



1           1.2           On May 9, 2011, CEH provided a “Notice of Violation of Proposition 65” to  
2 the California Attorney General, the District Attorneys of every county in California, the City  
3 Attorneys of every California city with a population greater than 750,000, and to Blue Sky  
4 regarding the presence of lead and lead compounds (collectively referred to herein as “Lead”) in  
5 journals and planners (“Covered Products”).

6           1.3           On July 29, 2011, CEH filed the complaint against Blue Sky in the Action (the  
7 “Complaint”).

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

15           1.5           CEH and Blue Sky enter into this Consent Judgment as a full and final  
16 settlement of all claims that were raised in the Complaint, or which could have been raised in the  
17 Complaint, arising out of the facts or conduct related to Blue Sky alleged therein and the sales of  
18 Covered Products by Blue Sky and their chain of distribution, including without limitation, Target  
19 Corporation. By execution of this Consent Judgment and agreeing to comply with its terms, the  
20 Parties do not admit any facts or conclusions of law including, but not limited to, any facts or  
21 conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other  
22 statutory, common law or equitable requirements. Nothing in this Consent Judgment is or shall  
23 be construed as an admission by the Parties of any fact, conclusion of law, issue of law or  
24 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
25 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Blue  
26 Sky denies the material, factual and legal allegations in CEH’s Complaint and expressly denies  
27 any wrong doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair  
28 any right, remedy, argument or defense the Parties may have in this or any other pending or future

1 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is  
2 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
3 disputed in this action.

4 **2. INJUNCTIVE RELIEF**

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

8 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.  
9 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”)).

10 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm).

11 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,  
12 Blue Sky shall cease shipping the Blue Sky Notes Book in Milano Green Kensington Strap, SKU  
13 No. 8-47037-11238-8, Item No. 11238, DPCI No. 081-01-1921, as identified in CEH’s pre-suit  
14 Notice of Violation to Blue Sky (the “Recall Covered Products”), to stores and/or customers in  
15 California, and Blue Sky shall withdraw the Recall Covered Products from the market in  
16 California, and, at a minimum, send instructions to any of their stores and/or customers that offer  
17 the Recall Covered Products for sale in California to cease offering such Recall Covered Products  
18 for sale and to either return all Recall Covered Products to Blue Sky for destruction, or to directly  
19 destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in  
20 compliance with all applicable laws. Blue Sky shall keep and make available to CEH for  
21 inspection and copying reasonable records and correspondence regarding the market withdrawal  
22 and destruction of the Recall Covered Products. If there is a dispute over the corrective action,  
23 the Parties shall meet and confer before seeking any remedy in court

24 **3. ENFORCEMENT**

25 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show  
26 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the  
27 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall  
28 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an

1 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to  
2 enforce may, by new action, motion or order to show cause before the Superior Court of Marin,  
3 seek to enforce the terms and conditions contained in this Consent Judgment.

4 **4. PAYMENTS**

5 4.1 **Payments From Blue Sky.** Within ten (10) days of the entry of this Consent  
6 Judgment, Blue Sky shall pay the total sum of \$32,500 as a settlement payment.

7 4.2 **Allocation of Payments.** The total settlement amount for Blue Sky shall be  
8 paid 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 Blue Sky shall pay the sum of \$3,000 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 Blue Sky shall pay the sum of \$9,000 as payment to CEH in lieu of penalty  
16 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11,  
17 § 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  
23 environmental justice groups working to educate and protect people from exposures to toxic  
24 chemicals. The method of selection of such groups can be found at the CEH web site at  
25 [www.ceh.org/what-we-do/supporting-communities/the-justice-fund](http://www.ceh.org/what-we-do/supporting-communities/the-justice-fund). The payment in lieu of  
26 penalty check shall be made payable to the Center for Environmental Health.

1                   4.2.3 Blue Sky shall pay the sum of \$20,500 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  
9 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a  
10 motion to 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  
13 and Blue Sky and Blue Sky'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, specifically including but not limited to Target Corporation, franchisees,  
17 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of  
18 Proposition 65 or any other statutory or common law claims that have been or could have been  
19 asserted in the public interest against Blue Sky, Defendant Releasees, and Downstream Defendant  
20 Releasees, regarding the failure to warn about exposure to Lead arising in connection with  
21 Covered Products manufactured, distributed, or sold by Defendants 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 Blue Sky, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
25 of Proposition 65 or any other statutory or common law claims that have been or could have been  
26 asserted in the public interest regarding the failure to warn about exposure to Lead arising in  
27 connection with Covered Products manufactured, distributed or sold by Blue Sky prior to the  
28 Effective Date.

1           6.3           Compliance with the terms of this Consent Judgment by Blue Sky and the  
2 Defendant Releasees shall constitute compliance with Proposition 65 by Blue Sky, 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 Blue Sky 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,  
8 the notice shall be sent by first class and electronic mail as follows:

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

11                               Brian T. Stephens  
12                               Stephens & Kray  
13                               5000 Birch Street, Suite 410  
14                               Newport Beach, CA 92660  
15                               bstephens@sklaw.net

16                               Mark Vidovich, Manager  
17                               Blue Sky the Color of Imagination, LLC  
18                               15991 Red Hill Avenue, Suite 101  
19                               Tustin, CA 92780  
20                               markv@blueskyimg.com

21                               James E. Freeman, Manager  
22                               Blue Sky the Color of Imagination, LLC  
23                               15991 Red Hill Avenue, Suite 101  
24                               Tustin, CA 92780  
25                               jimf@blueskyimg.com

26                   7.1.2   **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
27 this Consent Judgment shall be:

28                               Howard Hirsch  
29                               Lexington Law Group  
30                               503 Divisadero Street  
31                               San Francisco, CA 94117  
32                               hhirsch@lexlawgroup.com

33           7.2           Any Party may modify the person and address to whom the notice is to be sent  
34 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 Blue Sky shall support approval of such Motion.

5 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
7 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. ATTORNEYS' FEES**

12 10.1 A Party who unsuccessfully brings or contests an action arising out of this  
13 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and  
14 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this  
15 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
16 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

17 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement  
18 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
19 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party  
20 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this  
21 provision shall not be construed as altering any procedural or substantive requirements for  
22 obtaining such an award.

23 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of  
24 sanctions pursuant to law.

25 **11. ENTIRE AGREEMENT**

26 11.1 This Consent Judgment contains the sole and entire agreement and  
27 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
28 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby

1 merged herein and therein. There are no warranties, representations, or other agreements between  
2 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
3 implied, other than those specifically referred to in this Consent Judgment have been made by any  
4 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
5 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
6 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
7 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
8 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
9 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
10 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
11 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12 **12. RETENTION OF JURISDICTION**

13 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
14 Consent Judgment.

15 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

16 13.1 Each signatory to this Consent Judgment certifies that he or she is fully  
17 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
18 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
19 Party.

20 **14. NO EFFECT ON OTHER SETTLEMENTS**

21 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any  
22 claim against another entity on terms that are different than those contained in this Consent  
23 Judgment.


24 **15. EXECUTION IN COUNTERPARTS**

25 15.1 The stipulations to this Consent Judgment may be executed in counterparts  
26 and by means of facsimile, which taken together shall be deemed to constitute one document.  
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**IT IS SO STIPULATED:**

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| Dated: <u>10/21</u> , 2011 | <b>CENTER FOR ENVIRONMENTAL HEALTH</b><br><br><u>CONCHITA PIZANO</u><br>Printed Name<br><br><u>Associate Director</u><br>Title |
| Dated: _____, 2011         | <b>BLUE SKY THE COLOR OF IMAGINATION, LLC and BLUE SKY DISTRIBUTION</b><br><br>By: <u>James E. Freeman</u><br>Manager & Authorized Agent   |

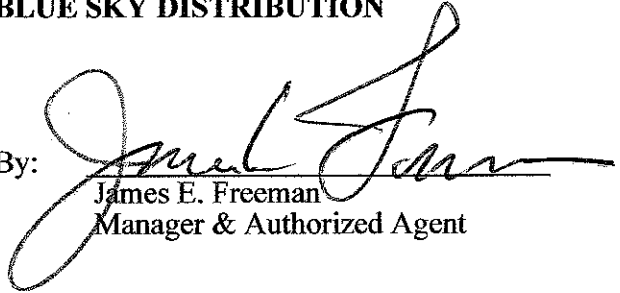
**IT IS SO ORDERED, ADJUDGED, AND DECREED**

Dated: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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**IT IS SO STIPULATED:**

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| Dated: _____, 2011            | <b>CENTER FOR ENVIRONMENTAL HEALTH</b><br><br>_____<br>Printed Name<br><br>_____<br>Title  |
| Dated: <u>10/17/11</u> , 2011 | <b>BLUE SKY THE COLOR OF IMAGINATION, LLC and BLUE SKY DISTRIBUTION</b><br><br>By: <br>James E. Freeman<br>Manager & Authorized Agent |

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA