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ENDORSED
FILED
ALAMEDA COUNTY

AUG 16 2016

CLERK OF THE SUPERIOR COURT
By Christina Momon, Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
v.)
)
VERY J INC., *et al.*,)
)
Defendants.)

Case No. RG 15-782612

**[PROPOSED] CONSENT JUDGMENT
AS TO WINGS MANUFACTURING
CORPORATION**

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 Wings Manufacturing Corporation (“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. Very J Inc., et al.*, Alameda County Superior Court Case No. RG 15-782612 (the “Action”).

1.2 On May 28, 2015, 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 August 19, 2015, CEH filed the Complaint in the Action, naming
5 Defendant as a defendant in that Action.

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

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 Alameda, 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, ship, sell, or offer for sale any
6 Covered Product in California or anywhere else unless such Covered Product complies with the
7 following Lead Limits:

8 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
9 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) ("ppm").

10 2.1.2 Polyvinyl chloride ("PVC"): no more than 0.02 percent Lead by weight
11 (200 ppm).

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

15 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
16 Defendant shall cease shipping the Red Snap Jacket in Brown, Item No. J6P2684 (the "Recall
17 Covered Product"), to stores and/or customers in California, and Defendant shall withdraw the
18 Recall Covered Product from the market in California, and, at a minimum, send instructions to
19 any of its stores and/or customers that offer the Recall Covered Product for sale in California to
20 cease offering such Recall Covered Product for sale and to either return all Recall Covered
21 Product to Defendant for destruction, or to directly destroy the Recall Covered Product. Any
22 destruction of the Recall Covered Product shall be in compliance with all applicable laws.
23 Defendant shall keep and make available to CEH for inspection and copying records and
24 correspondence regarding the market withdrawal and destruction of the Recall Covered Product.
25 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking
26 any remedy in court.

27 **3. ENFORCEMENT**

28 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show

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

8 **4. PAYMENTS**

9 4.1 **Payments from Defendant.** Within five (5) days of the entry of this Consent
10 Judgment or August 1, 2016, whichever is later, Defendant shall pay the total sum of \$25,000.

11 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
12 paid in four (4) separate checks made payable and allocated as follows:

13 4.2.1 Defendant shall pay the sum of \$3,250 as a civil penalty pursuant to Health
14 & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with
15 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
16 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of
17 the civil penalty payment in the amount of \$2,437.50 shall be made payable to OEHHA and
18 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
19 follows:

20 For United States Postal Service Delivery:

21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010, MS #19B
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

1 The CEH portion of the civil penalty payment in the amount of \$812.50 shall be made
2 payable to the Center for Environmental Health and associated with taxpayer identification
3 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
4 Street, San Francisco, CA 94117.

5 4.2.2 Defendant shall pay the sum of \$4,900 as payment to CEH in lieu of
6 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
7 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
8 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
9 funds to monitor compliance with the reformulation requirements of this and other similar
10 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
11 reformulation requirements. In addition, as part of its *Community Environmental Action and*
12 *Justice Fund*, CEH will use four percent (4%) of such funds to award grants to grassroots
13 environmental justice groups working to educate and protect people from exposures to toxic
14 chemicals. The method of selection of such groups can be found at the CEH web site at
15 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
16 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
17 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
18 CA 94117.

19 4.2.3 Defendant shall pay the sum of \$16,850 as reimbursement of reasonable
20 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
21 payable to the Lexington Law Group and associated with taxpayer identification number 94-
22 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
23 Francisco, CA 94117.

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 directly or indirectly including, but not limited to,
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
9 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or
10 common law claims that have been or could have been asserted in the public interest against
11 Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to
12 warn about exposure to Lead arising in connection with Covered Products manufactured,
13 distributed, or sold 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 persons for Defendant to receive notices
2 pursuant to this Consent Judgment shall be:

3 Wings Manufacturing Corporation
4 Attn: Maninder Sethi
5 15 Wilkinson Avenue
6 Jersey City, NJ 07305

7 John Conkle
8 H. Kim Sim
9 Conkle, Kremer & Engel, PLC
10 3130 Wilshire Boulevard, Suite 500
11 Santa Monica, CA 90403
12 j.conkle@conklelaw.com
13 k.sim@conklelaw.com

14 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
15 this Consent Judgment shall be:

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

21 7.2 Any Party may modify the person and address to whom the notice is to be sent
22 by sending the other Party notice by first class and electronic mail.

23 **8. COURT APPROVAL**

24 8.1 This Consent Judgment shall become effective on the Effective Date, provided
25 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
26 Defendant shall support approval of such Motion.

27 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 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.

1 **10. ENTIRE AGREEMENT**

2 10.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein and therein. There are no warranties, representations, or other agreements between
6 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
7 implied, other than those specifically referred to in this Consent Judgment have been made by any
8 Party hereto. No other agreements not specifically contained or referenced herein, oral or
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
10 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
11 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
12 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
15 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **11. RETENTION OF JURISDICTION**

17 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

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

20 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
23 Party.

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

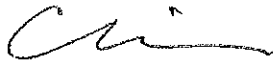
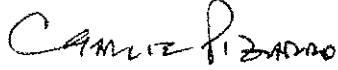
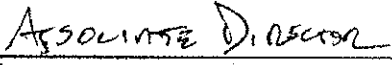
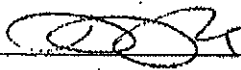
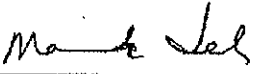

25 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
26 claim against another entity on terms that are different than those contained in this Consent
27 Judgment.

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1 **14. EXECUTION IN COUNTERPARTS**

2 14.1 The stipulations to this Consent Judgment may be executed in counterparts
3 and by means of facsimile, which taken together shall be deemed to constitute one document.
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6 **IT IS SO STIPULATED:**

7 Dated: <u>17 JUNE</u> , 2016 8 9 10 11 12 13 14 15 16	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature  _____ Printed Name  _____ Title
17 Dated: <u>JUNE 8</u> , 2016 18 19 20 21 22 23 24 25 26	WINGS MANUFACTURING CORPORATION  _____ Signature  _____ Printed Name  _____ Title

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

Dated:

AUG 16 2016

GEORGE C. HERNANDEZ, JR.

**JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA**