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CLERK OF SUPERIOR COURT
ALAMEDA COUNTY

APR - 9 2015

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 MONA LIZA FASHION

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 Mona Liza Fashion (“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. Cecico, Inc., et al.*, Alameda County Superior Court Case No. RG14722774 (the “Action”).

1.2 On October 31, 2014, 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 clothing made with leather, vinyl, or imitation leather materials ("Covered Products").

4 1.3 On April 24, 2014, CEH filed the Complaint against Defendant in the Action.
5 On or about January 12, 2015, CEH amended the Complaint to name Defendant as a defendant in
6 the Action.

7 1.4 Defendant manufactures, distributes, and/or sells Covered Products in the
8 State of California.

9 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
10 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in
11 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
12 that venue is proper in the County of Alameda, 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 Defendant.

16 1.6 CEH and Defendant 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 Defendant 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, including whether Defendant is a
26 "person in the course of doing business" as defined in Health and Safety Code section
27 25249.11(b). Defendant denies the material, factual and legal allegations in CEH's Complaint
28 and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment shall

1 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in this
2 or any other pending or future legal proceedings. This Consent Judgment is the product of
3 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
4 compromising, and resolving issues disputed in this action.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Reformulation of Covered Products.** As of July 1, 2015 (the “Effective
7 Date”), Defendant shall not manufacture, ship, sell, or offer for sale any Covered Product in
8 California or anywhere else unless such Covered Product complies with the following Lead
9 Limits:

10 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
11 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

12 2.1.2 Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight
13 (200 ppm).

14 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
15 zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by weight (300
16 ppm).

17 **2.2 Market Withdrawal of Covered Products.** On or before the Effective Date,
18 Defendant shall cease shipping the Lucca Couture Faux Leather Skirt in Blush, SKU No.
19 5189300, as identified in CEH’s pre-suit Notice of Violation to Defendant (the “Recall Covered
20 Products”), to stores and/or customers in California, and Defendant shall withdraw the Recall
21 Covered Products from the market in California, and, at a minimum, send instructions to any of
22 its stores and/or customers that offer the Recall Covered Products for sale in California to cease
23 offering such Recall Covered Products for sale and to either return all Recall Covered Products to
24 Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of
25 the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall
26 keep and make available to CEH for inspection and copying records and correspondence
27 regarding the market withdrawal and destruction of the Recall Covered Products. If there is a
28

1 dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in
2 court.

3 **3. ENFORCEMENT**

4 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
5 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
6 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
7 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
8 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
9 enforce may, by new action, motion, or order to show cause before the Superior Court of
10 Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.

11 **4. PAYMENTS**

12 4.1 **Payments From Defendant.** Defendant shall pay the total sum of \$30,000 as
13 a settlement payment. This total payment shall be made in three installments according to the
14 following schedule: (a) on or before March 1, 2015, Defendant shall pay \$10,000 as a settlement
15 payment; (b) on or before June 1, 2015, Defendant shall pay \$10,000 as a settlement payment;
16 and (c) on or before September 1, 2015, Defendant shall pay \$10,000 as a settlement payment.
17 Each of these payments shall be paid in three separate checks delivered to the address set forth in
18 Section 7.1.2 and shall be made payable and allocated as set forth in Section 4.2. Any failure by
19 Defendant to comply with the payment terms herein shall be subject to a stipulated late payment
20 fee of \$100 per day, which amount shall be recoverable by CEH, together with its reasonable
21 attorneys' fees and costs, in an enforcement proceeding brought pursuant to Section 3.

22 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
23 paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
24 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
25 as follows:

26 4.2.1 Defendant shall pay a total sum of \$3,900 as a penalty pursuant to Health
27 & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
28 Safety Code § 25249.12. \$1,300 of this amount shall be included with the first payment due on

1 March 1, 2015, \$1,300 of this amount shall be included with the second payment due on June 1,
2 2015, and \$1,300 of this amount shall be included with the third payment due on September 1,
3 2015. Each penalty check shall be made payable to the Center for Environmental Health.

4 4.2.2 Defendant shall pay a total sum of \$5,900 as payment to CEH in lieu of
5 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
6 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
7 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
8 funds to monitor compliance with the reformulation requirements of this and other similar
9 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
10 reformulation requirements. In addition, as part of its *Community Environmental Action and*
11 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
12 environmental justice groups working to educate and protect people from exposures to toxic
13 chemicals. The method of selection of such groups can be found at the CEH web site at
14 www.ceh.org/justicefund. \$1,970 of this amount shall be included with the first payment due on
15 March 1, 2015, \$1,970 of this amount shall be included with the second payment due on June 1,
16 2015, and \$1,960 of this amount shall be included with the third payment due on September 1,
17 2015. Each payment in lieu of penalty check shall be made payable to the Center for
18 Environmental Health.

19 4.2.3 Defendant shall pay a total sum of \$20,200 as reimbursement of reasonable
20 attorneys' fees and costs. \$6,730 of this amount shall be included with the first payment due on
21 March 1, 2015, \$6,730 of this amount shall be included with the second payment due on June 1,
22 2015, and \$6,740 of this amount shall be included with the third payment due on September 1,
23 2015. Each check pursuant to this section shall be made payable to the Lexington Law Group.

24 5. MODIFICATION AND DISPUTE RESOLUTION

25 5.1 **Modification.** This Consent Judgment may be modified from time to time by
26 express written agreement of the Parties, with the approval of the Court, or by an order of this
27 Court upon motion and in accordance with law.

28 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent

1 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
2 motion to modify the Consent Judgment.

3 **6. CLAIMS COVERED AND RELEASE**

4 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
5 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
6 partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to
7 whom they distribute or sell Covered Products including, but not limited to, distributors,
8 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream
9 Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law
10 claims that have been or could have been asserted in the public interest against Defendant,
11 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
12 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
13 by Defendant prior to the Effective Date.

14 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
15 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
16 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
17 violation of Proposition 65 or any other statutory or common law claims that have been or could
18 have been asserted in the public interest regarding the failure to warn about exposure to Lead
19 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
20 prior to the Effective Date.

21 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
22 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
23 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged
24 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
25 after the Effective Date.

26 **7. PROVISION OF NOTICE**

27 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
28 the notice shall be sent by first class and electronic mail as follows:

1 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
2 pursuant to this Consent Judgment shall be:

3 Jane Moon
4 Lucca Couture
5 629 E. 30th Street
6 Los Angeles, CA 90011
7 jane@luccacouture.com

8 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
9 this Consent Judgment shall be:

10 Howard Hirsch
11 Lexington Law Group
12 503 Divisadero Street
13 San Francisco, CA 94117
14 hhirsch@lexlawgroup.com

15 7.2 Any Party may modify the person and address to whom the notice is to be sent
16 by sending the other Party notice by first class and electronic mail.

17 **8. COURT APPROVAL**

18 8.1 This Consent Judgment shall become effective on the Effective Date, provided
19 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
20 Defendant shall support approval of such Motion.

21 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
22 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
23 purpose.

24 **9. GOVERNING LAW AND CONSTRUCTION**

25 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
26 of California.

27 **10. ENTIRE AGREEMENT**

28 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

1 implied, other than those specifically referred to in this Consent Judgment have been made by any
2 Party hereto. No other agreements not specifically contained or referenced herein, oral or
3 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
4 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
5 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
6 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
7 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
8 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
9 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

10 **11. RETENTION OF JURISDICTION**

11 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

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

14 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
16 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
17 Party.

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


19 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
20 claim against another entity on terms that are different than those contained in this Consent
21 Judgment.

22 **14. EXECUTION IN COUNTERPARTS**

23 14.1 The stipulations to this Consent Judgment may be executed in counterparts
24 and by means of facsimile, which taken together shall be deemed to constitute one document.
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IT IS SO STIPULATED:

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|-----------------------------------|---|
| <p>Dated: <u>JAN 29</u>, 2015</p> | <p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p>CHARLIE PIZARRO</p> <p>Printed Name</p> <hr/> <p>ASSOCIATE DIRECTOR</p> <p>Title</p> |
| <p>Dated: _____, 2015</p> | <p>MONA LIZA FASHION</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p> |

IT IS SO ORDERED, ADJUDGED,
AND DECREED

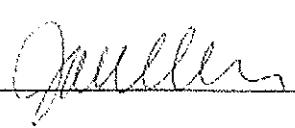

Dated: **APR - 9 2015**

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

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IT IS SO STIPULATED:

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|---------------------------------|---|
| Dated: _____, 2015 | CENTER FOR ENVIRONMENTAL HEALTH <hr/> Printed Name <hr/> Title |
| Dated: <u>January 21</u> , 2015 | MONA LIZA FASHION  <hr/> JANE MOON Printed Name  CEO <hr/> Title |

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

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