

1 Attorneys of every California city with a population greater than 750,000, and to Settling
2 Defendant regarding the presence of lead and lead compounds (collectively, “Lead”) in sport
3 duffel bags (“Covered Products”) manufactured, distributed or sold by Settling Defendant.

4 1.3 On August 5, 2011, CEH filed the Action against Settling Defendant.

5 1.4 Settling Defendant is a corporation that employs 10 or more persons, and that
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 Settling Defendant (the
8 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
9 the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
10 Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to
11 enter this Consent Judgment as a full and final resolution of all claims which were or could have
12 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
13 manufactured, distributed, and/or sold by Settling Defendant.

14 1.6 CEH and Settling 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 raised in the
16 Complaint, arising out of the facts or conduct related to Settling Defendant alleged therein. By
17 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
18 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law
19 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
20 or equitable requirements relating to Lead in the Covered Products. Nothing in this Consent
21 Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law,
22 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
23 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation
24 of law. Settling Defendant denies the material factual and legal allegations in CEH’s Complaint
25 and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment shall
26 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
27 any other pending or future legal proceedings. This Consent Judgment is the product of
28 negotiation and compromise and is accepted by the Parties solely for purposes of settling,

1 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 Defendant shall not manufacture, ship, sell or offer for
5 sale any Covered Product that contains any component, or that is made of any material, that is
6 more than 0.02 percent (200 parts per million (“ppm”)) Lead by weight.

7 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
8 Settling Defendant shall cease shipping the Ergonomix Sport Duffel Bag, Item No. ERGO-38LD-
9 0125, SKU No. 7-64712-55443-5, which was identified in the 60-Day Notice of Violation sent by
10 CEH to Settling Defendant (the “Recall Product”), to stores and/or customers in California, and
11 Settling Defendant shall withdraw the Recall Product from the market in California, and, at a
12 minimum, send instructions to any of its stores and/or customers that offer the Recall Product for
13 sale in California to cease offering such Recall Product for sale and to either return all Recall
14 Products to Settling Defendant for destruction, or to directly destroy the Recall Products. Any
15 destruction of the Recall Products shall be in compliance with all applicable laws. Settling
16 Defendant shall keep and make available to CEH for inspection and copying records and
17 correspondence regarding the market withdrawal and destruction of the Recall Products. If there
18 is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy
19 in court.

20 **3. ENFORCEMENT**

21 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
22 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the allegedly
23 breaching party twenty (20) days advanced written notice of the alleged violation. The Parties
24 shall meet and confer during such twenty (20) day period in an effort to try to reach agreement on
25 an appropriate cure for the alleged violation. After such twenty (20) day period, the Party seeking
26 to enforce may, by new action, motion or order to show cause before the Superior Court of Marin,
27 seek to enforce the terms and conditions contained in this Consent Judgment. Should the Party
28 seeking to enforce prevail on any motion or application under this section, such Party shall be

1 entitled to recover its reasonable attorneys' fees and costs associated with such motion, order to
2 show cause or procedure from the other Party.

3 **4. PAYMENTS**

4 4.1 **Payments From Settling Defendant.** On or before September 15, 2011, Settling
5 Defendant shall pay the sum of \$15,000, and, on or before October 17, 2011, Settling Defendant
6 shall pay the sum of \$15,000, for a total sum of \$30,000 as a settlement payment. The \$15,000
7 payment due on September 15th shall be paid in two separate checks as follows: (a) \$11,500 made
8 payable to the Center for Environmental Health; and (b) \$3,500 made payable to Lexington Law
9 Group. The \$15,000 payment due on October 17th shall be made by check payable to Lexington
10 Law Group. All of these payments shall be delivered to the offices of the Lexington Law Group
11 (Attn: Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117-2212, and
12 allocated as set forth below. Any failure by Settling Defendant to comply with the payment terms
13 herein shall be subject to a stipulated late payment fee of \$100 per day, which amount shall be
14 recoverable by CEH, together with its reasonable attorneys' fees and costs, in an enforcement
15 proceeding brought pursuant to Section 3.

16 4.2 **Allocation of Payments.** The total settlement amount from Settling Defendant
17 shall be allocated as follows:

18 4.2.1 \$3,000 as a penalty pursuant to Health & Safety Code §25249.7(b), such
19 money to be apportioned by CEH in accordance with Health & Safety Code §25249.12.

20 4.2.2 \$8,500 as payment to CEH in lieu of penalty pursuant to Health & Safety
21 Code §25249.7(b), and California Code of Regulations, Title 11, §3202(b). CEH will use such
22 funds to continue its work educating and protecting people from exposures to toxic chemicals,
23 including heavy metals. CEH may also use a portion of such funds to monitor compliance with
24 the reformulation requirements of this and other similar Consent Judgments. In addition, as part
25 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
26 funds to award grants to grassroots environmental justice groups working to educate and protect
27 people from exposures to toxic chemicals. The method of selection of such groups can be found at
28 the CEH web site at www.ceh.org/justicefund.

1 4.2.3 \$18,500 as reimbursement of a portion of CEH’s reasonable attorneys’
2 fees and costs.

3 **5. MODIFICATION AND DISPUTE RESOLUTION**

4 5.1 **Modification.** This Consent Judgment may be modified from time to time by
5 express written agreement of the Parties, with the approval of the Court, or by an order of this
6 Court upon motion and in accordance with law.

7 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
8 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
9 modify the Consent Judgment.

10 **6. CLAIMS COVERED AND RELEASE**

11 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and
12 Settling Defendant and Settling Defendant’s parents, shareholders, divisions, subdivisions,
13 subsidiaries, partners, sister companies and their successors and assigns (“Defendant Releasees”),
14 and all entities to whom they distribute or sell Covered Products including, but not limited to,
15 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees,
16 and specifically including, but not limited to, Wal Mart Stores, Inc. and its affiliates and
17 subsidiaries (“Downstream Defendant Releasees”), of any violation of Proposition 65 or any other
18 statutory or common law claims that have been or could have been asserted in the public interest
19 against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees,
20 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
21 manufactured, distributed, or sold by Settling Defendant prior to the Effective Date.

22 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
23 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
24 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
25 violation of Proposition 65 or any other statutory or common law claims that have been or could
26 have been asserted in the public interest regarding the failure to warn about exposure to Lead
27 arising in connection with Covered Products manufactured, distributed or sold by Settling
28 Defendant prior to the Effective Date.

1 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant and the
2 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant, the
3 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
4 failure to warn about Lead in Covered Products manufactured, distributed or sold by Settling
5 Defendant after the Effective Date.

6 **7. PROVISION OF NOTICE**

7 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class mail and electronic mail as follows:

9 7.1.1 **Notices to Settling Defendant.** The person for Settling Defendant to
10 receive Notices pursuant to this Consent Judgment shall be:

11 Henry J. Bongiovi
12 Law Offices of Henry J. Bongiovi
13 831 State Street
 Santa Barbara, California 93101
 bongiovi.law@verizon.net

14 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
15 this Consent Judgment shall be:

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

19 7.2 Either Party may modify the person and address to whom the notice is to be sent by
20 sending the other Party notice by first class and electronic mail.

21 **8. COURT APPROVAL**

22 8.1 This Consent Judgment shall become effective on the Effective Date, provided
23 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
24 Settling Defendant shall support approval of such Motion.

25 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
26 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.
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1 **9. GOVERNING LAW AND CONSTRUCTION**

2 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **10. ENTIRE AGREEMENT**

5 10.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
8 and therein. There are no warranties, representations, or other agreements between the Parties
9 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
10 other than those specifically referred to in this Consent Judgment have been made by any Party
11 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
12 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
13 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
14 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
15 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
16 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
17 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
18 whether or not similar, nor shall such waiver constitute a continuing waiver.

19 **11. RETENTION OF JURISDICTION**

20 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

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

23 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

27 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
28 against an entity that is not Settling Defendant on terms that are different than those contained in

1 this Consent Judgment.

2 **14. EXECUTION IN COUNTERPARTS**

3 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
4 means of facsimile, which taken together shall be deemed to constitute one document.

5

6 IT IS SO STIPULATED:

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Dated: SEPT 2, 2011

CENTER FOR ENVIRONMENTAL HEALTH

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Charlie Pizmas

Printed Name

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Associate Director

Title

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Dated: _____, 2011

GOLF SALES WEST, INC.

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Printed Name

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Title

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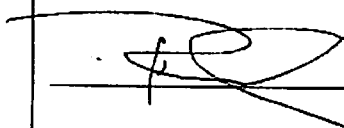
1 this Consent Judgment.

2 **14. EXECUTION IN COUNTERPARTS**

3 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
4 means of facsimile, which taken together shall be deemed to constitute one document.

5
6 IT IS SO STIPULATED:

7 Dated: _____, 2011 8 9 10 11 12 13 14 15	CENTER FOR ENVIRONMENTAL HEALTH _____ Printed Name _____ Title
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16 17 18 Dated: <u>Aug 29</u> , 2011 19 20 21 22 23 24 25 26	GOLF SALES WEST, INC.  _____ <u>RICHARD D. WOOD</u> Printed Name <u>President</u> Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated:

Judge of the Superior Court of the State of California