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FILED
ALAMEDA COUNTY

JUN 16 2015

CLERK OF THE SUPERIOR COURT
BY YOLANDA ESTRADA Deputy

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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. RG14-722774

~~[PROPOSED]~~ CONSENT JUDGMENT
AS TO ACTIVE USA, 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 Active USA, Inc. ("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. RG 14-722774 (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 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 clothing made with leather, vinyl, or imitation leather materials ("Covered Products").

3 1.3 On April 24, 2014, CEH filed the Complaint in the Action. On March 9,
4 2015, CEH filed an amendment to the Complaint naming Defendant as a defendant in the Action.

5 1.4 Defendant manufactures, distributes, and/or sells Covered Products in the
6 State of California.

7 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
8 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in
9 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
10 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
11 Consent Judgment as a full and final resolution of all claims which were or could have been
12 raised in the Complaint based on the facts alleged therein with respect to Covered Products
13 manufactured, distributed, and/or sold by Defendant.

14 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
15 settlement of all claims that were raised in the Complaint, or which could have been raised in the
16 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
17 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
18 facts or conclusions of law including, but not limited to, any facts or conclusions of law
19 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
20 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
21 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
22 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
23 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
24 factual and legal allegations in CEH's Complaint and expressly denies any wrong doing
25 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
26 remedy, argument, or defense the Parties may have in this or any other pending or future legal
27 proceedings. This Consent Judgment is the product of negotiation and compromise and is
28 accepted by the Parties solely for purposes of settling, compromising, and resolving issues

1 disputed in this action.

2 **2. INJUNCTIVE RELIEF**

3 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
4 Judgment (the "Effective Date"), Defendant shall not manufacture, ship, sell, or offer for sale any
5 Covered Product in California or anywhere else unless such Covered Product complies with the
6 following Lead Limits:

7 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
8 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) ("ppm").

9 2.1.2 Polyvinyl chloride ("PVC"): no more than 0.02 percent Lead by weight
10 (200 ppm).

11 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
12 zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by weight (300
13 ppm).

14 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
15 Defendant shall cease shipping the Active Leather Hooded Leatherette Jacket in Olive & Grey,
16 Style No. J9042 ("Recall Covered Products"), to stores and/or customers in California, and
17 Defendant shall withdraw the Recall Covered Products from the market in California, and, at a
18 minimum, send instructions to any of its stores and/or customers that offer the Recall Covered
19 Products for sale in California to cease offering such Recall Covered Products for sale and to
20 either return all Recall Covered Products to Defendant for destruction, or to directly destroy the
21 Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance
22 with all applicable laws. Defendant shall keep and make available to CEH for inspection and
23 copying records and correspondence regarding the market withdrawal and destruction of the
24 Recall Covered Products. If there is a dispute over the corrective action, the Parties shall meet
25 and confer before seeking any remedy in court.

26 **3. ENFORCEMENT**

27 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
28 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the

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

6 **4. PAYMENTS**

7 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
8 Judgment, Defendant shall pay the total sum of \$35,000.

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

13 4.2.1 Defendant shall pay the sum of \$4,600 as a penalty pursuant to Health &
14 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
15 Safety Code § 25249.12. The penalty check shall be made payable to the Center for
16 Environmental Health.

17 4.2.2 Defendant shall pay the sum of \$6,900 as payment to CEH in lieu of
18 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
19 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
20 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
21 funds to monitor compliance with the reformulation requirements of this and other similar
22 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
23 reformulation requirements. In addition, as part of its *Community Environmental Action and*
24 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
25 environmental justice groups working to educate and protect people from exposures to toxic
26 chemicals. The method of selection of such groups can be found at the CEH web site at
27 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
28 Center for Environmental Health.

1 4.2.3 Defendant shall pay the sum of \$23,500 as reimbursement of reasonable
2 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
3 payable to the Lexington Law Group.

4 **5. MODIFICATION AND DISPUTE RESOLUTION**

5 5.1 **Modification.** This Consent Judgment may be modified from time to time by
6 express written agreement of the Parties, with the approval of the Court, or by an order of this
7 Court upon motion and in accordance with law.

8 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
9 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
10 motion to modify the Consent Judgment.

11 **6. CLAIMS COVERED AND RELEASE**

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

22 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
23 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
24 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
25 violation of Proposition 65 or any other statutory or common law claims that have been or could
26 have been asserted in the public interest regarding the failure to warn about exposure to Lead
27 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
28 prior to the Effective Date.

1 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
2 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
3 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged
4 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
5 after the Effective Date.

6 **7. PROVISION OF NOTICE**

7 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
8 the notice shall be sent by first class and electronic mail as follows:

9 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
10 pursuant to this Consent Judgment shall be:

11 James A. Geocaris
12 Lewis Brisbois Bisgaard & Smith LLP
13 650 Town Center Drive, Suite 1400
14 Costa Mesa, CA 92626
15 James.Geocaris@lewisbrisbois.com

16 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
17 this Consent Judgment shall be:

18 Howard Hirsch
19 Lexington Law Group
20 503 Divisadero Street
21 San Francisco, CA 94117
22 hhirsch@lexlawgroup.com

23 7.2 Any Party may modify the person and address to whom the notice is to be sent
24 by sending the other Party notice by first class and electronic mail.

25 **8. COURT APPROVAL**

26 8.1 This Consent Judgment shall become effective on the Effective Date, provided
27 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
28 Defendant 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.

1 **9. GOVERNING LAW AND CONSTRUCTION**

2 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 **10. ENTIRE AGREEMENT**

5 10.1 This Consent Judgment contains the sole and entire agreement and
6 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
7 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
8 merged herein and therein. There are no warranties, representations, or other agreements between
9 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
10 implied, other than those specifically referred to in this Consent Judgment have been made by any
11 Party hereto. No other agreements not specifically contained or referenced herein, oral or
12 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
13 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
14 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
15 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
16 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
17 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
18 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

19 **11. RETENTION OF JURISDICTION**

20 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

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

23 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
25 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
26 Party.
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1 **13. NO EFFECT ON OTHER SETTLEMENTS**

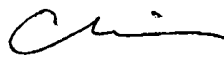
2 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
3 claim against another entity on terms that are different than those contained in this Consent
4 Judgment.

5 **14. EXECUTION IN COUNTERPARTS**

6 14.1 The stipulations to this Consent Judgment may be executed in counterparts
7 and by means of facsimile, which taken together shall be deemed to constitute one document.
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9 **IT IS SO STIPULATED:**

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Dated: <u>April 17</u> , 2015	CENTER FOR ENVIRONMENTAL HEALTH
	 _____ Signature
	<u>CHRISTINE PIZZANO</u> _____ Printed Name
	<u>ASSOCIATE DIRECTOR</u> _____ Title

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	<p>ACTIVE USA, INC:</p> <p><u>Bok Kyung Rhee</u> Signature</p> <p><u>BOK KYUNG RHEE</u> Printed Name</p> <p><u>PRESIDENT</u> Title</p>
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IT IS SO ORDERED, ADJUDGED,
AND DECREED

Dated: 6/16/2015

George C. Hernandez, Jr.
 JUDGE OF THE SUPERIOR COURT OF THE
 STATE OF CALIFORNIA

GEORGE C. HERNANDEZ, JR.