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**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 09 2014

K. McCoy, Exec. Off./Clerk

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
vs.)
)
DGL GROUP, LTD., et al.,)
)
Defendants.)

Case No. RG13706587

KM
**[PROPOSED] CONSENT JUDGMENT
AS TO DGL GROUP, LTD.**

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 DGL Group, Ltd. (“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. DGL Group, Ltd., et al.*, Alameda County Superior Court Case No. RG13706587 (the “Action”).

1.2 On September 18, 2013, CEH provided a “Notice of Violation” relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“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 Defendant
2 regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in
3 folio cases made with leather, vinyl, or imitation leather materials.

4 1.3 On December 12, 2013, CEH filed the Complaint against Defendant in the
5 Action. The operative Complaint alleges Proposition 65 violations with respect to the presence of
6 Lead in folio cases made with leather, vinyl, or imitation leather materials. However, the parties
7 agree that, upon entry of this Consent Judgment by the Court, the Complaint shall be deemed
8 amended such that the term Products in the Complaint means electronic device cases made with
9 leather, vinyl, or imitation leather materials ("Covered Products").

10 1.4 Defendant is a corporation that employs 10 or more persons, and that
11 manufactures, distributes, and/or sells Covered Products in the State of California.

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

19 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
20 settlement of all claims that were raised in the Complaint, or which could have been raised in the
21 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
22 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
23 facts or conclusions of law including, but not limited to, any facts or conclusions of law
24 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
25 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
26 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
27 compliance with the Consent Judgment constitute or be construed as an admission by the Parties

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1 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
2 factual and legal allegations in CEH's Complaint and expressly denies any wrong doing
3 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
4 remedy, argument, or defense the Parties may have in this or any other pending or future legal
5 proceedings. This Consent Judgment is the product of negotiation and compromise and is
6 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
7 disputed in this action.

8 **2. INJUNCTIVE RELIEF**

9 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
10 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell, or offer for sale any
11 Covered Product in California or anywhere else in the United States unless such Covered Product
12 complies with the following Lead Limits:

13 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
14 § 1303.2(b) on Accessible Components: no more than 0.009 percent Lead by weight (90 parts
15 per million ("ppm")). An "Accessible Component" means a component of a Covered Product that
16 could be touched by a person during normal or reasonably foreseeable use.

17 2.1.2 Polyvinyl chloride ("PVC") Accessible Components: no more than 0.02
18 percent Lead by weight (200 ppm).

19 2.1.3 All other Accessible Components other than cubic zirconia (sometimes
20 called cubic zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by
21 weight (300 ppm).

22 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
23 Defendant shall cease shipping the Hype Swivel Folio Case in Red, SKU No. 8-22248-53357-3,
24 Item No. HY-1014-IPD-RED, as identified in CEH's pre-suit Notice of Violation to Defendant
25 (the "Recall Covered Products"), to stores and/or customers in California, and Defendant shall
26 withdraw the Recall Covered Products from the market in California, and, at a minimum, send
27 instructions to any of its stores and/or customers that offer the Recall Covered Products for sale in

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1 California to cease offering such Recall Covered Products for sale and to either return all Recall
2 Covered Products to Defendant for destruction, or to directly destroy the Recall Covered
3 Products. Any destruction of the Recall Covered Products shall be in compliance with all
4 applicable laws. Defendant shall keep and make available to CEH for inspection and copying
5 records and correspondence regarding the market withdrawal and destruction of the Recall
6 Covered Products. If there is a dispute over the corrective action, the Parties shall meet and
7 confer before seeking any remedy in court.

8 **3. ENFORCEMENT**

9 3.1 Prior to bringing any motion or order to show cause to enforce the terms of
10 this Consent Judgment, a Party seeking to enforce shall provide the violating party thirty (30)
11 days advanced written notice of the alleged violation. The Parties shall meet and confer during
12 such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the
13 alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new
14 action, motion, or order to show cause before the Superior Court of Alameda, seek to enforce the
15 terms and conditions contained in this Consent Judgment.

16 3.2 With respect to any alleged violation of Section 2, CEH shall include with its
17 Notice of Violation a copy of any test results upon which the notice is based. CEH shall not bring
18 any motion, application, or further enforcement action against Defendant regarding an alleged
19 violation of Section 2 if, within thirty (30) days of a Notice of Violation (or such longer time as
20 agreed to by the Parties), Defendant provides CEH with a written notice of election not to contest
21 the alleged violation including the following:

22 3.2.1 A certification from Defendant that, prior to receiving and accepting for
23 distribution or sale the Covered Product identified in the Notice of Violation, Defendant
24 obtained test results demonstrating that all of the materials or components in the Covered
25 Product identified in the Notice of Violation complied with the applicable Lead Limits.
26 Any such testing must have been performed within two years prior to the date of the sales
27 transaction on which the Notice of Violation is based. Defendant shall provide copies of

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such test results to CEH with its notice of election;

3.2.2 A certification from Defendant that Defendant has taken or will take corrective action to address the alleged violation. Any such corrective action shall, at a minimum, provide reasonable assurance that the Covered Product identified in the Notice of Violation will no longer be offered by Defendant or its direct customers for sale in California. If there is a dispute over the sufficiency of the proposed corrective action or its implementation, CEH shall promptly notify Defendant and the Parties shall meet and confer before seeking the intervention of the Court to resolve the dispute; and

3.2.3 An identification (by proper name, address of principal place of business and telephone number) of the supplier of the Covered Product identified in the Notice of Violation.

3.3 Nothing in this Section 3 affects CEH's right to commence or prosecute an action under Proposition 65 against any supplier for any alleged violations of Proposition 65.

4. PAYMENTS

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

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

4.2.1 Defendant shall pay the sum of \$3,900 as a penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health.

4.2.2 Defendant shall pay the sum of \$5,900 as payment to CEH in lieu of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people

1 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
2 funds to monitor compliance with the reformulation requirements of this and other similar
3 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
4 reformulation requirements. In addition, as part of its *Community Environmental Action and*
5 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
6 environmental justice groups working to educate and protect people from exposures to toxic
7 chemicals. The method of selection of such groups can be found at the CEH web site at
8 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
9 Center for Environmental Health.

10 4.2.3 Defendant shall pay the sum of \$20,200 as reimbursement of reasonable
11 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
12 payable to the Lexington Law Group.

13 **5. MODIFICATION AND DISPUTE RESOLUTION**

14 5.1 **Modification.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties, with the approval of the Court, or by an order of this
16 Court upon motion and in accordance with law.

17 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
18 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
19 motion to modify the Consent Judgment.

20 **6. CLAIMS COVERED AND RELEASE**

21 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
22 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
23 partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to
24 whom they distribute or sell Covered Products including, but not limited to, distributors,
25 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream
26 Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law
27 claims that have been or could have been asserted in the public interest against Defendant,

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1 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
2 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
3 by Defendant prior to the Effective Date.

4 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
5 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
6 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
7 violation of Proposition 65 or any other statutory or common law claims that have been or could
8 have been asserted in the public interest regarding the failure to warn about exposure to Lead
9 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
10 prior to the Effective Date.

11 6.3 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 alleged
14 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
15 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 first class 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 Ezra Zaafarani, President
22 DGL Group, Ltd.
23 195 Raritan Center Parkway
24 Edison, NJ 08837

25 With a copy to:

26 Stacy Don
27 Peg Carew Toledo
28 Toledo Don LLP
 3001 Douglas Boulevard, Suite 340
 Roseville, CA 95661-3853
 don@toledodon.com
 toledo@toledodon.com

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 first class and electronic mail.

10 **8. COURT APPROVAL**

11 8.1 This Consent Judgment shall become effective on the Effective Date, provided
12 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
13 Defendant shall support approval of such Motion.

14 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
15 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
16 purpose.

17 **9. GOVERNING LAW AND CONSTRUCTION**

18 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
19 of California.

20 **10. ENTIRE AGREEMENT**

21 10.1 This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
23 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
24 merged herein and therein. There are no warranties, representations, or other agreements between
25 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
26 implied, other than those specifically referred to in this Consent Judgment have been made by any
27 Party hereto. No other agreements not specifically contained or referenced herein, oral or
28 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 or modify the
8 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 **14. EXECUTION IN COUNTERPARTS**

19 14.1 The stipulations to this Consent Judgment may be executed in counterparts
20 and by means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

<p>Dated: <u>MAY 2</u>, 2014</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p><i>Catherine P. Zervas</i></p> <p>Printed Name</p> <hr/> <p><i>ASSOCIATE DIRECTOR</i></p> <p>Title</p>
<p>Dated: _____, 2014</p>	<p>DGL GROUP, LTD.</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p>

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

Dated: **JUL 09 2014**



JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

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IT IS SO STIPULATED:

Dated: _____, 2014	CENTER FOR ENVIRONMENTAL HEALTH _____ _____ Printed Name _____ Title
Dated: <u>MAY 7</u> , 2014	DGL GROUP, LTD.  _____ <u>ERBA TAAFRANI</u> Printed Name <u>CEO</u> Title

IT IS SO ORDERED, ADJUDGED,
AND DECREED

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