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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,)
)
vs.)
)
SKAI BLU, INC., *et al.*,)
)
Defendants.)

Case No. RG 15-792125
**[PROPOSED] CONSENT JUDGMENT
AS TO B.B. DAKOTA, 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 B.B. Dakota, 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. Skai Blu, Inc., et al.*, Alameda County Superior Court Case No. RG 15-792125 (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 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 November 4, 2015, CEH filed the Complaint in the Action against
4 Defendant and others.

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. This Consent Judgment is the product of negotiation and compromise and is
26 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
27 disputed in this action.

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1 **2. INJUNCTIVE RELIEF**

2 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
3 Judgment (the “Effective Date”), Defendant shall not manufacture, ship, sell, or offer for sale any
4 Covered Product in California or anywhere else unless such Covered Product complies with the
5 following Lead Limits:

6 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
7 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) (“ppm”).

8 2.1.2 Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight
9 (200 ppm).

10 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
11 zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by weight (300
12 ppm).

13 2.2 **Market Withdrawal of Covered Products.** To the extent any of the
14 following products are still being offered for sale in California by Defendant or its direct
15 customers, on or before the Effective Date, Defendant shall cease shipping the: (1) BB Dakota
16 Juniors Tyne Leather Jacket in Tobacco, Style No. BE32359, (2) BB Dakota Leather Shorts in
17 Tobacco; Item No. BBD125; Style No. BE33253, and (3) BB Dakota Fit & Flare Dress; SKU No.
18 8-84986-80933-4 (“Recall Covered Products”), to stores and/or customers in California, and
19 Defendant shall withdraw the Recall Covered Products from the market in California, and, at a
20 minimum, send instructions to any of its stores and/or customers that offer the Recall Covered
21 Products for sale in California to cease offering such Recall Covered Products for sale and to
22 either return all Recall Covered Products to Defendant for destruction, or to directly destroy the
23 Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance
24 with all applicable laws. Defendant shall keep and make available to CEH for inspection and
25 copying records and correspondence regarding the market withdrawal and destruction of the
26 Recall Covered Products. If there is a dispute over the corrective action, the Parties shall meet
27 and confer before seeking any remedy in court.

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3. ENFORCEMENT

3.1 Enforcement Procedures. Prior to bringing any motion or order to show cause to enforce the terms of Section 2 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 Defendant. Within five (5) days of the entry of this Consent Judgment, Defendant shall pay the total sum of \$35,000, as further set forth in this Section.

4.2 Allocation of Payments. The total settlement amount for Defendant shall be paid in four 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 \$4,600. The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (*i.e.*, 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 \$3,450 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

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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 \$1,150 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 \$6,900. 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. 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

1 costs in the amount of \$23,500. The attorneys' fees and cost reimbursement check shall be made
2 payable to the Lexington Law Group and associated with taxpayer identification number 94-
3 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
4 Francisco, CA 94117.

5 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

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

12 **6. CLAIMS COVERED AND RELEASE**

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

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

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

8 **7. PROVISION OF NOTICE**

9 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
10 the notice shall be sent by first class and electronic mail as follows:

11 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
12 pursuant to this Consent Judgment shall be:

13 Steven Spaulding
14 Sinunu Bruni LLP
15 333 Pine Street, Suite 400
16 San Francisco, CA 94104
17 sspaulding@sinunubruni.com

18 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
19 this Consent Judgment shall be:

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

25 7.2 Any Party may modify the person and address to whom the notice is to be sent
26 by sending the other Party notice by first class and electronic mail.

27 **8. COURT APPROVAL**

28 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

1 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
2 purpose.

3 **9. ATTORNEYS' FEES**

4 9.1 Should CEH prevail on any motion, application for an order to show cause, or
5 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
6 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
7 Defendant prevail on any such motion, application for an order to show cause, or other
8 proceeding, Defendant may be awarded its reasonable attorneys' fees and costs as a result of such
9 motion or application upon a finding by the Court that CEH's prosecution of the motion or
10 application lacked substantial justification. For purposes of this Consent Judgment, the term
11 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
12 Code of Civil Procedure §§ 2016, *et seq.*

13 9.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
14 its own attorneys' fees and costs.

15 9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **10. GOVERNING LAW AND CONSTRUCTION**

18 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
19 of California.

20 **11. ENTIRE AGREEMENT**

21 11.1 This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
23 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
24 merged herein and therein. There are no warranties, representations, or other agreements between
25 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
26 implied, other than those specifically referred to in this Consent Judgment have been made by any
27 Party hereto. No other agreements not specifically contained or referenced herein, oral or
28 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements

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

7 **12. RETENTION OF JURISDICTION**

8 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

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

11 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
12 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
13 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
14 Party.

15 **14. NO EFFECT ON OTHER SETTLEMENTS**

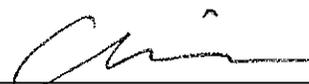
16 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
17 claim against another entity on terms that are different than those contained in this Consent
18 Judgment.

19 **15. EXECUTION IN COUNTERPARTS**

20 15.1 The stipulations to this Consent Judgment may be executed in counterparts
21 and by means of facsimile, which taken together shall be deemed to constitute one document.
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IT IS SO STIPULATED:

<p>Dated: <u>26 May</u>, 2016</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <p>Signature</p> <p><u>CHARLIE PIZZARO</u></p> <p>Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u></p> <p>Title</p>
<p>Dated: _____, 2016</p>	<p>B.B. DAKOTA, INC.</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p>

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

Dated: _____

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

