ENDORSED
FILED
ALAMEDA COUNTY

JUN 16 2015

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, vs. CECICO, INC., *et al.*, Defendants.	Case No. RG14722774 **[PROPOSED] CONSENT JUDGMENT AS TO CECICO, INC. AND FOREIGN EXCHANGE, INC.**

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 Cecico, Inc. and Foreign Exchange, Inc. (collectively, "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. Cecico, Inc., et al.*, Alameda County Superior Court Case No. RG14722774 (the "Action").

1.2 On February 3, 2014, CEH provided a "Notice of Violation" relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") to the

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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 Defendants regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in clothing made with leather, vinyl, or imitation leather materials ("Covered Products").

1.3 On April 24, 2014, CEH filed the Complaint against Defendants in the Action.

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

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

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

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

2. INJUNCTIVE RELIEF

2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent Judgment (the "Effective Date"), Defendants shall not manufacture, ship, sell, or offer for sale any Covered Product that will be sold or offered for sale to California consumers unless such Covered Product complies with the following Lead Limits:

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

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

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

2.2 **Market Withdrawal of Recall Covered Products.** On or before the Effective Date, Defendants shall cease shipping: (a) the Cecico Jacket in Burgundy & Navy, Item No. 110535, Style No. 8G6079, (b) the Foreign Exchange Miniskirt in Burgundy, Item No. 102014, Style No. CS2225FE, as identified in CEH's pre-suit Notice of Violation to Defendants, (c) Rust colored garment style S3T2767D84 (classified in the action by CEH as PL246), and (d) TOMATO colored garment style BK5300A (classified in the action by CEH as PL247)(the "Recall Covered Products") to stores and/or customers in California, and Defendants shall withdraw the Recall Covered Products from the market in California, and, at a minimum, send instructions to any of its stores and/or customers that offer the Recall Covered Products for sale in California to cease offering such Recall Covered Products for sale in California, or to destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance with all applicable laws. Defendants shall keep and make available to CEH for inspection and

copying records and correspondence regarding the market withdrawal and/or destruction of the Recall Covered Products for a period not to exceed 1 year after the date of this Agreement. If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in court

3. ENFORCEMENT

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

4. PAYMENTS

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

4.2 **Allocation of Payments.** The total settlement amount shall be paid in 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 Defendants shall pay the total 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. Defendants' combined penalty check shall be made payable to the Center for Environmental Health.

4.2.2 Defendants shall pay the total 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 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds to monitor compliance with the reformulation requirements of this and other similar Consent Judgments and to purchase and test

Covered Products to confirm compliance with such reformulation requirements. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. Defendants' combined payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

4.2.3 Defendants shall pay the total sum of $20,200 as reimbursement of reasonable attorneys' fees and costs. Defendants' combined attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group.

5. MODIFICATION AND DISPUTE RESOLUTION

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

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

6. CLAIMS COVERED AND RELEASE

6.1 This Consent Judgment is a full, final, and binding resolution between CEH and Defendants and Defendants' parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to whom they distribute or sell Covered Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted in the public interest against Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold by Defendants prior to the Effective Date.

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

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

7. PROVISION OF NOTICE

7.1 When any Party is entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail as follows:

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

Martin J. Kaufman, Esq.
The Kaufman Law Firm, APC
2300 Westwood Blvd., Suite 200
Los Angeles, CA 90064
mjk@lawkaufman.com

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

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

7.2 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

8. COURT APPROVAL

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

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

9. GOVERNING LAW AND CONSTRUCTION

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

10. ENTIRE AGREEMENT

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

11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

13. NO EFFECT ON OTHER SETTLEMENTS

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

14. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: Feb 12, 2015	**CENTER FOR ENVIRONMENTAL HEALTH** Charlie Pizarro Printed Name Associate Director Title

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Dated: Feb. 2, 2015	**CECICO, INC.** Kelly Ann Printed Name CEO Title
Dated: Feb. 2, 2015	**FOREIGN EXCHANGE, INC.** Albert Han Printed Name CFO Title

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: JUN 16 2015

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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