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ENDORSED
FILED
San Francisco County Superior Court

AUG 11 2006

GORDON PARK-LI, Clerk
BY: PHILOMENA DIAS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11

12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

13 Plaintiff,)

14 v.)

15)
16 ROSS STORES, INC., et al; and DEFENDANT)
17 DOES 1 through 200, inclusive,)

18 Defendants.)
19

20 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

21 Plaintiff)

22 v.)
23

24 LISA FRANK, INC.; and DEFENDANT DOES)
25 1 through 200, inclusive,)

26 Defendants.)
27

28 And consolidated actions.

Lead Case No. CGC-05-444522

~~[PROPOSED]~~ CONSENT JUDGMENT
RE: LISA FRANK, INC.

Case No. CGC-05-447915

1 **1. INTRODUCTION**

2 **1.1** On December 22, 2005, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco
4 County Superior Court, entitled *Center for Environmental Health v. Lisa Frank, Inc., et al.*, San
5 Francisco County Superior Court Case Number CGC-05-447915 (the “CEH Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code
7 §25249.5 et seq. (“Proposition 65”).

8 **1.2** Defendant Lisa Frank, Inc. is a corporation that employs 10 or more persons
9 and manufactured, distributed and/or sold soft food and beverage containers such as lunch boxes,
10 water bottles, and similar products (the “Products”) in the State of California. The term “Products”
11 encompasses only products designated for sale or distribution within ^{California} ~~the United States~~.

12 **1.3** On or about September 20, 2005, CEH served Defendant and public
13 enforcement agencies with the requisite 60-day notice alleging that Defendant was in violation of
14 Proposition 65 (the “Notice”). CEH’s Notice and the Complaint in this Action allege that
15 Defendant exposes people who use or otherwise handle the Products to lead and/or lead compounds
16 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to cause
17 cancer, birth defects and other reproductive harm, without first providing clear and reasonable
18 warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The
19 Notice and Complaint allege that Defendant’s conduct violates Proposition 65, including Cal.
20 Health & Safety Code §25249.6. Defendant disputes such allegations and asserts that all its
21 products are safe and comply with all applicable laws, including Consumer Product Safety
22 Commission and Federal Food and Drug Administration standards.

23 **1.4** Upon receipt of CEH's Notice, Defendant took immediate measures to
24 address the allegations set forth therein and to investigate the substance of CEH's allegations.

25 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
26 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
27 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is proper
28 in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment

1 as a full and final resolution of all claims which were or could have been raised in the Complaint
2 and Notice based on the facts alleged therein.

3 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
4 certain disputed claims between the Parties as alleged in the Notice and/or Complaint. By
5 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the
6 Parties' intent that nothing in this Consent Judgment shall be construed as an admission by the
7 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
8 Consent Judgment constitute or be construed as an admission of any fact, conclusion of law, issue
9 of law, or violation of law.

10 **2. COMPLIANCE - REFORMULATION**

11 **2.1 Level.** Within 180 days of entry of this Consent Judgment (the "Compliance
12 Date"), Defendant shall not manufacture, distribute, ship, or sell, or cause to be manufactured,
13 distributed, or sold, any Product in which the interior lining of the Product contains Lead in
14 concentrations that exceed 200 parts per million ("ppm") or of which the exterior of the Product
15 contains Lead exceeding 600 ppm ("Reformulation Standard").

16 **2.2 Certification of level from suppliers.** Defendant shall obtain written
17 certification from its suppliers of the Products certifying that the Products meet the Reformulation
18 Standard.

19 **2.3 Testing.** In order to ensure compliance with the requirements of Section 2.1,
20 Defendant shall conduct (or cause to be conducted) testing to confirm that the Reformulation
21 Standard has been achieved. At all times that Defendant uses PVC for the interior lining of its
22 Products, testing shall be conducted in compliance with Section 2.3.1. At any time that Defendant
23 uses a material other than PVC for the interior lining of its Products, testing shall be conducted in
24 accordance with Section 2.3.2. All testing pursuant to this section shall be performed by an
25 independent laboratory. The results of all testing performed pursuant to this Section 2 shall be
26 made available to both Parties on a confidential basis.

27 **2.3.1 Testing Where Interior Lining Contains PVC.** For each of the first
28 two orders of Products purchased from Defendant's suppliers after the Compliance Date,

1 Defendant, or Defendant's retailer(s), shall randomly select and test the greater of 0.1% (one-tenth
2 of one percent) or two, but in no case more than four, of the total Products purchased from each
3 supplier of the Products intended for sale in California. Following the first two orders, Defendant
4 shall test the Products in accordance with Section 2.3.2.

5 **2.3.2 Random Testing.** Testing pursuant to this Section 2 shall be
6 performed on randomly selected units by an independent laboratory in accordance with Defendant's
7 usual independent testing practices, which may include direct testing by Defendant's retailer(s). At
8 a minimum, during each calendar year, Defendant shall randomly select and test the greater of 0.1%
9 (one-tenth of one percent) or two, but in no case more than four, of the total Products purchased
10 from each supplier of the Products intended for sale in California. At the request of CEH, the
11 results of all testing performed pursuant to this section shall be made available to CEH on a
12 confidential basis. Testing conducted by CEH pursuant to this Consent Judgment shall only be
13 accomplished in accordance with EPA Method 3050B for the interior lining and any PVC material
14 used in the exterior of the Products, and either EPA Method 3050B or ASTM F-963 for the exterior
15 surface-coating (the "Test Protocol").

16 **2.3.3 Products that exceed stipulated levels pursuant to Defendant's**
17 **Testing.** If the results of the testing required pursuant to Section 2.3 show levels of lead exceeding
18 the Reformulation Standard, Defendant shall refuse to accept all of the Products that were
19 purchased under the particular purchase order and send a notice to the supplier explaining that such
20 Products do not comply with the supplier's certification. Following a test demonstrating a
21 particular supplier's Product exceeded the levels set forth above, Defendant shall apply the testing
22 frequency set forth in Section 2.3 as though the next shipment from the supplier were the first one
23 after the Compliance Date.

24 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of
25 the Products. Any such testing will be conducted by CEH at an independent laboratory, in
26 accordance with the Test Protocol. In the event that CEH's testing demonstrates Lead levels in
27 excess of the Reformulation Standard of two or more Products, CEH shall inform Defendant of the
28 test results, including information sufficient to permit Defendant to identify the Products. In the

1 event of such a contingency, Defendant may perform its own confirmatory testing. If Defendant's
2 confirmatory testing demonstrates Lead levels below the Reformulation Standard, CEH and
3 Defendant will jointly submit the Product(s) to a third laboratory, to be selected jointly by CEH and
4 Defendant, which will test the Product(s) using the appropriate Test Protocol. If the testing by
5 either Defendant or the third laboratory demonstrates Lead levels in excess of the Reformulation
6 Standard then: (1) the test will count as a test in excess of the Reformulation Standard for purposes
7 of Section 2.3.3; and (2) Defendant shall, within 20 days following such notice, provide CEH, at the
8 address listed in Section 12, with its supplier certification and testing information demonstrating its
9 compliance with Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH
10 with information demonstrating that it complied with Sections 2.2 and 2.3 (as the case may be),
11 Defendant shall be liable for stipulated payments in lieu of penalties for Products for which CEH
12 produces tests demonstrating Lead levels exceeding the Reformulation Standard as set forth below.
13 In addition, Defendant shall then apply the testing frequency set forth in Section 2.3 as though the
14 next shipment from the supplier were the first one following the Compliance Date. The payments
15 shall be made to CEH and used for the purposes described in Section 4.1.

16 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in
17 lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows:

18	First Occurrence:	\$1,250
19	Second Occurrence:	\$1,500
20	Third Occurrence:	\$1,750
21	Thereafter:	\$2,500

22 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,
23 regardless of the number of units of Defendant's Products tested by CEH with exceedances of the
24 Lead levels set forth in this Consent Judgment, shall be \$3,500.

25 **2.4.2 Products in the stream of commerce.** Defendant's Products that
26 have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the
27 Compliance Date shall be released from any claims that were brought or that could have been
28 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of

1 Section 8, below.

2 3. [RESERVED.]

3 4. SETTLEMENT PAYMENTS

4 4.1 Monetary Payment in Lieu of Penalty: Defendant shall pay \$15,000 to
5 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use such
6 funds to continue its work protecting people from exposures to toxic chemicals. As part of this
7 work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.

8 4.2 Attorneys' Fees and Costs: Defendant shall pay \$30,000 to the Lexington
9 Law Group to reimburse the Lexington Law Group and its attorneys for their reasonable
10 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating,
11 bringing this matter to Defendant's attention, litigating and negotiating a settlement in the public
12 interest.

13 4.3 Timing of payments. The payments required under Sections 4.1 and 4.2
14 shall be paid into a Lexington Law Group, LLP interest bearing Client Funds Account within five
15 (5) days after execution of this proposed Consent Judgment by the Parties. The payments
16 deposited, including interest, may not be withdrawn from the Client Funds Account or otherwise
17 utilized until after this Consent Judgment is final, including all appeals, if any.

18 5. MODIFICATION OF CONSENT JUDGMENT

19 5.1 This Consent Judgment may be modified by written agreement of CEH and
20 Defendant, or upon motion of CEH or Defendant as provided by law.

21 5.2 CEH intends to enter into agreements with other entities that manufacture,
22 distribute and/or sell Products. Should Defendant determine that the provisions of any such
23 Consent Judgment with a similarly situated manufacturer or distributor of products are less
24 stringent, Defendant may request a modification of this Consent Judgment to conform with the
25 terms of the later entered Consent Judgment. Upon 30 days prior written notice of Defendant's
26 request for a modification, CEH shall inform Defendant whether it will agree to such modification.
27 If CEH does not agree, Defendant may move the Court for a modification pursuant to this section.
28

1 **6. ENFORCEMENT OF CONSENT JUDGMENT**

2 6.1 Either Party may, by motion or application for an order to show cause,
3 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on any
4 motion or application shall be entitled to its reasonable attorneys' fees and costs associated with
5 such motion or application.

6 **7. APPLICATION OF CONSENT JUDGMENT**

7 7.1 This Consent Judgment shall apply to and be binding upon the Parties hereto,
8 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

9 **8. CLAIMS COVERED**

10 8.1 This Consent Judgment is a full, final and binding resolution between CEH
11 and Defendant of any violation of Proposition 65 that was or could have been asserted in the Notice
12 or Complaint against Defendant (including any claims that could be asserted in connection with any
13 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,
14 officers, employees, agents, attorneys, distributors, or customers (collectively, "Defendant
15 Releasees") based on failure to warn about alleged Proposition 65 exposures, with respect to any
16 Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date
17 of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment constitutes
18 compliance with Proposition 65 for purposes of Lead exposures from the Products.

19 8.2 Further, CEH hereby releases all retailers, distributors, and licensors of
20 Defendant's products from any claims related to the Products set forth in the Notice, the Complaint
21 and this Judgment and CEH agrees to dismiss any such claims that it has asserted or could assert
22 against any retailers, distributors, or licensors of Defendant's Products. If CEH has filed a
23 complaint against a retailer, distributor, or licensor of Defendant's Products, then CEH shall within
24 10 days of entry of this Consent Judgment file a dismissal, with prejudice, as to those claims
25 relating to Defendant's Products. CEH shall provide Defendant with a conformed copy of the
26 dismissal. CEH further agrees to provide Defendant with a letter substantially similar to the one
27 attached hereto as Exhibit A, stating that it has released all of Defendant's distributors, retailers, and
28 licensors from any liability relating to sales of Products manufactured and/or sold by Defendant. As

1 to each of Defendant's retailers, distributors, or licensors which have not been served with a 60-day
2 notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said retailer,
3 distributor, or licensor which includes within its scope, whether directly or indirectly, any of
4 Defendant's Products. For purposes of the release provided in this section, the term "retailers,
5 distributors, or licensors" shall include their respective related entities, predecessors, successors,
6 assigns, parents, subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders,
7 attorneys, representatives, agents and employees, past present and future.

8 **9. SEVERABILITY**

9 **9.1** In the event that any of the provisions of this Consent Judgment are held by a
10 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

11 **10. GOVERNING LAW**

12 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
13 State of California.

14 **11. CONSENT JUDGMENT TERMINATION AND RETENTION OF**
15 **JURISDICTION**

16 **11.1** 11.1 This Consent Judgment will automatically terminate and be of no
17 further force, validity or affect as of July 1, 2011.

18 **11.2** This Court shall retain jurisdiction of this matter to implement and enforce
19 the terms this Consent Judgment while it is in effect.

20 **12. PROVISION OF NOTICE**

21 **12.1** All notices required pursuant to this Consent Judgment and correspondence
22 shall be sent to the following:

23 For CEH:

24 Mark N. Todzo
25 Lexington Law Group, LLP
26 1627 Irving Street
27 San Francisco, CA 94122
28

1 For Defendant:

2 Malcolm Weiss, Esq.

3 Jeffer, Mangels, Butler & Marmaro, LLP

4 1900 Avenue of the Stars, 7th Floor

5 Los Angeles, CA 90067

6 **13. COURT APPROVAL**

7 **13.1** CEH will comply with the settlement notice provisions of Health and Safety
8 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

9 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
10 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive
11 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become
12 effective and has no force or effect until all issues on appeal are resolved.

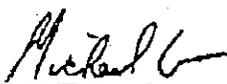
13 **14. EXECUTION AND COUNTERPARTS**

14 **14.1** 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.

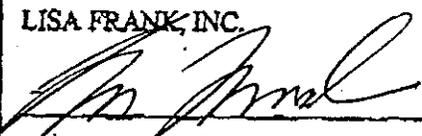
16 **15. AUTHORIZATION**

17 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
19 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
20 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
21 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

1. AGREED TO:
2. CENTER FOR ENVIRONMENTAL HEALTH

3. 
4. _____
5. Michael Green, Executive Director
6. Center for Environmental Health

Dated: 5/31/06

7. LISA FRANK, INC.
8. 
9. _____
10. Lisa Frank
11. Printed Name

Dated: 6-12-06

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