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David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara

Case #1-00-CV-788657 Filing #G-61899

By R. Walker, Deputy

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

ATLANTIC RICHFIELD COMPANY,
CONAGRA GROCERY PRODUCTS
COMPANY, E.I. DU PONT DE NEMOURS
AND COMPANY, NL INDUSTRIES, INC.,
and THE SHERWIN-WILLIAMS COMPANY,

Defendants.

Case No.: 1-00-CV-788657

AMENDED JUDGMENT

AND RELATED CROSS-ACTION.

1 Filed thirteen years ago, the matter came on for a bench trial on July 15-18, 22-25, 29-30,
2 August 1, 5-8, 12-15, and 19-22, 2013 in Department 1 (Complex Civil Litigation), the
3 Honorable James P. Kleinberg presiding. The appearances of counsel for each trial day are as
4 noted in the record and in the minutes of the Court filed on December 2, 2013, Docket Nos.
5 3646-3669, inclusive.

6 Pursuant to the Court's Order of August 16, 2013 each party simultaneously submitted its
7 detailed version of a proposed statement of decision ("PSOD") for the Court to consider in
8 rendering this opinion. And, on September 23, 2013, the greater part of the day was devoted to
9 closing arguments. Following argument the matter was submitted for decision. On November 4,
10 2013, the Court issued an Order directing the parties to address issues pertaining to the proposed
11 plan of abatement with which the parties complied; the case then stood resubmitted for decision
12 as of November 26, 2013.

13 On December 16, 2013 the Court issued its Proposed Statement of Decision, and advised
14 the parties that any objections pursuant to California Rules of Court, Rule 3.1590(g) must be
15 submitted within 15 days. On December 31, 2013, the parties filed objections to the Court's
16 December 16, 2013 Proposed Statement of Decision.

17 After consideration of the objections filed, and having read and considered the oral and
18 written evidence, having observed the witnesses testifying in court, and testimony introduced
19 through depositions, having considered the supporting and opposing memoranda of all parties,
20 ~~having heard and considered the arguments of counsel, and good cause appearing therefore, the~~
21 Court on January 7, 2014 issued its Statement of Decision, which is incorporated by reference
22 into this Amended Judgment.

23
24 By reason of the Statement of Decision, judgment shall be entered for Plaintiff, the
25 People of the State of California, acting by and through the County Counsels of Santa Clara,
26 Alameda, Los Angeles, Monterey, San Mateo, Solano, and Ventura Counties and the City
27 Attorneys of Oakland, San Diego, and San Francisco (referred to herein as "the People") against
28 Defendants ConAgra Grocery Products Company ("ConAgra"), NL Industries, Inc. ("NL") and
The Sherwin-Williams Company ("SW") as follows. The term "Jurisdictions" below refers to

1 the counties of Santa Clara, Alameda, Los Angeles, Monterey, San Mateo, Solano, and Ventura,
2 the cities of Oakland and San Diego, and the City and County of San Francisco.

3
4 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that**

5 1. The Court finds in favor of the People and against ConAgra, NL, and SW on the
6 claim of public nuisance, and enters judgment in favor of the People against ConAgra, NL and
7 SW, jointly and severally.

8 2. The proper remedy in this case is abatement through the establishment of a fund,
9 in the name of the People, dedicated to abating the public nuisance. This fund shall be
10 administered by the State of California in a manner consistent with the following abatement plan
11 (the "Plan").

12 3. If the State is unwilling or unable to serve as the receiver, then (a) the
13 Jurisdictions shall serve in this capacity; (b) all further references to the State or the Childhood
14 Lead Poisoning Prevention Branch shall be to the Jurisdictions; and (c) the second, third, and
15 fourth bullet points of Section C ("Administration") of the Plan shall not apply.

16 **A. Exclusions: The Plan *excludes* the following:**

- 17 • Institutional group quarters, including correctional facilities, nursing homes, dormitories,
18 non-family military housing (e.g. barracks), mental health psychiatric rehabilitation
19 residences, alcohol/detox living facilities, supervised apartment living quarters for youths
20 over 16, schools, and non-home based day care centers not otherwise included;
- 21 • Housing designated exclusively for the elderly or occupied by the elderly, unless children
22 are regularly present;
- 23 • Houses not occupied by young children for which clear evidence exists that demolition
24 will occur within two years;
- 25 • Houses constructed after 1980; and
- 26 • Properties documented by an inspection to not contain any interior lead-based paint.

27 **B.** The Plan does not require full-fledged removal of all lead paint from all surfaces in all
28 homes covered; The plan requires:

- 1 • Testing of interior surfaces in homes to identify both the presence of lead-based paint
- 2 and the presence of lead-based paint hazards;
- 3 • Remediation of interior lead-based paint on friction surfaces (including windows,
- 4 doors, and floors) by either replacement of the building component or by encapsulation
- 5 or enclosure of the lead-paint;
- 6 • Remediation of lead-based paint hazards in excess of actionable levels¹ on all other
- 7 surfaces through paint stabilization (as opposed to paint removal, enclosure or
- 8 encapsulation);
- 9 • Dust removal, proper disposal of waste, post-hazard control cleanup and dust testing,
- 10 and occupant and worker protection;
- 11 • Repair of building deficiencies that might cause the corrective measures to fail (e.g.
- 12 water leaks) to ensure durability of the lead hazard control measures; and
- 13 • Education of families and homeowners on lead poisoning prevention and paint-
- 14 stabilization techniques to remediate lead based paint hazards on non-friction surfaces.

15 **C. Administration**

- 16 • Payments into the fund shall be deposited into an account established in the name of
- 17 the People and disbursed by the State of California's Childhood Lead Poisoning
- 18 Prevention Branch ("CLPPB") on behalf of the People.
- 19 • The Jurisdictions shall apply for grant funds from the State on a specific needs basis.
- 20 • ~~The CLPPB will be responsible for reviewing grant applications prepared by the~~
- 21 ~~applying jurisdictions, and thereafter make specific grants to the Jurisdictions.~~
- 22 • The CLPPB shall be responsible for the administration of the financing of the Plan at
- 23 the statewide level.
- 24 • The Jurisdictions, through their existing lead control programs, will administer the
- 25 Plan consistent with all applicable State, Federal and local government regulations.

26 The Jurisdictions shall:

27 ¹ Actionable lead for this plan is defined as ≥ 1 mg/cm² or $\geq 5,000$ ppm for lead in deteriorated paint, ≥ 10 μ g/ft² for
28 lead in settled dust on floors, and ≥ 100 μ g/ft² for lead on interior window sills.

- 1 ○ Establish the Priority of Inspection and Lead Hazard Control Work
- 2 ○ Conduct workforce development, if necessary
- 3 ○ Conduct a public education campaign
- 4 ○ Conduct bidding for and payment of hazard control contractors
- 5 ○ Contract with independent contractors to conduct all actionable lead hazard
- 6 control, inspections and risk assessments
- 7 ○ Perform lead hazard control plans for each property
- 8 ○ Conduct all clearance tests
- 9 ○ Design of all hazard control plans for each property that will undergo hazard
- 10 control
- 11 ○ Design of any needed repairs to ensure the viability of hazard control
- 12 ○ Review of payments to hazard control contractors to ensure clearance is
- 13 achieved and all work has been completed in compliance with hazard control
- 14 specifications and to the satisfaction of the owners and occupants before
- 15 certified contractors are paid
- 16 ○ Review workforce development and training operations to ensure the needed
- 17 workforce is being obtained and is in place
- 18 ○ Review of public education and outreach materials and methods

19 **D. Enrollment**

20 ~~Property owners who enroll in the Plan would be screened to see if they own a~~
21 property that qualifies for inspection and services. If so, the individual jurisdiction
22 shall coordinate with that property owner to schedule an inspection for lead based paint
23 hazards in the home, as described below. The Jurisdiction will keep a complete public
24 database of all properties that have been enrolled in the Plan, the dates of inspection,
25 and the manner and method of hazard control services performed at the address, if any.
26 If the property owner does not enroll in the Plan after appropriate educational outreach
27 and counseling, the property should be deferred for actionable lead hazard control until
28 the property owner vacates or sells the property, unless there is a child who is at risk. A

1 listing of properties that have failed to enroll in the Plan or subsequently failed to
2 undergo actionable lead hazard control will be made available and accessible to the
3 public.

4 **E. Priorities**

5 In order to balance efficiency, simplicity and practical considerations, the “worst-first”
6 prioritization option should be used. This means that housing units meeting *one or*
7 *more* of the following criteria should be treated first and should be assigned to Priority
8 Group 1.

9 *PRIORITY GROUP 1*

- 10 • Housing property currently containing children with elevated blood lead levels and
11 known actionable lead hazards
 - 12 • Housing with a history of repeated, multiple poisonings occupied by a young child
13 who has not (yet) developed an elevated blood lead level and which has never
14 undergone any form of actionable lead treatment or hazard control
 - 15 • Housing with repeated notices of non-compliance with existing lead poisoning
16 prevention laws
 - 17 • Housing with substantial deferred maintenance defined by ten or more code violations
18 in the past 4 years
 - 19 • Housing identified as “high risk” by local authorities
 - 20 • ~~Housing located in high-risk census tracts or neighborhoods~~
 - 21 • Vacant units located in high-risk census tracts or neighborhoods whose owners commit
22 to renting to low-income families following hazard control for a specified time period
 - 23 • Properties meeting the criteria shown below should be assigned to the lower risk
24 Priority Group 2 and should be treated for actionable lead only after most of the higher
25 risk Priority Group 1 buildings have been completed
- 26 *PRIORITY GROUP 2*
- 27 • Properties with lower lead paint concentrations or with lead paint on fewer and/or
28 smaller surfaces (this would include buildings where the maximum paint lead loading

- 1 is greater than or equal to 1 mg/cm² but less than 5 mg/cm² and where the interior lead
2 painted surface area is less than 100 square feet)
- 3 • Properties with no history of lead poisoning
 - 4 • Residential buildings built after 1950 or not in high risk neighborhoods or census tracts
 - 5 • Properties that have undergone “gut” rehabilitation, which means that all painted
6 interior surfaces were removed and replaced with post-1980 building materials,
7 finishes and coatings
 - 8 • Vacant housing units that could one day be occupied by children
 - 9 • Properties not located in one of the high risk census tracts
 - 10 • The Jurisdictions shall prioritize Properties into Priority Group 1 or 2, as needed to
11 promote Plan efficiency and public health

12 **F. Completion of a Comprehensive Lead Hazard Inspection**

13 For most properties that are enrolled in the Plan, a new inspection for the presence or
14 absence of actionable lead (as defined below) shall be conducted. Tests will be conducted
15 using a portable X-Ray Fluorescence (“XRF”) instrument, a handheld device that measures
16 the presence and quantity of lead based paint on surfaces. For those properties that have been
17 inspected within the past 5 years, the earlier results can be used if desired by the owner or
18 occupant, so long as they comply with EPA and HUD requirements related to the number of
19 XRF readings within a given property and the number of housing units tested within a given
20 ~~multifamily housing development, quality control procedures, and performance of the~~
21 inspection by a California certified lead-based paint inspector, and the other criteria specified
22 below.

23 For all properties that have not been inspected or were inspected more than 5 years
24 ago, a new actionable lead-based paint inspection should be completed, unless there is
25 adequate documentation that the property is free of and/or has been made free of actionable
26 lead hazards. The inspection should be done at a time convenient to the occupant and should
27 be adequately staffed so that it can be completed in no more than two hours for a typical
28 California housing unit to reduce the burden on the occupant. Allowance for a longer time for

1 a larger property should be granted on a case by case basis. All data from the inspection shall
2 be retained by the Jurisdiction for the life of the building, by the owner of the building until it
3 is sold or demolished (all data should be transferred to the new owner) and by the inspector for
4 at least 5 years. The Jurisdiction should construct and populate a publicly available inspection
5 and hazard control database.

6 Under this Plan, the Jurisdiction will be required to establish programs throughout the
7 jurisdictions that provide homeowners with access to comprehensive residential lead paint
8 testing in conformity with the prioritization set forth above. That testing will be available to
9 all homeowners and residents of Properties not meeting the exclusion criteria set forth above.
10 The comprehensive lead inspection will properly identify those surfaces with actionable lead
11 and will identify those Properties that have no lead-based paint. Presumption of actionable
12 lead hazards will not be permitted. Previous lead inspection data should be used only if it is of
13 sufficient quality and only if it is augmented as needed.

14 Lead paint inspections under this plan must be done in accordance with an XRF
15 Performance Characteristics Sheet (PCS) issued by HUD and EPA and have all the required
16 measurement and supporting quality control data. It must include lead paint measurements on
17 all surfaces with a similar painting history in all rooms, room equivalents, including
18 measurements on floors, walls and ceilings with intact and non-intact paint and coatings using
19 the standard HUD lead-based paint inspection protocol.

20 **G. Identification and Reporting of Actionable Lead Paint**

21 The results of the comprehensive lead inspections performed on included housing units
22 will be used: (1) to maintain a database that is available to the public documenting the location
23 of lead based paint and lead based paint hazards in inspected properties; and (2) as the basis
24 for recommending lead hazard control activities in properties.

25 To be considered actionable and therefore eligible for lead hazard control programs as
26 set forth in the recommendations that follow, the lead levels on surfaces and in dust must meet
27 certain actionable levels.

28 The level of lead in paint to be considered actionable under this plan should be ≥ 1

1 mg/cm² (or $\geq 5,000$ ppm if loading cannot be measured for technical reasons). The lead paint
2 should be measured using field-based XRF lead paint analyzers with a Performance
3 Characteristics Sheet; sodium rhodizonate, sodium sulfide or other spot test kits should not be
4 used to determine the presence of actionable lead for the purposes of this plan.

5 The level of lead in settled dust to be considered actionable under this plan should be
6 ≥ 10 $\mu\text{g}/\text{ft}^2$ on floors and ≥ 100 $\mu\text{g}/\text{ft}^2$ on interior window sills. Dust lead should be measured
7 using the standard wipe sampling method.

8 **H. Hazard Control Criteria and Options**

9 Once actionable lead has been found on surfaces or in dust in a property, the property
10 owner and the Jurisdiction will develop a plan for lead hazard control.

11 Under the Plan, all replaced building components should be at least equal in quality to
12 the lead painted components they replace. The judgment on what constitutes "equal to"
13 should be made by the Jurisdiction that will design the hazard control in collaboration with
14 owners and occupants. If an owner decides to replace a building component with a higher cost
15 equivalent item, the incremental cost should be borne by the owner.

16 The plan contemplates that the first prioritization of any lead hazard control plan is
17 replacement of lead painted windows and doors, which will yield the largest health benefit in
18 the shortest time period.

19 If the existing substrate is incapable of supporting an enclosure system, it should be
20 ~~either repaired to support an enclosure, or the component should be replaced.~~

21 Walls: For lead painted interior walls and ceilings, (new plaster is an acceptable
22 enclosure method, as long as the new lathe is physically attached to the substrate)

23 Floors & Stairs: Enclosure with new subflooring and finish goods (paint stabilization
24 should not be permitted on lead-painted floors and lead-painted stairs because of the
25 likelihood of deterioration due to traffic and on-going impact).

26 Ceilings: Paint Stabilization or Enclosure with drywall or equivalent

27 Window trim: Replacement (or off-site stripping and repainting for ornate, unique
28 items)

1 Window troughs: Replacement or Enclosure

2 Other window parts: Replacement (or off-site stripping and repainting for ornate,
3 unique items)

4 Window or Door Lintels: Replacement (or, if load-bearing, enclosure)

5 Doors Replacement: (or off-site stripping and repainting for ornate, unique items)

6 Door Frames: Replacement (or enclosure if load-bearing)

7 Interior Trim: Replacement (or off-site stripping and repainting for ornate, unique
8 items) or Paint Stabilization

9 Cabinets/Shelving: Paint Stabilization or Replacement (or off-site stripping and
10 repainting for ornate, unique items)

11 Radiators/Pipes: Paint Stabilization or Replacement (or off-site stripping and
12 repainting)

13 Stairs: Enclosure or Replacement

14 Dust Actionable Lead Dust: Removal to Clearance Standards

15 **I. Performance of Hazard Control Work**

16 The results of the actionable lead inspection will be used to devise actionable lead
17 hazard control work specifications. The specific products and methods, together with the
18 inspection report and expected timelines, will be presented to the owner and occupants and a
19 plan will be agreed to between the homeowner and the Jurisdiction.

20 ~~**J. Public Education and Outreach Plan**~~

21 The Jurisdiction shall conduct a public education and social marketing campaign to
22 engage the citizens, building owners, construction, and lead mitigation and inspection

23 **K. Costs and Timeline**

24 The Jurisdictions shall utilize their existing expertise in the following areas:
25 Inspection, Risk Assessment, Hazard Control, Construction, Specification Writing and
26 Bidding; Contracting and Procurement; Accounting and Payment Processing; Public
27 Education and Outreach; Toxicology; Environmental, Housing and Public Health Regulation
28 and Practice; Evaluation; Oversight; Legal; Insurance; Information Technology; Public and

1 Media Relations; and Clerical and Other Support Staff.

2 **L. Funding**

3 Since the Court orders abatement of interior surfaces only, with the Jurisdictions
4 conducting the inspections using their respective staffs, the estimate for inspection costs is
5 reduced from \$569,000,000 to \$400,000,000. This is calculated by using the per-unit cost of
6 inspection testified to at trial. The total cost of inspection of pre-1978 homes in the
7 Jurisdictions would be 3,555,630 units x 0.8 (reduction for multi-unit residences). Applying
8 that number to a reasonable cost of inspection yields the \$400,000,000 figure.

9 **M. Cost of Remediation**

10 Remediation limited to interior surfaces results in an estimated cost of remediation of
11 \$759,284,467, or approximately \$750,000,000.

12 Education expenses are included in these figures.

13 **CONCLUSION:**

14 **THEREFORE, THE COURT ORDERS:**

15 The Defendants against whom judgment is entered, jointly and severally, shall pay to
16 the People of the State of California, in a manner consistent with California law,
17 \$1,150,000,000 (One Billion One Hundred Fifty Million Dollars) into a specifically
18 designated, dedicated, and restricted abatement fund (the "Fund").

19 The payments into the Fund shall be within 60 days of entry of judgment.

20 ~~The Fund is to be administered by the Director of the California CLPPB program for~~
21 the benefit of people within the 10 Jurisdictions and the costs incurred by the State of
22 California to administer the Fund shall be paid from the Fund.

23 Monies from the Fund shall be disbursed to each jurisdiction to be supervised by that
24 County's Board of Supervisors (including the Board of Supervisors of the City and County of
25 San Francisco) and the city councils of the cities of Oakland and San Diego, consistent with
26 past practices regarding lead detection, removal, and prevention. Each jurisdiction shall be
27 entitled to receive up to the following maximum percentage and distribution from the fund:

28 Alameda* 9% \$103,500,000

1 (*including the residents of the City of Oakland)

2	Los Angeles	55%	\$632,500,000
3	Monterey	2%	\$23,000,000
4	San Mateo	5%	\$57,500,000
5	Santa Clara	9%	\$103,500,000
6	San Diego	7%	\$80,500,000
7	San Francisco	7%	\$80,500,000
8	Solano	2%	\$23,000,000
9	Ventura	4%	\$46,000,000

10 The jurisdictions shall apply for grants from the Fund with a three-step program as
11 described. Exterior abatement and remediation is excluded from this order.

12 Dr. David Jacobs, or his designee, shall serve as a consultant to the Plan. He shall be
13 compensated at a rate of \$300 per hour, with payments to be made out of the Fund. His
14 compensation for any 12 month period shall not exceed \$50,000. Any ordinary expenses
15 incurred by Dr. Jacobs, such as travel, meals, and incidentals shall be in addition to his hourly
16 charges and shall be consistent with the State of California reimbursement guidelines for
17 government employees.

18 The program shall last for four years from the date of total payment by defendants into
19 the Fund. If, at the end of four years, any funds remain, those monies shall be returned to the
20 ~~paying defendants in the ratio by which the program was initially funded. The Superior Court of~~
21 California, County of Santa Clara, shall have continuing jurisdiction over the Plan and its
22 implementation.

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:**

24 A judgment of dismissal shall be issued in favor of Defendant Atlantic Richfield
25 Company ("ARCO") and Defendant E.I. Du Pont de Nemours and Company ("DuPont") as
26 against the People on the public nuisance claim.

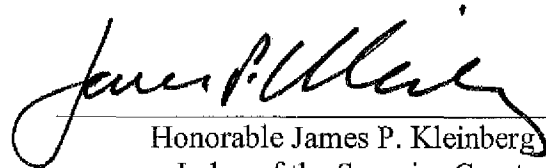
27 The Court finds in favor of the Cross-Defendant Jurisdictions, *i.e.*, County of Santa Clara,
28 City and County of San Francisco, County of Alameda, County of Los Angeles, County of

1 Monterey, City of Oakland, City of San Diego, County of San Mateo, County of Solano and
2 County of Ventura, and against Cross-Complainant and Defendant SW on SW's Cross-
3 Complaint for declaratory relief and hereby enters judgment in favor of the Jurisdictions and
4 against SW.

5 The prevailing parties shall have and recover from the opposing parties their statutory
6 costs in an amount of \$ _____ for the People against ConAgra, NL and SW, jointly and
7 severally, \$ _____ for Cross-Defendants against SW only, \$ _____ for ARCO
8 against the People only, and \$ _____ for DuPont against the People only. The
9 determination of costs shall not delay entry of judgment; the Clerk shall later insert the amounts
10 of awarded costs in the preceding sentence once they have been determined.

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Dated: March 26, 2014



Honorable James P. Kleinberg
Judge of the Superior Court
State of California