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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 07 2011

John A. Clarke, Executive Officer/Clerk
By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA EX
REL. CALIFORNIA AIR RESOURCES BOARD,

PLAINTIFF,

v.

LIQUID GLASS ENTERPRISES, INC. and DOES
1 through 50,

DEFENDANT.

Case No. BC 427662

CONSENT JUDGMENT
PURSUANT TO STIPULATION
OF THE PARTIES; [~~PROPOSED~~]
ORDER

Judge: Hon. Ronald M. Sohigian
Dept.: 41

This Consent Judgment ("Consent Judgment") is entered into by Plaintiff the PEOPLE OF THE STATE OF CALIFORNIA, ex rel. CALIFORNIA AIR RESOURCES BOARD (CARB) and Defendant LIQUID GLASS ENTERPRISES, INC. (Liquid Glass). For purposes of this Consent Judgment, CARB and Liquid Glass are referred to collectively as the "Parties."

INTRODUCTION

This Consent Judgment relates to Liquid Glass's violations of California Code of Regulations, Title 17, sections 94509 and 94512 (the "Regulations"). As set forth in the complaint for civil penalties and injunctive relief filed on December 9, 2009 (the "Complaint"),

1 CARB alleges that Liquid Glass violated Title 17, section 94509 by offering to sell and selling in
2 California Liquid Glass Ultimate Auto Polish/Finish which contain volatile organic compounds
3 (VOCs) in concentrations greater than 15 percent, and offering to sell and selling in California
4 Liquid Glass Pre-Cleaner which contain VOCs in concentrations greater than 17 percent, both of
5 which exceeded maximum concentrations of VOCs from 2005 to the present. CARB's complaint
6 also alleges that Liquid Glass violated Title 17, section 94512, by failing to clearly display the
7 date of manufacture on Liquid Glass Ultimate Auto Polish/Finish or Liquid Glass Pre-Cleaner
8 (the "Products") from 2005 through at least 2007.

9 The Parties engaged in extended settlement negotiations to resolve the Complaint. In these
10 negotiations, CARB was represented by the Attorney General of the State of California. Liquid
11 Glass was represented by Michael Vergara with the law firm Somach Simmons & Dunn.

12 The Parties enter into this Consent Judgment pursuant to a compromise and settlement of
13 the allegations in the Complaint. The Parties believe that the resolution embodied in this Consent
14 Judgment is fair and reasonable, and that entry of this Consent Judgment is fair and in the best
15 interest of the public.

16 The Parties, after opportunity for review by counsel, hereby stipulate and consent to the
17 entry of this Consent Judgment as set forth below.

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

19 **CONSENT JUDGMENT PURSUANT TO STIPULATION**

20 **1. DEFINITIONS**

21 Except where otherwise expressly defined in this Consent Judgment, all terms shall be
22 interpreted consistent with Division 26, Part 4, Chapters 1 through 4 of the California Health &
23 Safety Code (Health & Saf. Code §§ 39000 et seq.) and the Consumer Products Regulation (Cal
24 Code Regs., tit. 17, §§ 94507 et seq.).

25 **2. JURISDICTION AND VENUE**

26 The Parties agree that the Superior Court of California, County of Los Angeles, has subject
27 matter jurisdiction over the matters alleged in this action, and for purposes of enforcing this
28 Consent Judgment, personal jurisdiction over the Parties. The Superior Court for the County of

1 Los Angeles is a proper venue for this action. This court shall keep jurisdiction over this matter
2 pursuant to Code of Civil Procedure section 664.6, and any other relevant statute, through the
3 date of termination of this agreement.

4 **3. PAYMENT OF CIVIL PENALTIES**

5 **3.1 Total Penalties**

6 On entry of this Consent Judgment, Liquid Glass shall be liable for a total of one hundred
7 thousand dollars (\$100,000.00) in civil penalties, forty thousand dollars (\$40,000.00) of which
8 shall be suspended ("Suspended Penalty") until the terms of this Consent Judgment expire, or
9 until Liquid Glass violates the terms of the injunction set forth in Section 4, at which time CARB
10 may seek enforcement of the injunction and payment of the Suspended Penalty as provided in
11 Section 5.

12 **3.2 Civil Penalty Payment**

13 Within twenty (20) days of facsimile and mail service of the notice of entry of this Consent
14 Judgment, Liquid Glass shall deliver a check for \$60,000.00 made payable to the "Air Pollution
15 Control Fund" addressed as follows:

16
17 California Air Resources Board
18 1001 I Street
19 Sacramento, California 95812
Attn: Steve Giorgi

20 If Liquid Glass fails to make timely payment of this amount, Liquid Glass shall pay a stipulated
21 late payment penalty of one thousand dollars (\$1,000.00) for each day payment is overdue.

22 **3.3 Suspended Penalty**

23 Against the total penalty of \$100,000.00, \$40,000.00 shall be suspended for a period of five
24 years. Subject to the requirements of Section 5, if during the term of this Consent Judgment
25 Liquid Glass violates the terms of the injunction stated in Section 4.1, Liquid Glass shall pay to
26 the Air Pollution Control Fund, at the address stated in Section 3.2, the Suspended Penalty. If
27
28

1 Liquid Glass is ordered to pay the Suspended Penalty and then fails to pay the Suspended Penalty
2 in twenty (20) days after service of entry of the order, it shall pay an additional late payment
3 penalty of \$1000.00 per day for each day it is late. CARB shall seek payment of the Suspended
4 Penalty by serving and filing a regularly noticed motion in accordance with Code of Civil
5 Procedure section 1005 pursuant to Section 5.
6

7 **3.4 Disputes Pertaining to Late Payment Penalties**

8 Should any disagreement arise pertaining to Liquid Glass's failure to timely pay the late
9 payment penalties provided in Sections 3.2 and 3.3, CARB may move the Court to award such
10 late payment penalty(ies) by serving and filing a regularly noticed motion in accordance with
11 Code of Civil Procedure section 1005. Liquid Glass may file an opposition, and CARB may file
12 a reply. At least ten (10) business days before filing a motion under this section, CARB must
13 meet and confer in good faith with Liquid Glass to attempt to resolve the dispute without judicial
14 intervention.
15

16 **4. INJUNCTIVE RELIEF**

17 **4.1 Injunction**

18 Pursuant to this Consent Judgment, Liquid Glass is enjoined from and shall not
19 manufacture for sale in California, nor distribute, supply, sell or offer for sale within the State of
20 California any consumer product in violation of the Consumer Products Regulation, California
21 Code of Regulations, title 17, sections 94509 and 94512.
22

23 **4.2 Violation of the Injunction**

24 If Liquid Glass violates Section 4.1, it may be liable for penalties subject to the Consent
25 Judgment enforcement provisions set forth in Section 5, as applicable, in an amount consistent
26 with Health & Safety Code sections 42402, 42402.1, 42402.2, 42402.3, 42402.4, and 42403.
27 These penalties shall be in addition to the Suspended Penalty.
28

1 **5. ENFORCEMENT OF INJUNCTION**

2 As provided in Sections 3 and 4, CARB may move this Court to enforce the injunction, and
3 to award other appropriate relief by serving and filing a regularly noticed motion in accordance
4 with Code of Civil Procedure section 1005. Liquid Glass may file an opposition, and CARB may
5 file a reply, both also in accordance with Code of Civil Procedure section 1005. Nothing in this
6 Consent Judgment alters or reduces CARB's burdens (e.g., burden of going forward, burden of
7 producing evidence, burden of proof) applicable to any enforcement action brought under this
8 Consent Judgment. At least ten (10) business days before filing a motion under this section,
9 CARB must meet and confer with Liquid Glass to attempt to resolve the matter without judicial
10 intervention.

11 **6. MATTERS COVERED BY THIS CONSENT JUDGMENT**

12 **6.1 Final and Binding Resolution**

13 This Consent Judgment is a final and binding resolution and settlement of all claims,
14 violations or causes of action alleged by CARB in the Complaint, and of all claims, violations or
15 causes of action which could have been asserted by CARB against Liquid Glass, based on the
16 facts that are the subject of the Complaint ("Covered Matters").

17 **6.2 Reserved Claims**

18 CARB reserves the right to pursue any claim(s) that is not a Covered Matter ("Reserved
19 Claim"), and Liquid Glass retains all available defenses (except those expressly waived under
20 Section 6.4 below) including, without limitation, subject matter jurisdiction, personal jurisdiction,
21 and statute of limitations against any Reserved Claim. Any claims, violations or causes of action
22 that constitute a Reserved Claim are not resolved, settled or covered by this Consent Judgment.

23 **6.3 Covenant Not to Sue**

24 Liquid Glass and its officers, employees, representatives, agents or attorneys covenant not
25 to sue or pursue any civil or administrative claims against CARB or other departments or
26 agencies of the State of California, or their officers, employees, representatives, agents or
27 attorneys arising out of or related to Covered Matters, except for the purpose of enforcing
28 Plaintiff's obligations under this Consent Judgment.

1 **6.4 Laches, Claims Splitting Etc.**

2 In any subsequent action that may be brought by CARB based on any Reserved Claims,
3 Liquid Glass agrees that it will not assert that failing to pursue the Reserved Claims as part of this
4 action constitutes claim-splitting, laches or is otherwise inequitable. This Paragraph does not
5 prohibit Liquid Glass from asserting any statute of limitations that may be applicable to any
6 Reserved Claims.

7 **6.5 No Waiver of Rights**

8 Liquid Glass hereby specifically reserves any rights, and by this Consent Judgment does not
9 waive its rights, to challenge any permit, permit condition, or CARB action not otherwise
10 resolved pursuant to this Consent Judgment.

11 **6.6 Applicable Dates**

12 The provisions of sections 6.1 through 6.4 are effective on the date of the entry of the
13 Consent Judgment.

14 **6.7 No Bar to Enforcement**

15 Sections 6.1 through 6.4 shall not bar CARB's right to enforce the terms of the Consent
16 Judgment in this or another proceeding.

17 **7. NOTICE**

18 All submissions and notices required by this Consent Judgment shall be sent to:

19 For CARB:

20
21 Julie Cress
22 California Air Resources Board
23 1001 I Street
24 Sacramento, California 95812

25 Gary Tavetian
26 Deputy Attorney General
27 Office of the Attorney General
28 300 South Spring Street, Ste 1702
 Los Angeles, California 90013

1 For Liquid Glass:

2 John R. Heywang
3 Liquid Glass Enterprises, Inc.
4 P.O. Box 1170
5 Teaneck, NJ 07666
6 jheywang@ix.netcom.com

7 Michael Vergara
8 Somach Simmons & Dunn
9 500 Capitol Mall, Suite 1000
10 Sacramento, California 95814
11 mvergara@somachlaw.com

12 Any Party may change its notice name and address by informing the other Party in writing,
13 but no change is effective until it is received. All notices and other communications required or
14 permitted under this Consent Judgment that are properly addressed as provided in this Paragraph
15 are effective upon delivery if delivered personally or by overnight mail, or are effective five (5)
16 days following deposit in the United States mail, postage prepaid, if delivered by mail.

17 **8. EFFECT OF JUDGMENT**

18 Except as expressly provided in this Consent Judgment, nothing in this Consent Judgment
19 is intended nor shall it be construed to preclude CARB, or any state, county, or local agency,
20 department, board or entity from exercising its authority under any law, statute or regulation.

21 **9. NO WAIVER OF RIGHT TO ENFORCE**

22 The failure of CARB to enforce any provision of this Consent Judgment shall neither be
23 deemed a waiver of such provision nor in any way affect the validity of this Consent Judgment.
24 The failure of CARB to enforce any such provision shall not preclude it from later enforcing the
25 same or any other provision of this Consent Judgment. No oral advice, guidance, suggestions or
26 comments by employees or officials of any Party regarding matters covered in this Consent
27 Judgment shall be construed to relieve any Party of its obligations under this Consent Judgment.
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10. FUTURE REGULATORY CHANGES

Nothing in this Consent Judgment shall excuse Liquid Glass from meeting any more stringent requirements that may be imposed by changes in the applicable law.

11. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment shall apply to and be binding upon CARB and Liquid Glass, and their employees, agents, successors, and assigns.

12. AUTHORITY TO ENTER CONSENT JUDGMENT

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

13. RETENTION OF JURISDICTION

The Parties agree that this Court has exclusive jurisdiction to interpret and enforce the Consent Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this Consent Judgment, and to address any other matters arising out of or regarding this Consent Judgment.

14. EFFECTIVE DATE OF CONSENT JUDGMENT

This Consent Judgment shall go into effect immediately upon the Court's entry thereof.

15. NON-DISCHARGEABILITY OF OBLIGATIONS

Liquid Glass agrees that it will not seek to discharge in bankruptcy any payment obligations required by this Consent Judgment.

16. PAYMENT OF LITIGATION EXPENSES AND FEES

The Parties shall pay their own attorneys' fees and costs and all other costs of litigation and investigation incurred in this action.

17. INTERPRETATION

This Consent Judgment was drafted equally by all Parties. The Parties agree that the rule of construction holding that ambiguity is construed against the drafting Party shall not apply to the interpretation of this Consent Judgment.

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18. COUNTERPART, EMAIL, AND FACSIMILE SIGNATURES

This Consent Judgment may be executed by the Parties in counterparts, emails, and facsimiles, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

19. INTEGRATION

This Consent Judgment constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in the Consent Judgment.

20. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only by the Court, or upon written consent by the Parties and the approval of the Court.

21. TERMINATION OF CONSENT JUDGMENT

This Consent Judgment will expire and be of no further effect five (5) years from the entry of this Consent Judgment by the Court.

22. FINAL JUDGMENT

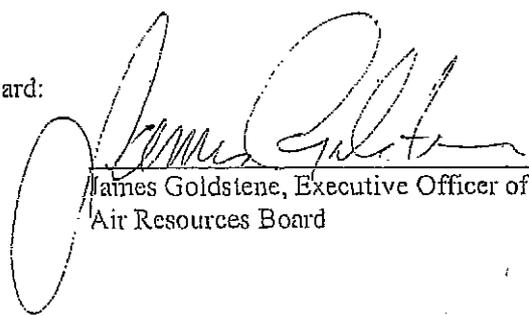
Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment by the Court as to the Parties.

STIPULATION AND APPROVALS OF THE PARTIES.

IT IS SO STIPULATED.

Plaintiff California Air Resources Board:

Dated: FEB 24, 2011


James Goldstene, Executive Officer of the California Air Resources Board

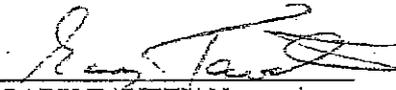
1 Defendant Liquid Glass Enterprises, Inc.:

2
3 Dated: 2/9/2011, 2011

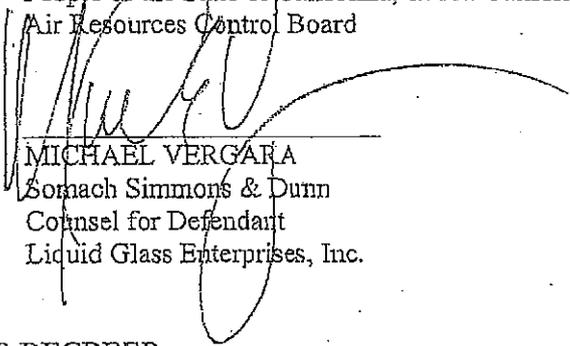

JOHN R. HEYWANG
President and Chief Executive Officer
Liquid Glass Enterprises, Inc.

6 Approved as to form:

8 Dated: 2/24, 2011


GARY TAVETIAN
Deputy Attorney General for the State of California
Attorneys for Plaintiff
People of the State of California, ex rel. California
Air Resources Control Board

12 Dated: 2-11-11, 2011


MICHAEL VERGARA
Somach Simmons & Dunn
Counsel for Defendant
Liquid Glass Enterprises, Inc.

17 IT IS SO ORDERED, ADJUDGED AND DECREED

18 Dated: MAR 07 2011, 2011

RONALD M. SOHIGIAN
Judge of the Superior Court

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