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

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

vs.)

ADAMS USA, INC., et al.,)

Defendants.)

Case No. CIV-1104003

[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 Rawlings Sporting Goods Company, Inc. (“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. Rawlings Sporting Goods Company, Inc.*, Marin County Superior Court Case No. CIV-1104003 (the “Action”).

1.2 On March 30, 2011, CEH provided a “Notice of Violation of Proposition 65” (“60-Day Notice”) to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Defendant regarding the presence of lead in baseball or other sports belts used in athletic

1 uniforms (“Covered Products”).

2 1.3 On August 10, 2011, CEH filed the complaint against Defendant in the Action.

3 1.4 Defendant is a corporation that employs 10 or more persons, and which
4 manufactures, distributes and/or sells Covered Products in the State of California.

5 1.5 Promptly following receipt of CEH’s 60-Day Notice, all sales of the Rawlings
6 Youth Baseball Belt – Red, SKU No. 0-83321-13047-2, RN No. 11510, which was identified as
7 an example in CEH’s 60-Day Notice (the “Exemplar Covered Product”), were suspended in
8 California by Defendant’s customers. Defendant also promptly performed lead testing on the
9 Exemplar Covered Product to evaluate CEH’s allegations relative to test results it had previously
10 obtained.

11 1.6 For purposes of this Consent Judgment only, CEH and Defendant (the “Parties”)
12 stipulate that this Court has jurisdiction over the allegations of violations contained in the
13 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
14 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
15 Judgment as a full and final resolution of all claims which were or could have been raised in the
16 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
17 distributed, and/or sold by Defendant.

18 1.7 CEH and Defendant enter into this Consent Judgment as a full and final
19 settlement of all claims that were raised in the Complaint, or which could have been raised in the
20 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
21 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
22 facts or conclusions of law including, but not limited to, any facts or conclusions of law
23 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
24 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
25 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
26 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
27 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
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1 factual and legal allegations in CEH's Complaint and expressly denies any wrong doing
2 whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
3 remedy, argument or defense the Parties may have in this or any other pending or future legal
4 proceedings. This Consent Judgment is the product of negotiation and compromise and is
5 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
6 disputed in this action.

7 **2. INJUNCTIVE RELIEF**

8 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
9 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell or offer for sale any
10 Covered Product unless such Covered Product complies with the following Lead Limits:

11 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R. §
12 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

13 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm).

14 **3. ENFORCEMENT**

15 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause
16 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
17 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
18 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
19 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
20 enforce may, by new action, motion or order to show cause before the Superior Court of Marin,
21 seek to enforce the terms and conditions contained in this Consent Judgment.

22 **4. PAYMENTS**

23 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
24 Judgment, Defendant shall pay the total sum of \$40,000 as a settlement payment.

25 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
26 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
27 Hirsch), 503 Divisadero Street, San Francisco, California 94117 and made payable and allocated
28

1 as follows:

2 4.2.1 Defendant shall pay the sum of \$4,000 as a penalty pursuant to Health &
3 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
4 Safety Code §25249.12. The penalty check shall be made payable to the Center For
5 Environmental Health.

6 4.2.2 Defendant shall pay the sum of \$11,500 as payment to CEH in lieu of
7 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,
8 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting
9 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion
10 of such funds to monitor compliance with the reformulation requirements of this and other
11 similar Consent Judgments and to purchase and test Covered Products to confirm compliance
12 with such reformulation requirements. In addition, as part of its Community Environmental
13 Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
14 environmental justice groups working to educate and protect people from exposures to toxic
15 chemicals. The method of selection of such groups can be found at the CEH web site at
16 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
17 Center for Environmental Health.

18 4.2.3 Defendant shall pay the sum of \$24,500 as reimbursement of reasonable
19 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
20 payable to the Lexington Law Group.

21 **5. MODIFICATION AND DISPUTE RESOLUTION**

22 5.1 **Modification.** This Consent Judgment may be modified from time to time by
23 express written agreement of the Parties, with the approval of the Court, or by an order of this
24 Court upon motion and in accordance with law.

25 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
26 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
27 modify the Consent Judgment.

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1 **6. CLAIMS COVERED AND RELEASE**

2 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and
3 Defendant and Defendant’s parents, shareholders, divisions, subdivisions, subsidiaries, partners,
4 sister companies and their successors and assigns (“Defendant Releasees”), and all to whom they
5 distribute or sell Covered Products including, but not limited to, distributors, wholesalers,
6 customers, retailers (including but not limited to Wal-Mart Stores, Inc. and its affiliates and
7 subsidiaries), franchisees, cooperative members, and licensees (“Downstream Defendant
8 Releasees”), of any violation of Proposition 65 or any other statutory or common law claims that
9 have been or could have been asserted in the public interest against Defendant, Defendant
10 Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure
11 to lead arising in connection with Covered Products manufactured, distributed, or sold by
12 Defendant prior to the Effective Date.

13 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
14 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
15 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
16 violation of Proposition 65 or any other statutory or common law claims that have been or could
17 have been asserted in the public interest regarding the failure to warn about exposure to lead
18 arising in connection with Covered Products manufactured, distributed or sold by Defendant
19 prior to the Effective Date.

20 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
21 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
22 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
23 failure to warn about lead in Covered Products manufactured, distributed or sold by Defendant
24 after the Effective Date.

25 **7. PROVISION OF NOTICE**

26 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail as follows:
28

1 7.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
2 pursuant to this Consent Judgment shall be:

3 Marc P. Clements
4 Jarden Corporation
5 2111 East 37th Street N
6 Wichita KS 67219
7 MClements@jarden.com

8 With a copy to:

9 Robert L. Falk
10 Morrison & Foerster LLP
11 425 Market Street
12 San Francisco, CA 94105-2482
13 RFalk@mofo.com

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
19 San Francisco, CA 94117
20 hhirsch@lexlawgroup.com

21 7.2 Any Party may modify the person and address to whom the notice is to be sent by
22 sending the other Party notice by first class and electronic mail.

23 **8. COURT APPROVAL**

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

27 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
purpose.

9. GOVERNING LAW AND CONSTRUCTION

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

1 **10. ENTIRE AGREEMENT**

2 10.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. There are no warranties, representations, or other agreements between the Parties
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
7 other than those specifically referred to in this Consent Judgment have been made by any Party
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No
12 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
15 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **11. RETENTION OF JURISDICTION**

17 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

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

20 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
22 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

24 13.1 Except as set forth in Section 6 above, nothing in this Consent Judgment shall
25 preclude CEH from resolving any claim against another entity on terms that are different than
26 those contained in this Consent Judgment.
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14. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: <u>Aug 23</u> , 2011	CENTER FOR ENVIRONMENTAL HEALTH  <u>CHARLIE PIZARRO</u> Printed Name <u>Associate Director</u> Title
Dated: _____, 2011	RAWLINGS SPORTING GOODS COMPANY, INC. _____ Printed Name _____ Title

IT IS SO ORDERED, ADJUDGED, AND DECREED

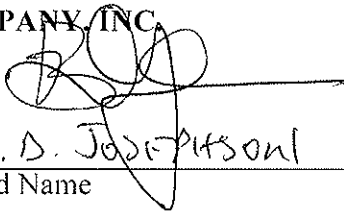
Dated: _____
Judge of the Superior Court of the State of California

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14. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: _____, 2011	CENTER FOR ENVIRONMENTAL HEALTH _____ Printed Name _____ Title
Dated: <u>25-AUG</u> , 2011	RAWLINGS SPORTING GOODS COMPANY, INC.  <u>B. D. Josephson</u> Printed Name <u>CFO</u> Title

IT IS SO ORDERED, ADJUDGED, AND DECREED

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