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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
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11 CENTER FOR ENVIRONMENTAL HEALTH,)
12 a non-profit corporation,)

13 Plaintiff,)

14 v.)

15 CARDINAL BRANDS, INC., *et al.*,)

16 Defendants.)
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Case No. CIV-1105699

**[PROPOSED] CONSENT JUDGMENT
AS TO DCWV ACQUISITION
CORPORATION**

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”) on the one hand, and DCWV Acquisition Corporation (“Defendant”) on the other hand, 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. Cardinal Brands, Inc., et al.*, Marin County Superior Court Case No. CIV-1105699 (the “Action”).

1.2 On August 24, 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

1 Attorneys of every California city with a population greater than 750,000, and to Defendant
2 regarding the presence of lead and lead compounds (collectively referred to herein as “Lead”) in
3 photo albums and scrapbooks (“Covered Products”).

4 1.3 On November 18, 2011, CEH filed the complaint against Defendant in the
5 Action.

6 1.4 Defendant is a corporation that employs 10 or more persons, and that
7 manufactures, distributes and/or sells Covered Products in the State of California.

8 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
9 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
10 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
11 that venue is proper in the County of Marin, and that this Court has jurisdiction to enter this
12 Consent Judgment as a full and final resolution of all claims which were or could have been
13 raised in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed, and/or sold by Defendant.

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

solely for purposes of settling, compromising, and resolving issues disputed in this action.

2. INJUNCTIVE RELIEF

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

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

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

2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date, Defendant shall cease shipping the DCWV 3 Ring Album in Red, SKU No. 6-11356-95558-8, as identified in CEH’s pre-suit Notice of Violation to Defendant (the “Recall Covered Products”), to stores and/or customers in California, and Defendant shall withdraw the Recall Covered Products from the market in California, and, at a minimum, send instructions to any of its stores and/or customers that offer the Recall Covered Products for sale in California to cease offering such Recall Covered Products for sale and to either return all Recall Covered Products to Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall keep and make available to CEH for inspection and copying records and correspondence regarding the market withdrawal and destruction of the Recall Covered Products. If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in court.

3. ENFORCEMENT

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

1 **4. PAYMENTS**

2 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
3 Judgment, Defendant shall pay the total sum of \$30,000 as a settlement payment.

4 4.2 **Allocation of Payments.** The total settlement amount shall be paid in three
5 separate checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503
6 Divisadero Street, San Francisco, California 94117, and made payable and allocated as follows:

7 4.2.1 Defendant shall pay the sum of \$3,930 as a penalty pursuant to Health &
8 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
9 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
10 Environmental Health.

11 4.2.2 Defendant shall pay the sum of \$5,900 as payment to CEH in lieu of
12 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
13 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
14 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
15 funds to monitor compliance with the reformulation requirements of this and other similar
16 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
17 reformulation requirements. In addition, as part of its *Community Environmental Action and*
18 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
19 environmental justice groups working to educate and protect people from exposures to toxic
20 chemicals. The method of selection of such groups can be found at the CEH web site at
21 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
22 Center for Environmental Health.

23 4.2.3 Defendant shall pay the sum of \$20,170 as reimbursement of reasonable
24 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
25 payable to the Lexington Law Group.

26 **5. MODIFICATION AND DISPUTE RESOLUTION**

27 5.1 **Modification.** This Consent Judgment may be modified from time to time by
28 express written agreement of the Parties, with the approval of the Court, or by an order of this

1 Court upon motion and in accordance with law.

2 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
3 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
4 motion to modify the Consent Judgment.

5 **6. CLAIMS COVERED AND RELEASE**

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

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

23 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
24 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
25 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
26 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant
27 after the Effective Date.
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1 **7. PROVISION OF NOTICE**

2 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
3 the notice shall be sent by first class and electronic mail as follows:

4 7.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
5 pursuant to this Consent Judgment shall be:

6 Melissa A. Jones
7 Stoel Rives LLP
8 500 Capitol Mall, Ste. 1600
 Sacramento, CA 95814
 majones@stoel.com

9 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
10 this Consent Judgment shall be:

11 Howard Hirsch
12 Lexington Law Group
13 503 Divisadero Street
 San Francisco, CA 94117
 hhirsch@lexlawgroup.com

14 7.2 Any Party may modify the person and address to whom the notice is to be sent
15 by sending the other Party notice by first class and electronic mail.

16 **8. COURT APPROVAL**

17 8.1 This Consent Judgment shall become effective on the Effective Date, provided
18 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
19 Defendant shall support approval of such Motion.

20 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
21 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
22 purpose.

23 **9. GOVERNING LAW AND CONSTRUCTION**

24 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
25 of California.

26 **10. ATTORNEYS' FEES**

27 10.1 A Party who unsuccessfully brings or contests an action arising out of this
28 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and

1 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
2 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
3 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

4 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
5 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
6 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
7 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
8 provision shall not be construed as altering any procedural or substantive requirements for
9 obtaining such an award.

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

12 **11. ENTIRE AGREEMENT**

13 11.1 This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
15 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
16 merged herein and therein. There are no warranties, representations, or other agreements between
17 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
18 implied, other than those specifically referred to in this Consent Judgment have been made by any
19 Party hereto. No other agreements not specifically contained or referenced herein, oral or
20 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
21 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
22 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
23 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
24 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
25 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
26 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

1 **12. RETENTION OF JURISDICTION**

2 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

5 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
8 Party.

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

10 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
11 claim against another entity on terms that are different than those contained in this Consent
12 Judgment.


13 **15. EXECUTION IN COUNTERPARTS**

14 15.1 The stipulations to this Consent Judgment may be executed in counterparts
15 and by means of facsimile, which taken together shall be deemed to constitute one document.
16

17 **IT IS SO STIPULATED:**

18 Dated: <u>May 3</u> , 2012 19 20 21 22 23 24 25	CENTER FOR ENVIRONMENTAL HEALTH <u>CHARLIE PIZARD</u> Printed Name <u>Associate Director</u> Title
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Dated: <u>April 25</u> , 2011 2012	DCWV ACQUISITION CORPORATION
	 <u>Gary Millet</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