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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 Alleson of Rochester, 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. Adama USA, Inc., et al.*, 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” 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 uniforms

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

12 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
13 settlement of all claims that were raised in the Complaint, or which could have been raised in the
14 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
15 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
16 facts or conclusions of law including, but not limited to, any facts or conclusions of law
17 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
18 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
19 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
20 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
21 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
22 factual and legal allegations in CEH’s Complaint and expressly denies any wrong doing
23 whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
24 remedy, argument or defense the Parties may have in this or any other pending or future legal
25 proceedings. This Consent Judgment is the product of negotiation and compromise and is
26 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
27 disputed in this action.
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1 **2. INJUNCTIVE RELIEF**

2 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
3 Judgment (the “Effective Date”), Defendant shall not purchase, manufacture, import, or supply
4 to an unaffiliated third party any Covered Product that will be sold or offered for sale in
5 California unless such Covered Product complies with the following Lead Limits:

6 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R. §
7 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

8 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm).

9 2.2 **Market Withdrawal of Covered Products.** By December 1, 2011, Defendant
10 shall cease shipping the Alleson Athletic Adjustable Elastic Baseball Belt – Yellow, SKU No.
11 12630-49425-7, as identified in CEH’s pre-suit Notice of Violation to Defendant (the “Recall
12 Covered Product”), to stores and/or customers in California, and Defendant shall withdraw the
13 Recall Covered Product from the market in California, and, at a minimum, send instructions to
14 any of its stores and/or customers that offer the Recall Covered Product for sale in California to
15 cease offering such Recall Covered Product for sale and to either return all Recall Covered
16 Products to Defendant for destruction, or to directly destroy the Recall Covered Products. Any
17 destruction of the Recall Covered Products shall be in compliance with all applicable laws.
18 Defendant shall keep and make available to CEH for inspection and copying records and
19 correspondence regarding the market withdrawal and destruction of the Recall Covered
20 Products. If there is a dispute over the corrective action, the Parties shall meet and confer before
21 seeking any remedy in court.

22 **3. ENFORCEMENT**

23 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause
24 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
25 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
26 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
27 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
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1 enforce may, by new action, motion or order to show cause before the Superior Court of Marin,
2 seek to enforce the terms and conditions contained in this Consent Judgment.

3 **4. PAYMENTS**

4 4.1 **Payments From Defendant.** Within five (5) business days of the entry of this
5 Consent Judgment, Defendant shall pay the total sum of \$45,000 as a settlement payment.

6 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
7 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
8 Hirsch), 503 Divisadero Street, San Francisco, California 94117 and made payable and allocated
9 as follows:

10 4.2.1 Defendant shall pay the sum of \$5,800 as a penalty pursuant to Health &
11 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
12 Safety Code §25249.12. The penalty check shall be made payable to the Center For
13 Environmental Health.

14 4.2.2 Defendant shall pay the sum of \$9,100 as payment to CEH in lieu of
15 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,
16 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting
17 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion
18 of such funds to monitor compliance with the reformulation requirements of this and other
19 similar Consent Judgments and to purchase and test Covered Products to confirm compliance
20 with such reformulation requirements. In addition, as part of its Community Environmental
21 Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
22 environmental justice groups working to educate and protect people from exposures to toxic
23 chemicals. The method of selection of such groups can be found at the CEH web site at
24 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
25 Center for Environmental Health.
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27 4.2.3 Defendant shall pay the sum of \$30,100 as reimbursement of reasonable
28 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made

1 payable to the Lexington Law Group.

2 **5. MODIFICATION AND DISPUTE RESOLUTION**

3 5.1 **Modification.** This Consent Judgment may be modified from time to time by
4 express written agreement of the Parties, with the approval of the Court, or by an order of this
5 Court upon motion and in accordance with law.

6 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
7 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
8 modify the Consent Judgment.

9 **6. CLAIMS COVERED AND RELEASE**

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

20 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
21 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
22 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
23 violation of Proposition 65 or any other statutory or common law claims that have been or could
24 have been asserted in the public interest regarding the failure to warn about exposure to lead
25 arising in connection with Covered Products manufactured, distributed or sold by Defendant
26 prior to the Effective Date.

27 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
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1 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
2 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
3 failure to warn about lead in Covered Products manufactured, distributed or sold by Defendant
4 after the Effective Date.

5 **7. PROVISION OF NOTICE**

6 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
7 notice shall be sent by first class and electronic mail as follows:

8 7.1.1 **Notices to Defendant.** The persons for Defendant to receive Notices
9 pursuant to this Consent Judgment shall be:

10
11 Melissa Jones
12 Stoel Rives LLP
13 500 Capitol Mall, 16th Floor
14 Sacramento, CA 95814
15 majones@stoel.com

16 With a copy to:

17 Julia Green Sewruk
18 Harter Secrest & Emery LLP
19 1600 Bausch & Lomb Place
20 Rochester NY 14604
21 jsewruk@hselaw.com

22 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
23 this Consent Judgment shall be:

24 Howard Hirsch
25 Lexington Law Group
26 503 Divisadero Street
27 San Francisco, CA 94117
28 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.

8. COURT APPROVAL

8.1 This Consent Judgment shall become effective on the Effective Date, provided
however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and

1 Defendant shall support approval of such Motion.

2 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
3 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
4 purpose.

5 **9. GOVERNING LAW AND CONSTRUCTION**

6 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California.

8 **10. ENTIRE AGREEMENT**

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

23 **11. RETENTION OF JURISDICTION**

24 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.

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

27 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
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by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

13. NO EFFECT ON OTHER SETTLEMENTS

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

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:

<p>Dated: <u>January 9</u>, 2012</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p>Printed Name</p> <p><u>Associate Director</u></p> <hr/> <p>Title</p>
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Dated: Jan. 6, 2012

ALLESON OF ROCHESTER, INC.



Printed Name Todd Levine



Title

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

Dated:

Judge of the Superior Court of the State of
California