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

CENTER FOR ENVIRONMENTAL	)	Case No. CIV-1104003
HEALTH, a non-profit corporation,	)	
	)	[PROPOSED] CONSENT JUDGMENT AS
Plaintiff,	)	TO ATHLETIC SPECIALTIES, INC.
	)	
vs.	)	
	)	
ADAMS USA, INC., et al.,	)	
	)	
Defendants.	)	
	)	

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**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Athletic Specialties, 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. Adams USA, Inc.*, Marin County Superior Court Case No. CIV-1104003 (the “Action”).

1.2 On May 9, 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

1 California, the City Attorneys of every California city with a population greater than 750,000, and  
2 to Defendant regarding the presence of lead in baseball or other sports belts used in athletic  
3 uniforms (“Covered Products”).

4 1.3 On August 10, 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 “Parties”)  
8 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
9 Complaint and personal jurisdiction over Defendant 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 Defendant.

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

3 **2. INJUNCTIVE RELIEF**

4 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent  
5 Judgment (the “Effective Date”), Defendant shall not manufacture, ship, sell or offer for sale any  
6 Covered Product unless such Covered Product complies with the following Lead Limits:

7 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R. §  
8 1303.2(b): no more than 0.009 percent lead by weight (90 parts per million (“ppm”).

9 2.1.2 All other materials: no more than .01 percent lead by weight (100 ppm).

10 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,  
11 Defendant shall cease shipping the Athletic Specialties Youth Elastic Uniform Belt - Big Kids in  
12 Yellow, as identified in CEH’s pre-suit Notice of Violation to Defendant (the “Recall Covered  
13 Product”), to stores and/or retail customers in California. Defendant shall send instructions to  
14 those retail customers to whom Defendant shipped the Recall Covered Product in the past year for  
15 which Defendant used a California shipping address, with Defendant instructing said customers to  
16 cease offering such Recall Covered Product for sale in California and to either return all Recall  
17 Covered Products to Defendant for destruction, or to directly destroy the Recall Covered  
18 Products. Any destruction of the Recall Covered Products shall be in compliance with all  
19 applicable laws. Defendant shall keep and make available to CEH for inspection and copying  
20 records and correspondence regarding the market withdrawal and destruction of the Recall  
21 Covered Products. If there is a dispute over the corrective action, the Parties shall meet and confer  
22 before seeking any remedy in court.

23 **3. ENFORCEMENT**

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

4 **4. PAYMENTS**

5 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent  
6 Judgment, Defendant shall pay the total sum of \$15,000 as a settlement payment.

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

11 4.2.1 Defendant shall pay the sum of \$1,930 as a penalty pursuant to Health &  
12 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &  
13 Safety Code §25249.12. The penalty check shall be made payable to the Center For  
14 Environmental Health.

15 4.2.2 Defendant shall pay the sum of \$2,900 as payment to CEH in lieu of  
16 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title  
17 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from  
18 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
19 to monitor compliance with the reformulation requirements of this and other similar Consent  
20 Judgments and to purchase and test Covered Products to confirm compliance with such  
21 reformulation requirements. In addition, as part of its Community Environmental Action and  
22 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental  
23 justice groups working to educate and protect people from exposures to toxic chemicals. The  
24 method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).  
25 The payment in lieu of penalty check shall be made payable to the Center for Environmental  
26 Health.

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1                   4.2.3     Defendant shall pay the sum of \$10,170 as reimbursement of reasonable  
2 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
3 payable to the Lexington Law Group.

4     **5.       MODIFICATION AND DISPUTE RESOLUTION**

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

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

11     **6.       CLAIMS COVERED AND RELEASE**

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

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 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
25 of Proposition 65 that have been or could have been asserted in the public interest regarding the  
26 failure to warn about exposure to lead arising in connection with Covered Products manufactured,  
27 distributed or sold by Defendant prior to the Effective Date.

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

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

11                                     John E. Dittoe  
12                                     Reed Smith LLP  
13                                     101 Second Street, Suite 1800  
14                                     San Francisco, CA 94105  
15                                     jdittoe@reedsmith.com

16                                     Michael J. Philippi  
17                                     Ungaretti & Harris LLP  
18                                     70 W. Madison, Suite 3500  
19                                     Chicago, IL 60602  
20                                     Mphilippi@uhlaw.com

21                     7.1.2     **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
22 this Consent Judgment shall be:

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

28           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 effect  
3 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

4 **9. GOVERNING LAW AND CONSTRUCTION**

5 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
6 California.

7 **10. ENTIRE AGREEMENT**

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

22 **11. RETENTION OF JURISDICTION**

23 11.1 This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

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

26 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
27 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
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1 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

3 13.1 Except as set forth in Section 6 above, nothing in this Consent Judgment shall  
4 preclude CEH from resolving any claim against another entity on terms that are different than  
5 those contained in this Consent Judgment.

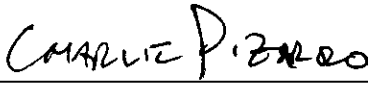
6 **14. EXECUTION IN COUNTERPARTS**

7 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
8 means of facsimile, which taken together shall be deemed to constitute one document.

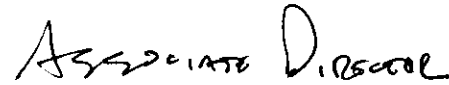
9 **IT IS SO STIPULATED:**

10 **CENTER FOR ENVIRONMENTAL HEALTH**

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15 Printed Name

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17 \_\_\_\_\_

17 Title

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19 **ATHLETIC SPECIALTIES, INC.**

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21 \_\_\_\_\_

22  
23 \_\_\_\_\_

24 Printed Name

25  
26 \_\_\_\_\_

26 Title

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28 \_\_\_\_\_



1 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

3 13.1 Except as set forth in Section 6 above, nothing in this Consent Judgment shall  
4 preclude CEH from resolving any claim against another entity on terms that are different than  
5 those contained in this Consent Judgment.

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7 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
8 means of facsimile, which taken together shall be deemed to constitute one document.

9 **IT IS SO STIPULATED:**

10 **CENTER FOR ENVIRONMENTAL HEALTH**

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15 \_\_\_\_\_  
16 Printed Name

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18 Title

19 **ATHLETIC SPECIALTIES, INC.**

20  
21 *Carey Brunelli*  
22 \_\_\_\_\_

23 *CAREY BRUNELLI*  
24 \_\_\_\_\_  
25 Printed Name

26 *PRESIDENT*  
27 \_\_\_\_\_  
28 Title

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

Dated:

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