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FILED

MAY 23 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
vs.)
)
FABRIC.COM, INC., *et al.*,)
)
Defendants.)

Case No. CIV-1102079

**[PROPOSED] CONSENT JUDGMENT
AS TO SPRADLING INTERNATIONAL,
INC., SPRADLING INTERNATIONAL,
INC. - WEST, AND PROQUINAL, S.A. .**

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 Spradling International, Inc. and Spradling International, Inc. - West, and Proquinal S.A. (“Defendants”) on the other hand, to settle certain claims asserted by CEH against Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Fabric.com, Inc., et al.*, Marin County Superior Court Case No. CIV-1102079 (the “Action”).

1.2 On February 4, 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 Defendants
2 regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in
3 vinyl, oilcloth or imitation leather fabric ("Covered Products").

4 1.3 On April 25, 2011, CEH filed its complaint in the Action to name each
5 Defendant as a party.

6 1.4 Each 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 in the course of
8 doing business.

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

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

1 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 sixty days after the date of entry of
6 this Consent Judgment (the "Effective Date"), Defendants shall not manufacture, distribute, ship,
7 sell or offer for sale any Covered Product unless such Covered Product contains no more than .03
8 percent total Lead by weight (300 parts per million ("ppm")), as determined by the sample
9 preparation method used in USEPA Method 3050 or 3050B followed by ICP/MS (Inductively
10 coupled plasma-mass spectrometry) testing method 6020, as described in "SW846" - "Test
11 Methods for Evaluating Solid Waste, Physical/Chemical Methods," Third Edition, Nov. 1986 and
12 updates (<http://www.epa.gov/osw/hazard/testmethods/sw846/online/>).

13 2.2 On or before the Effective Date, Defendants shall provide samples of reformulated
14 Spradling Proquinal Red Marine Vinyl to CEH for demonstration and confirmation purposes.

15 2.3 On or before the Effective Date, Defendants shall provide CEH with a means
16 sufficient to allow CEH to determine whether Covered Products were manufactured, distributed,
17 shipped, sold or offered for sale by Defendants after the Effective Date.

18 **3. ENFORCEMENT**

19 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
20 cause to enforce the terms of this Consent Judgment, any Party seeking to enforce shall provide
21 the violating Party thirty (30) days advance written notice of the alleged violation. To the extent
22 CEH alleges that Defendants have violated the requirements of Section 2.1 above, the notice from
23 CEH shall include a description of the Covered Product giving rise to the alleged violation,
24 including any item, lot or SKU numbers on the Covered Product and its packaging, labeling and
25 receipt. Any enforcement by CEH of Paragraph 2.1 will be limited to Covered Products
26 purchased by CEH in California. The Parties shall meet and confer during such thirty (30) day
27 period in an effort to try to reach agreement on whether a violation has occurred and an
28 appropriate remedy for the alleged violation. After such thirty (30) day period, the Party seeking

1 to enforce may, after meeting and conferring, by motion or application for an order to show cause
2 before this Court, enforce the terms and conditions contained in this Consent Judgment.

3 **4. PAYMENTS**

4 4.1 **Payments From Defendants.** Within five (5) days of the entry of this
5 Consent Judgment, Defendants shall pay the total sum of \$40,000 as a settlement payment.

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

10 4.2.1 Defendants shall pay the sum of \$5,250 as a penalty pursuant to Health &
11 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
12 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
13 Environmental Health.

14 4.2.2 Defendants shall pay the sum of \$7,900 as payment to CEH in lieu of
15 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
16 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
17 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
18 funds to monitor compliance with the reformulation requirements of this and other similar
19 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
20 reformulation requirements. In addition, as part of its *Community Environmental Action and*
21 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
22 environmental justice groups working to educate and protect people from exposures to toxic
23 chemicals. The method of selection of such groups can be found at the CEH web site at
24 www.ceh.org/what-we-do/supporting-communities/the-justice-fund. The payment in lieu of
25 penalty check shall be made payable to the Center for Environmental Health.

26 4.2.3 Defendants shall pay the sum of \$26,850 as reimbursement of reasonable
27 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
28 payable to the Lexington Law Group.

1 **5. MODIFICATION AND DISPUTE RESOLUTION**

2 5.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
6 Judgment shall, after thirty (30) days written notice to any other Party, attempt in good faith to
7 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

8 **6. CLAIMS COVERED AND RELEASE**

9 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
10 and Defendants and Defendants' parents, shareholders, divisions, subdivisions, subsidiaries,
11 affiliated entities under common or joint ownership, directors, officers, employees, and their
12 successors and assigns ("Defendant Releasees"), and all to whom they directly or indirectly
13 distribute or sell Covered Products including, but not limited to distributors, wholesalers,
14 customers, retailers, franchisees, cooperative members, licensors and licensees (including but not
15 limited to Jo-Ann Stores, Inc.) ("Downstream Defendant Releasees"), of any violation of
16 Proposition 65 or any other statutory or common law claims that have been or could have been
17 asserted in the Complaint against Defendants, Defendant Releasees, and Downstream Defendant
18 Releasees, regarding exposure to Lead or the failure to warn about exposure to Lead arising in
19 connection with Covered Products manufactured, distributed, or sold by Defendants prior to the
20 Effective Date as set forth in the "Notice of Violation."

21 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
22 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
23 Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
24 violation of Proposition 65 that has been or could have been asserted regarding exposure to Lead
25 or the failure to warn about exposure to Lead arising in connection with Covered Products
26 manufactured, distributed or sold by Defendants prior to the Effective Date as set forth in the
27 "Notice of Violation." CEH will dismiss the action without prejudice as to Jo-Ann Stores, Inc.
28 promptly following the Effective Date.

1 6.3 CEH releases, waives, and forever discharges any and all claims against
2 Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
3 statutory or common law claims, other than Proposition 65 that have been or could have been
4 asserted regarding exposure to Lead or the failure to warn about exposure to Lead arising in
5 connection with Covered Products manufactured, distributed or sold by Defendants prior to the
6 Effective Date.

7 6.4 Compliance with the terms of this Consent Judgment by Defendants and the
8 Defendant Releasees shall constitute compliance with Proposition 65 by Defendants, the
9 Defendant Releasees and their Downstream Defendant Releasees with respect to any exposure to
10 Lead or alleged failure to warn about any exposure to Lead in Covered Products manufactured,
11 distributed or sold by Defendants after the Effective Date.

12 **7. PROVISION OF NOTICE**

13 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
14 the notice shall be sent by certified mail, return receipt requested, and electronic mail as follows:

15 **7.1.1 Notices to Defendants.** The person for Defendants to receive Notices
16 pursuant to this Consent Judgment shall be:

17 Mark Goldstone
18 President
19 Spradling International, Inc.
20 200 Cahaba Valley Pkwy North
 Pelham, AL 35124
 markg@spradlingvinyl.com

21 with copies to:

22 Steven G. McKinney
23 Balch & Bingham LLP
24 1901 Sixth Ave., North, Ste. 2600
 Birmingham, AL 35203-2628
 smckinney@balch.com

25 James R. Arnold
26 The Arnold Law Practice
27 225 Bush Street, 16th Floor
 San Francisco, CA 94104
 JArnold@arnoldlp.com

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1 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
2 this Consent Judgment shall be:

3 Howard Hirsch
4 Lexington Law Group
5 503 Divisadero Street
6 San Francisco, CA 94117
7 hhirsch@lexlawgroup.com

8 7.2 Any Party may modify the person and address to whom the notice is to be sent
9 by sending the other Party notice by certified mail, return receipt requested, and/or other
10 verifiable form of written communication.

11 **8. COURT APPROVAL**

12 8.1 This Consent Judgment shall become effective on the date of entry, provided
13 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
14 Defendants shall support approval of such Motion.

15 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
16 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
17 purpose.

18 **9. GOVERNING LAW AND CONSTRUCTION**

19 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
20 of California.

21 **10. ENTIRE AGREEMENT**

22 10.1 This Consent Judgment contains the sole and entire agreement and
23 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
24 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
25 merged herein and therein. There are no warranties, representations, or other agreements between
26 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
27 implied, other than those specifically referred to in this Consent Judgment have been made by any
28 Party hereto. No other agreements not specifically contained or referenced herein, oral or
otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind

1 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
2 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
3 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
4 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
5 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

6 **11. RETENTION OF JURISDICTION**

7 11.1 This Court shall retain jurisdiction of this matter to implement, modify or
8 enforce this Consent Judgment.

9 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

10 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
12 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
13 Party.

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

15 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
16 claim against another entity on terms that are different than those contained in this Consent
17 Judgment.

18 13.2 Nothing in this Consent Judgment shall release, or in any way affect any rights
19 that any Defendant may have against any other party, whether or not that party is a Defendant.

20 **14. EXECUTION IN COUNTERPARTS**

21 14.1 The stipulations to this Consent Judgment may be executed in counterparts
22 and by means of facsimile or portable document format (pdf), which taken together shall be
23 deemed to constitute one document.

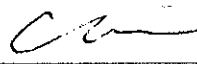
24 **15. PREPARATION OF CONSENT JUDGMENT**

25 15.1 The Parties, including their counsel, have participated in the preparation of
26 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
27 This Consent Judgment was subject to revision and modification by the Parties and has been
28 accepted and approved in its final form by all Parties and their counsel. Accordingly, any

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
4 be resolved against the drafting Party shall not be employed in the interpretation of this Consent
5 Judgment and, in this regard, the Parties hereby waive California Civil Code §1654.

6 **IT IS SO STIPULATED:**

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Dated: <u>Feb 17</u> , 2012	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>CAROLIZ PIZARRA</u> _____ Printed Name <u>Associate Director</u> _____ Title
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Dated: _____, 2012	SPRADLING INTERNATIONAL, INC. _____ Signature _____ Printed Name _____ Title
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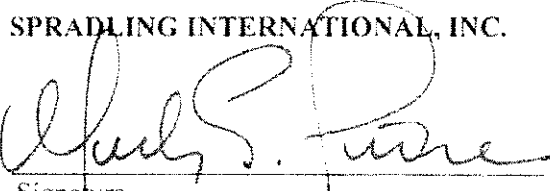
6 **IT IS SO STIPULATED:**

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Dated: _____, 2012	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
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Dated: <u>Feb. 16</u> , 2012	SPRADLING INTERNATIONAL, INC.  _____ Signature _____ Mark E. Goldstone Printed Name _____ President Title
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