ENDORSED
FILED
ALAMEDA COUNTY

DEC - 1 2015

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, vs. VERY J INC., *et al.*, Defendants.	Case No. RG 15-782612 **~~[PROPOSED]~~ CONSENT JUDGMENT AS TO DB & CO.**

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 DB & Co. ("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 July 30, 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

DOCUMENT PREPARED ON RECYCLED PAPER

Attorneys of every California city with a population greater than 750,000, and to Defendant 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 August 19, 2015, CEH filed the Complaint in the Action. On or about October 5, 2015, CEH named Defendant as a defendant in that action pursuant to California Code of Civil Procedure § 474.

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

1.5 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendant 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 Defendant.

1.6 CEH and Defendant 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 Defendant 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. Defendant denies the material, factual and legal allegations in CEH's Complaint and expressly denies 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 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"), Defendant shall not manufacture, ship, sell, or offer for sale any Covered Product in California or anywhere else 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").

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 Covered Products.** On or before the Effective Date, Defendant shall cease shipping the Wells Grace Faux Leather Button-Down Shirt in Cognac, SKU No. 8-12737-02033-2, Item No. 0492335386131 ("Recall Covered Products"), to stores and/or customers in California, and Defendant 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 and to either return all Recall Covered Products to Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall keep and make available to CEH for inspection and copying records and correspondence regarding the market withdrawal and destruction of the Recall Covered Products. 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 by Defendant.** Within five (5) days of the entry of this Consent Judgment, Defendant shall pay the total sum of $25,000 as further set forth in this Section.

4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid in four (4) separate checks in the amounts set forth below and delivered as set forth below. Any failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late fee in the amount of $100 for each day after the delivery date the payment is received. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid by Defendant shall be allocated as set forth below between the following categories and made payable as follows:

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b) in the amount of $4,900. CEH shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. 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. The payment pursuant to this Section shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and costs in the amount of $16,850. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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 on behalf of itself and the public interest and Defendant, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, and attorneys ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers (expressly including Saks Incorporated, Saks & Company and Saks Direct, LLC), franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees") of any violation of Proposition 65 that was or could have been asserted in the Complaint against Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to Lead contained in Covered Products that were sold by Defendant prior to the Effective Date.

6.2 Compliance with the terms of this Consent Judgment by Defendant constitutes compliance with Proposition 65 with respect to Lead in Covered Products sold by Defendant.

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

DOCUMENT PREPARED ON RECYCLED PAPER

Mark Brutzkus
Ezra Brutzkus Gubner LLP
21650 Oxnard Street, Suite 500
Woodland Hills, CA 91367-4911
mbrutzkus@ebg-law.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 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.

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.

DOCUMENT PREPARED ON RECYCLED PAPER

IT IS SO STIPULATED:

Dated: SEP 25, 2015	**CENTER FOR ENVIRONMENTAL HEALTH** Signature CHARLIE PIZARRO Printed Name ASSOCIATE DIRECTOR Title
Dated: _____, 2015	**DB & CO.** Signature Printed Name Title

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: DEC - 1 2015

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

DOCUMENT PREPARED ON RECYCLED PAPER

IT IS SO STIPULATED:

Dated: _____, 2015	**CENTER FOR ENVIRONMENTAL HEALTH** _____ Signature _____ Printed Name _____ Title
Dated: 9/17, 2015	**DB & CO. AND DB N CO., INC.** _____ Signature SUKJAE LEE Printed Name PRESIDENT Title

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated:

_____
JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

DOCUMENT PREPARED ON RECYCLED PAPER