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

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. CIV-1102079  
a non-profit corporation, )  
 )  
Plaintiff, ) **[PROPOSED] CONSENT JUDGMENT**  
 ) **AS TO PLASTEX INTERNATIONAL,**  
vs. ) **INC.**  
 )  
FABRIC.COM, INC., *et al.*, )  
 )  
Defendants. )

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**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 Plastex International, 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. Fabric.com, Inc., et al.*, Marin County Superior Court Case No. CIV-1102079 (the “Action”). CEH and Defendant are referred to collectively as the “Parties.”

1.2 On April 22, 2013, CEH provided a “Notice of Violation of 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 vinyl, oilcloth or imitation leather fabric (“Covered Products”).

4 1.3 On July 19, 2013, CEH amended the operative complaint in the Action to  
5 name Defendant as a party.

6 1.4 Defendant is a corporation that employs 10 or more persons, and that  
7 manufactures, distributes and/or sells Covered Products in the State of California.

8 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
9 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
10 applicable to Defendant (the “Complaint”) and personal jurisdiction over Settling Defendant as to  
11 the acts alleged in the Complaint; (ii) that venue is proper in the County of Marin; and (iii) that  
12 this Court has jurisdiction to enter this Consent Judgment.

13 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by  
14 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
15 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
16 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
17 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
18 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
19 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
20 this action.

## 21 **2. INJUNCTIVE RELIEF**

22 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent  
23 Judgment (the “Effective Date”), Defendant shall not manufacture, distribute, sell or offer for sale  
24 any Covered Product that Defendant knows or has reason to believe will be sold or offered for  
25 sale to California consumers unless such Covered Product complies with the following Lead  
26 Limits:

27 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.  
28 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

1                   2.1.2 Polyvinyl Chloride: no more than .02 percent Lead by weight (200 ppm).

2                   2.1.3 All other materials: no more than .03 percent Lead by weight (300 ppm).

3                   2.2               For the purposes of this section, if Defendant gives notice to a customer that a  
4 Covered Product is not for resale in California, Defendant will be deemed to have no knowledge  
5 or reason to believe that the Covered Product will be sold or offered for sale to California  
6 consumers.

7                   2.3               **Specification to Suppliers.** To the extent it has not already done so, no more  
8 than 30 days after the Effective Date, Defendant shall provide the Lead Limits to its suppliers of  
9 Covered Products and shall instruct each supplier to use reasonable efforts to provide Covered  
10 Products that comply with the Lead Limits on a nationwide basis.

11                  2.4               **Market Withdrawal of Covered Products.** On or before the Effective Date,  
12 Defendant shall cease shipping the Patent Leather Vinyl in Red, Item No. UI-359, as identified in  
13 CEH’s pre-suit Notice of Violation to Defendant (the “Recall Covered Products”), to stores  
14 and/or customers in California, and Defendant shall withdraw the Recall Covered Products from  
15 the market in California. No more than 15 days after the Effective Date, Defendant shall, at a  
16 minimum, send instructions to any of its stores and/or customers that Defendant knows or has  
17 reason to believe offers the Recall Covered Products for sale in California to cease offering such  
18 Recall Covered Products for sale in California, and those stores and/or customers may return all  
19 Recall Covered Products to Defendant for destruction, or directly destroy the Recall Covered  
20 Products. Any destruction of the Recall Covered Products shall be in compliance with all  
21 applicable laws. Defendant shall keep and make available to CEH for inspection and copying  
22 records and correspondence regarding the market withdrawal and destruction of the Recall  
23 Covered Products. If there is a dispute over the corrective action, the Parties shall meet and  
24 confer before seeking any remedy in court.

25                  **3.               ENFORCEMENT**

26                  3.1               CEH may, by motion or application for an order to show cause before the  
27 Superior Court of Marin County, enforce the terms and conditions contained in this Consent  
28 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 2

1 above, CEH shall provide Defendant with a Notice of Violation and a copy of any test results  
2 from SGS which purportedly support CEH's Notice of Violation. The Parties shall meet and  
3 confer during the thirty (30) day period after CEH provides a Notice of Violation in an effort to  
4 try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day  
5 period, CEH may, by new action, motion or order to show cause before the Superior Court of  
6 Marin, seek to enforce the terms and conditions contained in this Consent Judgment.

7           3.2           CEH shall not bring any motion, application, or further enforcement action  
8 against Defendant regarding an alleged violation of Section 2 if, within thirty (30) days of a  
9 Notice of Violation from CEH, Defendant: (i) demonstrates to CEH that Defendant complied  
10 with Section 2.2 with respect to the supplier of the Covered Product identified in the Notice of  
11 Violation; (ii) provides CEH with a detailed description of corrective action that Defendant has  
12 undertaken or proposes to undertake to address the alleged violation; and (iii) identifies to CEH  
13 (by proper name, address of principal place of business and telephone number) the supplier of  
14 each Covered Product identified in the Notice of Violation. Any such corrective action shall  
15 include, at a minimum: (i) reasonable assurance that the Covered Product(s) identified in the  
16 Notice of Violation will no longer be offered by Defendant for direct sale in California; and (ii)  
17 sending instructions to any of Defendant's direct customers that Defendant knows or has reason  
18 to believe offers the Covered Product(s) for sale in California to cease offering such Covered  
19 Product(s) for sale in California. If there is a dispute over the sufficiency of the proposed  
20 corrective action or its implementation, CEH shall promptly notify Defendant and the Parties  
21 shall meet and confer before seeking the intervention of the Court to resolve the dispute. Nothing  
22 in this Section 3 affects CEH's right to commence or prosecute an action under Proposition 65  
23 against any supplier for any alleged violations of Proposition 65.

#### 24   **4.    PAYMENTS**

25           4.1           **Payments From Defendant.** Within five (5) days of the entry of this Consent  
26 Judgment, Defendant shall pay the total sum of \$27,000 as a settlement payment. Any failure by  
27 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be  
28 paid by Defendant in the amount of \$100 for each day the full payment is not received after the

1 due date. The late fees required under this Section shall be recoverable, together with reasonable  
2 attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent  
3 Judgment.

4 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be  
5 paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard  
6 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated  
7 as follows:

8 4.2.1 Defendant shall pay the sum of \$3,530 as a civil penalty pursuant to Health  
9 & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &  
10 Safety Code § 25249.12. The civil penalty check shall be made payable to the Center For  
11 Environmental Health.

12 4.2.2 Defendant shall pay the sum of \$5,300 as payment in lieu of penalty to  
13 CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title  
14 11, § 3203(b). CEH will use such funds to continue its work educating and protecting people  
15 from exposures to toxic chemicals. CEH may also use a portion of such funds to monitor  
16 compliance with this Consent Judgment and to purchase and test Defendant's products to confirm  
17 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH  
18 will use four percent (4%) of such funds to award grants to grassroots environmental justice  
19 groups working to educate and protect people from exposures to toxic chemicals. The method of  
20 selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The  
21 payment pursuant to this Section shall be made payable to the Center For Environmental Health.

22 4.2.3 Defendant shall pay the sum of \$18,170 as reimbursement of a portion of  
23 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check  
24 shall be made payable to the Lexington Law Group.

1     **5.     MODIFICATION**

2             5.1             **Written Consent.** This Consent Judgment may be modified from time to  
3 time by express written agreement of the Parties with the approval of the Court, or by an order of  
4 this Court upon motion and in accordance with law.

5             5.2             **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
6 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
7 modify the Consent Judgment.

8     **6.     CLAIMS COVERED AND RELEASE**

9             6.1             This Consent Judgment is a full, final and binding resolution between CEH on  
10 behalf of itself and the public interest and Defendant, and its parents, subsidiaries, affiliated  
11 entities that are under common ownership, directors, officers, employees, and attorneys  
12 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell  
13 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
14 franchisees, cooperative members, licensors and licensees (“Downstream Defendant Releasees”)  
15 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
16 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn  
17 about alleged exposure to Lead contained in Covered Products that were manufactured,  
18 distributed, or sold by Defendant prior to the Effective Date.

19             6.2             Compliance with the terms of this Consent Judgment by Defendant shall  
20 constitute compliance with Proposition 65 by Defendant, the Defendant Releasees and the  
21 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in  
22 Covered Products manufactured, distributed, or sold by Defendant after the Effective Date.

23             6.3             Nothing in this Section 6 affects CEH’s right to commence or prosecute an  
24 action under Proposition 65 against any person other than Defendant, Defendant Releasees, or  
25 Downstream Defendant Releasees.

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                                   Steven H. Bovarnick  
4                                   John A. Lofton  
5                                   Leland, Parachini, Steinberg, Matzger & Melnick, LLP  
6                                   199 Fremont Street, 21st Floor  
7                                   San Francisco, CA 94105  
8                                   sbovarnick@lpplaw.com  
9                                   jlofton@lpplaw.com

10                   7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
11 this Consent Judgment shall be:

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

17                   7.2            Any Party may modify the person and address to whom the notice is to be sent  
18 by sending the other Party notice by first class and electronic mail.

19 **8. COURT APPROVAL**

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

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

26 **9. ATTORNEYS' FEES**

27                   9.1            Should any Party prevail on any motion, application for an order to show  
28 cause or other proceeding to enforce a violation of this Consent Judgment, that Party shall be  
entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or  
application.

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

                  9.3            Nothing in this Section 9 shall preclude a Party from seeking an award of

1 sanctions pursuant to law.

2 **10. OTHER TERMS**

3 10.1 The terms of this Consent Judgment shall be governed by the laws of the State  
4 of California.

5 10.2 This Consent Judgment shall apply to and be binding upon CEH and  
6 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
7 assigns of any of them.

8 10.3 This Consent Judgment contains the sole and entire agreement and  
9 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
10 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
11 merged herein and therein. There are no warranties, representations, or other agreements between  
12 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
13 implied, other than those specifically referred to in this Consent Judgment have been made by any  
14 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
15 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
16 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 10.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
21 that Defendant might have against any other party.

22 10.5 This Court shall retain jurisdiction of this matter to implement or modify the  
23 Consent Judgment.

24 10.6 The stipulations to this Consent Judgment may be executed in counterparts  
25 and by means of facsimile or portable document format (pdf), which taken together shall be  
26 deemed to constitute one document.

27 10.7 Each signatory to this Consent Judgment certifies that he or she is fully  
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into




1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
2 Party.

3 10.8 The Parties, including their counsel, have participated in the preparation of  
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
5 This Consent Judgment was subject to revision and modification by the Parties and has been  
6 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
10 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12  
13 **IT IS SO STIPULATED:**

14 **CENTER FOR ENVIRONMENTAL HEALTH**

15  
16   
17 \_\_\_\_\_  
18 Charlie Pizarro  
19 Associate Director

20 **PLASTEX INTERNATIONAL, LTD.**

21  
22 \_\_\_\_\_  
23 Signature

24 \_\_\_\_\_  
25 Printed Name

26  
27 \_\_\_\_\_  
28 Title

1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
2 Party.

3 10.8 The Parties, including their counsel, have participated in the preparation of  
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
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7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
10 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12  
13 **IT IS SO STIPULATED:**

14 **CENTER FOR ENVIRONMENTAL HEALTH**

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17 \_\_\_\_\_  
18 Charlie Pizarro  
19 Associate Director

20 **PLASTEX INTERNATIONAL, LTD.**

21 \_\_\_\_\_  
22   
23 Signature

24 JACK MALKA  
25 Printed Name

26 PRESIDENT  
27 Title

28 IS/PLASTEX/0001/XXXX/009964354/XXXX

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**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Judge of the Superior Court