arnold & Porter LLP
9 One Embarcadero Center, 22nd Floor
10 San Francisco, CA 94111
11 Trent.Norris@aporter.com

12 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices
13 pursuant to this Consent Judgment shall be:

14 Howard Hirsch
15 Lexington Law Group
16 503 Divisadero Street
17 San Francisco, CA 94117
18 hhirsch@lexlawgroup.com

19 8.2 Any Party may modify the person and address to whom the notice is to be
20 sent by sending the other Party notice by first class mail and/or other verifiable form of
21 written communication.

22 **9. COURT APPROVAL**

23 9.1 This Consent Judgment shall become effective on the Effective Date,
24 provided however, that CEH shall prepare and file a Motion for Approval of this Consent
25 Judgment and Defendant shall support approval of such Motion.

26 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force
27 or effect and shall not be introduced into evidence or otherwise used in any proceeding
28 for any purpose.

1 **10. GOVERNING LAW AND CONSTRUCTION**

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

4 **11. ENTIRE AGREEMENT**

5 11.1 This Consent Judgment contains the sole and entire agreement and
6 understanding of the Parties with respect to the entire subject matter hereof, and any and
7 all prior discussions, negotiations, commitments, or understandings related thereto, if
8 any, are hereby merged herein and therein. There are no warranties, representations, or
9 other agreements between the Parties except as expressly set forth herein. No
10 representations, oral or otherwise, express or implied, other than those specifically
11 referred to in this Consent Judgment have been made by any Party hereto. No other
12 agreements not specifically contained or referenced herein, oral or otherwise, shall be
13 deemed to exist or to bind any of the Parties hereto. Any agreements specifically
14 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
15 of the Parties hereto only to the extent that they are expressly incorporated herein. No
16 supplementation, modification, waiver, or termination of this Consent Judgment shall be
17 binding unless executed in writing by the Party to be bound thereby. No waiver of any of
18 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of
19 any of the other provisions hereof whether or not similar, nor shall such waiver constitute
20 a continuing waiver.

21 **12. RETENTION OF JURISDICTION**

22 12.1 This Court shall retain jurisdiction of this matter to implement or modify
23 the Consent Judgment.

24 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

25 13.1 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
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1 enter into and execute the Consent Judgment on behalf of the Party represented and
2 legally to bind that Party.


3 **14. NO EFFECT ON OTHER SETTLEMENTS**

4 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
5 claim against another entity on terms that are different than those contained in this
6 Consent Judgment.

7 **15. EXECUTION IN COUNTERPARTS**

8 15.1 The stipulations to this Consent Judgment may be executed in counterparts
9 and by means of facsimile, which taken together shall be deemed to constitute one
10 document.

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12 IT IS SO STIPULATED:

13 Dated: <u>July 29</u> , 2011	14 CENTER FOR ENVIRONMENTAL HEALTH 15  16 _____ 17 18 <u>CHARLIE PIZARRO</u> 19 Printed Name 20 21 <u>ASSOCIATE DIRECTOR</u> 22 Title
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Dated: <u>AUGUST 2</u> , 2011	ADVANCE PUBLISHERS, L.C. <u><i>Leonard Habas</i></u> <u>Leonard Habas</u> Printed Name <u>Chairman & CEO</u> Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____
Judge of the Superior Court of the State of
California