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FILED

AUG 22 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, 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 NASSIMI, LLC**

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 Nassimi, LLC ("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. Fabric.com, Inc., et al.*, Marin County Superior Court Case No. CIV-1102079 (the "Action").

1.2 On May 3, 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 Attorneys of every California city with a population greater than 750,000, and to Defendant

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

3 1.3 On April 25, 2011, CEH filed the complaint in the Action. On August 23,
4 2011, CEH filed a "Doe" amendment naming Defendant as a party.

5 1.4 Defendant is a corporation that employs 10 or more persons, and that
6 manufactures, distributes and/or sells Covered Products in the State of California in the course of
7 doing business.

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

1 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
2 disputed in this action.

3 **2. INJUNCTIVE RELIEF**

4 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
5 Judgment (the "Effective Date"), Defendant shall not manufacture, purchase, or import any
6 Covered Product unless such Covered Product contains no more than .03 percent total Lead by
7 weight (300 parts per million ("ppm")), as determined by the sample preparation method used in
8 USEPA Method 3050 or 3050B followed by ICP/MS (Inductively coupled plasma-
9 mass spectrometry) testing method 6020, as described in "SW846" - "Test Methods for
10 Evaluating Solid Waste, Physical/Chemical Methods," Third Edition, Nov. 1986 and updates
11 (<http://www.epa.gov/osw/hazard/testmethods/sw846/online/>). As of 120 days after the date of
12 entry of this Consent Judgment, Defendant shall not distribute, ship, sell or offer for sale any
13 Covered Product unless such Covered Product contains no more than .03 percent total Lead by
14 weight (300 parts per million ("ppm")), as determined by the sample preparation method used in
15 USEPA Method 3050 or 3050B followed by ICP/MS (Inductively coupled plasma-
16 mass spectrometry) testing method 6020, as described in "SW846" - "Test Methods for
17 Evaluating Solid Waste, Physical/Chemical Methods," Third Edition, Nov. 1986 and updates.

18 2.2 On or before the Effective Date, Defendant shall provide samples of reformulated
19 Orange Primary Vinyl, formerly known as PRIORA, to CEH for demonstration and confirmation
20 purposes.

21 2.3 On or before the Effective Date, Defendant shall provide CEH with a means
22 sufficient to allow CEH to determine whether Covered Products were manufactured, distributed,
23 shipped, sold or offered for sale by Defendant after the Effective Date.

24 **3. ENFORCEMENT**

25 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
26 cause to enforce the terms of this Consent Judgment, any Party seeking to enforce shall provide
27 the violating Party thirty (30) days advance written notice of the alleged violation. To the extent
28 CEH alleges that Defendant has violated the requirements of Section 2.1 above, the notice from

1 CEH shall include a description of the Covered Product giving rise to the alleged violation,
2 including any item, lot or SKU numbers on the Covered Product and its packaging, labeling and
3 receipt. The Parties shall meet and confer during such thirty (30) day period in an effort to try to
4 reach agreement on whether a violation has occurred and an appropriate remedy for the alleged
5 violation. After such thirty (30) day period, the Party seeking to enforce may, after meeting and
6 conferring, by motion or application for an order to show cause before this Court, enforce the
7 terms and conditions contained in this Consent Judgment.

8 **4. PAYMENTS**

9 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
10 Judgment, Defendant shall pay the total sum of \$30,000 as a settlement payment.

11 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
12 paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
13 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
14 as follows:

15 4.2.1 Defendant shall pay the sum of \$3,930 as a penalty pursuant to Health &
16 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
17 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
18 Environmental Health.

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

1 www.ceh.org/what-we-do/supporting-communities/the-justice-fund. The payment in lieu of
2 penalty check shall be made payable to the Center for Environmental Health.

3 4.2.3 Defendant shall pay the sum of \$20,170 as reimbursement of reasonable
4 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
5 payable to the Lexington Law Group.

6 **5. MODIFICATION AND DISPUTE RESOLUTION**

7 5.1 **Modification.** This Consent Judgment may be modified from time to time by
8 express written agreement of the Parties, with the approval of the Court, or by an order of this
9 Court upon motion and in accordance with law.

10 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
11 Judgment shall, after thirty (30) days written notice to any other Party, attempt in good faith to
12 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

13 **6. CLAIMS COVERED AND RELEASE**

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

26 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
27 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
28 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any

1 violation of Proposition 65 that has been or could have been asserted regarding exposure to Lead
2 or the failure to warn about exposure to Lead arising in connection with Covered Products
3 manufactured, distributed or sold by Defendant prior to the Effective Date as set forth in the
4 "Notice of Violation."

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

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

16 **7. PROVISION OF NOTICE**

17 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
18 the notice shall be sent by certified mail, return receipt requested, and electronic mail as follows:

19 7.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
20 pursuant to this Consent Judgment shall be:

21 Gary M. Roberts
22 SNR Denton US LLP
23 601 South Figueroa Street, Suite 2500
24 Los Angeles, CA 90017-5704
25 Gary.roberts@snrdenton.com

26 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
27 this Consent Judgment shall be:

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

1 7.2 Any Party may modify the person and address to whom the notice is to be sent
2 by sending the other Party notice by certified mail, return receipt requested, and/or other
3 verifiable form of written communication.

4 **8. COURT APPROVAL**

5 8.1 This Consent Judgment shall become effective on the date of entry, provided
6 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
7 Defendant shall support approval of such Motion.

8 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
9 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
10 purpose.

11 **9. GOVERNING LAW AND CONSTRUCTION**

12 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
13 of California.

14 **10. ENTIRE AGREEMENT**

15 10.1 This Consent Judgment contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
17 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
18 merged herein and therein. There are no warranties, representations, or other agreements between
19 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
20 implied, other than those specifically referred to in this Consent Judgment have been made by any
21 Party hereto. No other agreements not specifically contained or referenced herein, oral or
22 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
23 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
24 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
25 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
26 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
27 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
28 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

1 **11. RETENTION OF JURISDICTION**

2 11.1 This Court shall retain jurisdiction of this matter to implement, modify or
3 enforce this Consent Judgment.

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

5 12.1 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 **13. NO EFFECT ON OTHER SETTLEMENTS**

10 13.1 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 13.2 Nothing in this Consent Judgment shall release, or in any way affect any rights
14 that any Defendant may have against any other party, whether or not that party is a Defendant.

15 **14. EXECUTION IN COUNTERPARTS**

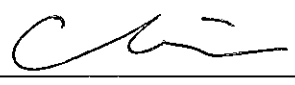
16 14.1 The stipulations to this Consent Judgment may be executed in counterparts
17 and by means of facsimile or portable document format (pdf), which taken together shall be
18 deemed to constitute one document.

19 **15. PREPARATION OF CONSENT JUDGMENT**

20 15.1 The Parties, including their counsel, have participated in the preparation of
21 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
22 This Consent Judgment was subject to revision and modification by the Parties and has been
23 accepted and approved in its final form by all Parties and their counsel. Accordingly, any
24 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
25 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
26 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
27 be resolved against the drafting Party shall not be employed in the interpretation of this Consent
28 Judgment and, in this regard, the Parties hereby waive California Civil Code §1654.

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IT IS SO STIPULATED:

Dated: <u>May 11</u> , 2012	CENTER FOR ENVIRONMENTAL HEALTH
	 _____ Signature
	<u>Charles Pizzano</u> _____ Printed Name
	<u>Associate Director</u> _____ Title

Dated: _____, 2012	NASSIMI, LLC
	_____ Signature
	_____ Printed Name
	_____ Title

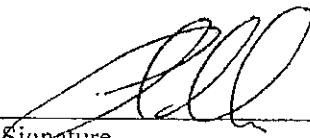
(PROPOSED) ORDER

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____
JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

1 IT IS SO STIPULATED:

2 Dated: _____, 2012 3 4 5 6 7 8 9 10 11	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
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12 Dated: <u>MAY 9</u> , 2012 13 14 15 16 17 18 19 20 21 22	NASSIMI, LLC  _____ Signature <u>EDWARD NASSIMI</u> _____ Printed Name <u>PRESIDENT</u> _____ Title
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23 (PROPOSED) ORDER

24 IT IS SO ORDERED, ADJUDGED,
25 AND DECREED

26 Dated: AUG 22 2012
27
28

ROY CHERNUS

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA