



1 (“Notice”) to the California Attorney General, the District Attorneys of every county in California,  
2 the City Attorneys of every California city with a population greater than 750,000, and to Settling  
3 Defendants regarding the presence of lead and lead compounds (collectively, “Lead”) in beanbag  
4 chairs made with vinyl materials (“Covered Products”) manufactured, distributed or sold by  
5 Settling Defendants.

6 1.3 On July 26, 2011, CEH filed the Action against Settling Defendants.

7 1.4 For purposes of this Consent Judgment only, CEH and Settling Defendants (the  
8 “Parties”) stipulate that this Court has jurisdiction over the allegations contained in the Complaint  
9 and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that  
10 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent  
11 Judgment as a full and final resolution of all claims which were or could have been raised in the  
12 Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
13 distributed, and/or sold by Settling Defendants.

14 1.5 CEH and Settling Defendants enter into this Consent Judgment as a full and  
15 final settlement of all claims that were raised in the Notice and Complaint, or which could have  
16 been raised in the Notice or Complaint, arising out of the facts or conduct related to Settling  
17 Defendants alleged therein. By execution of this Consent Judgment and agreeing to comply with  
18 its terms, 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 or any  
20 other statutory, common law or equitable requirements relating to Lead in the Covered Products.  
21 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any  
22 fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
23 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
24 issue of law, or violation of law. Settling Defendants deny the material, factual and legal  
25 allegations in CEH’s Complaint and expressly deny any wrong doing whatsoever. Nothing in this  
26 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the  
27 Parties may have in this or any other pending or future legal proceedings. This Consent Judgment  
28 is the product of negotiation and compromise and is accepted by the Parties solely for purposes of

1 settling, compromising, and resolving issues disputed in this action.

2 **2. INJUNCTIVE RELIEF**

3 2.1 **Reformulation of Covered Products.** After the date of entry of this Consent  
4 Judgment (the “Effective Date”), Settling Defendants shall not manufacture, ship, sell or offer for  
5 sale any Covered Product that contains any Accessible Component made of any material that is  
6 more than 0.02 percent (200 parts per million (“ppm”)) Lead by weight. For purposes of this  
7 Consent Judgment, “Accessible Component” shall mean a component of a Covered Product that  
8 could be touched or handled by a consumer during normal and reasonably foreseeable use.

9 2.2 **Consumer Recall of Covered Products.** On or before the Effective Date,  
10 Settling Defendants shall have withdrawn from sale in California, and attempt to recall from  
11 consumer purchasers, the Deluxe Vinyl Teen Red Beanbag Chair, Item Number 1013155 (“Recall  
12 Product”), which was identified in the 60-Day Notice sent by CEH to Settling Defendants. Such  
13 recall shall extend to consumers who purchased the Recall Product between January 1, 2010 and  
14 April 30, 2011 and exclude CEH or its agents. In attempting to recall the Recall Product from  
15 prior purchasers, Settling Defendants shall, at a minimum: (a) determine the name and last known  
16 mailing address of prior purchasers based on a review of Settling Defendants’ records and an  
17 inquiry to their retailers; (b) send a notice of the recall to prior purchasers that explains that the  
18 Recall Product is being recalled due to a Proposition 65 Settlement involving lead in the Recall  
19 Products and offer a full refund of the retail purchase price plus any shipping costs to any  
20 consumer who returns the Recall Product to Settling Defendants within 90 days of the sending of  
21 the recall notice; (c) honor any valid requests for refunds that are received within 90 days of the  
22 sending of the recall notice; and (d) destroy any Recall Products that are returned by retailers or  
23 consumers. Any destruction of the Recall Products shall be in compliance with all applicable laws.  
24 Settling Defendants shall keep and make available to CEH for inspection and copying records and  
25 correspondence regarding the recall and destruction of the Recall Products. If there is a dispute  
26 over the corrective action, the Parties shall meet and confer before seeking any remedy in court.

27 **3. ENFORCEMENT**

28 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show

1 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the  
2 allegedly breaching party twenty (20) days advanced written notice of the alleged violation. The  
3 Parties shall meet and confer during such twenty (20) day period in an effort to try to reach  
4 agreement on an appropriate cure for the alleged violation. After such twenty (20) day period, the  
5 Party seeking to enforce may, by new action, motion or order to show cause before the Superior  
6 Court of Marin, seek to enforce the terms and conditions contained in this Consent Judgment.

7 **4. PAYMENTS**

8 4.1 **Payments From Settling Defendants.** Within five (5) days of the entry of this  
9 Consent Judgment, Settling Defendants shall pay the total sum of \$15,000 as a settlement  
10 payment. If Settling Defendants fail to comply with the payment terms herein, CEH shall be  
11 entitled to enforce the payment terms by motion or order to show cause before the Superior Court  
12 of Marin and shall be entitled to recover its reasonable attorneys' fees and costs from Settling  
13 Defendants in connection with any such enforcement proceeding brought pursuant to Section 3. If  
14 the Court's approval of this Consent Judgment is overturned on appeal, and unless the Parties can  
15 agree to a modification or the Court orders otherwise, CEH shall return any funds received from  
16 Settling Defendants within thirty (30) days after such appeal becomes final.

17 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendants  
18 shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn:  
19 Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and  
20 allocated as follows:

21 4.2.1 Settling Defendants shall pay the sum of \$1,500 as a penalty pursuant to  
22 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with  
23 Health & Safety Code §25249.12. The penalty check shall be made payable to the Center For  
24 Environmental Health.

25 4.2.2 Settling Defendants shall pay the sum of \$4,000 as payment to CEH in  
26 lieu of penalty pursuant to Health & Safety Code §25249.7(b), and California Code of  
27 Regulations, Title 11, §3202(b). CEH will use such funds to continue its work educating and  
28 protecting people from exposures to toxic chemicals, including heavy metals. CEH may also use a

1 portion of such funds to monitor compliance with the reformulation requirements of this and other  
2 similar Consent Judgments. In addition, as part of its Community Environmental Action and  
3 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental  
4 justice groups working to educate and protect people from exposures to toxic chemicals. The  
5 method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).  
6 The payment in lieu of penalty check shall be made payable to the Center For Environmental  
7 Health.

8 4.2.3 Settling Defendants shall pay the sum of \$9,500 as reimbursement of  
9 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check  
10 shall be made payable to the Lexington Law Group.

## 11 **5. MODIFICATION AND DISPUTE RESOLUTION**

12 5.1 **Modification.** This Consent Judgment may be modified from time to time by  
13 express written agreement of the Parties, with the approval of the Court, or by an order of this  
14 Court upon motion and in accordance with law.

15 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent  
16 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a  
17 motion to modify the Consent Judgment.

## 18 **6. CLAIMS COVERED AND RELEASE**

19 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and  
20 Settling Defendants and Settling Defendants' parents, shareholders, divisions, subdivisions,  
21 subsidiaries, partners, sister companies and their successors and assigns ("Defendant Releasees"),  
22 and all entities to whom they distribute or sell Covered Products including, but not limited to,  
23 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
24 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or  
25 common law claims that have been or could have been asserted in the public interest against  
26 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the  
27 failure to warn about exposure to Lead arising in connection with Covered Products manufactured,  
28 distributed, or sold by Settling Defendants prior to the Effective Date.

1           6.2           CEH, for itself and acting on behalf of the public interest pursuant to Health &  
2 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against  
3 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any  
4 violation of Proposition 65 or any other statutory or common law claims that have been or could  
5 have been asserted in the public interest regarding the failure to warn about exposure to Lead  
6 arising in connection with Covered Products manufactured, distributed or sold by Settling  
7 Defendants prior to the Effective Date.

8           6.3           Compliance with the terms of this Consent Judgment by Settling Defendants  
9 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
10 Defendants, the Defendant Releasees and their Downstream Defendant Releasees with respect to  
11 any alleged failure to warn about Lead in Covered Products manufactured, distributed or sold by  
12 Settling Defendants after the Effective Date.

13       **7.       PROVISION OF NOTICE**

14           7.1           When any Party is entitled to receive any notice under this Consent Judgment,  
15 the notice shall be sent by first class and electronic mail as follows:

16                   7.1.1       **Notices to Settling Defendants.** The persons for Settling Defendants and  
17 to receive Notices pursuant to this Consent Judgment shall be:

18                                   Malcolm C. Weiss  
19                                   Hunton & Williams LLP  
20                                   550 South Hope Street, Suite 2000  
21                                   Los Angeles, CA 90071  
22                                   mweiss@hunton.com

23                   7.1.2       **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
24 this Consent Judgment shall be:

25                                   Howard Hirsch  
26                                   Lexington Law Group  
27                                   503 Divisadero Street  
28                                   San Francisco, CA 94117  
                                     hhirsch@lexlawgroup.com

              7.2           Any Party may modify the person and address to whom the notice is to be sent  
by sending the other Party notice by first class and electronic mail.

1     **8.     COURT APPROVAL**

2             8.1             This Consent Judgment shall become effective on the Effective Date, provided  
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
4 Settling Defendants shall support approval of such Motion.

5             8.2             If this Consent Judgment is not entered by the Court within 12 months after  
6 executed by the Settling Defendants, it shall be of no force or effect and shall not be introduced  
7 into evidence or otherwise used in any proceeding for any purpose.

8     **9.     GOVERNING LAW AND CONSTRUCTION**

9             9.1             The terms of this Consent Judgment shall be governed by the laws of the State  
10 of California.

11    **10.    ENTIRE AGREEMENT**

12            10.1            This Consent Judgment contains the sole and entire agreement and  
13 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15 merged herein and therein. There are no warranties, representations, or other agreements between  
16 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
17 implied, other than those specifically referred to in this Consent Judgment have been made by any  
18 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
19 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
20 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
21 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
22 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
23 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of  
24 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions  
25 hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

26    **11.    RETENTION OF JURISDICTION**

27            11.1            This Court shall retain jurisdiction of this matter to implement or modify the  
28 Consent Judgment.

1 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

2 12.1 Each signatory to this Consent Judgment certifies that he or she is fully  
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
5 Party.

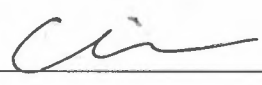
6 **13. NO EFFECT ON OTHER SETTLEMENTS**

7 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
8 against an entity that is not a Settling Defendant on terms that are different than those contained in  
9 this Consent Judgment.

10 **14. EXECUTION IN COUNTERPARTS**

11 14.1 The stipulations to this Consent Judgment may be executed in counterparts and  
12 by means of facsimile, which taken together shall be deemed to constitute one document.  
13  
14

15 IT IS SO STIPULATED:


|                                 |  |
|---------------------------------|--|
| 16 Dated: <u>July 29</u> , 2011 | 17 <b>CENTER FOR ENVIRONMENTAL HEALTH</b><br>18 <br>19 _____<br>20 <u>CHARLIE PIZZANO</u><br>21 Printed Name<br>22 _____<br>23 <u>ASSOCIATE DIRECTOR</u><br>24 Title<br>25<br>26<br>27<br>28 |
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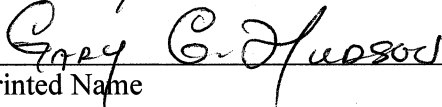


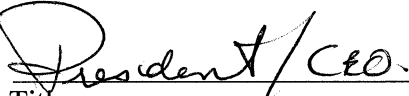
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Dated: \_\_\_\_\_, 2011

**HUDSON INDUSTRIES, INC. and GOLD MEDAL PRODUCTS, INC.**

  
\_\_\_\_\_

  
Printed Name

  
Title

**IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

Dated: \_\_\_\_\_  
Judge of the Superior Court of the State of California