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

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">vs.</div> CECICO, INC., <i>et al.</i> , <div style="text-align: center;">Defendants.</div>)))))))))))	Case No. RG 14-722774 [PROPOSED] CONSENT JUDGMENT AS TO MAVERICK APPAREL LLC
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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 Maverick Apparel LLC (“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 March 18, 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

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 April 24, 2014, CEH filed the Complaint in the Action. On May 29, 2014,
5 CEH filed an amendment to the Complaint pursuant to California Code of Civil Procedure § 474
6 naming Defendant as a defendant in the Action.

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

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

16 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
17 settlement of all claims that were raised in the Complaint, or which could have been raised in the
18 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
19 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
20 facts or conclusions of law including, but not limited to, any facts or conclusions of law
21 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
22 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
23 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
24 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
25 of any fact, conclusion of law, issue of law, or violation of law, including whether Defendant is a
26 “person in the course of doing business” as defined in Health and Safety Code section
27 25249.11(b). Defendant denies the material, factual, and legal allegations in CEH’s Complaint
28 and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment shall

1 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in this
2 or any other pending or future legal proceedings. This Consent Judgment is the product of
3 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
4 compromising, and resolving issues disputed in this action.

5 **2. INJUNCTIVE RELIEF**

6 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
7 Judgment (the “Effective Date”), Defendant shall not shall not purchase, import, manufacture,
8 supply to an unaffiliated third party, or sell or offer for sale any Covered Product that will be sold
9 or offered for sale to California consumers unless such Covered Product complies with the
10 following Lead Limits:

11 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
12 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

13 2.1.2 Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight
14 (200 ppm).

15 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
16 zirconium, CZ), crystal, glass, or rhinestones: no more than 0.03 percent Lead by weight (300
17 ppm).

18 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
19 Defendant shall cease shipping the Miss London Knit Collar Waist 4PKT Jacket in Red, SKU No.
20 00197071570608003, as identified in CEH’s pre-suit Notice of Violation to Defendant (the
21 “Recall Covered Product”), to stores and/or customers in California, and Defendant shall
22 withdraw the Recall Covered Product from the market in California, and, at a minimum, send
23 instructions to any of its stores and/or customers that offer the Recall Covered Product for sale in
24 California to cease offering such Recall Covered Product for sale and to either return all Recall
25 Covered Products to Defendant for destruction, or to directly destroy the Recall Covered
26 Product. Any destruction of the Recall Covered Product shall be in compliance with all
27 applicable laws. Defendant shall keep and make available to CEH for inspection and copying
28 records and correspondence regarding the market withdrawal and destruction of the Recall

1 Covered Product. If there is a dispute over the corrective action, the Parties shall meet and confer
2 before seeking any remedy in court

3 **3. ENFORCEMENT**

4 3.1 Any Party may, after meeting and conferring, by motion or application for an
5 order to show cause before this Court, enforce the terms and conditions contained in this Consent
6 Judgment. Enforcement of the terms and conditions of Section 2.1 of this Consent Judgment
7 shall be brought exclusively pursuant to Sections 3.2 through 3.2.1.

8 3.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section
9 2.1 by issuing a Notice of Violation pursuant to this Section 3.2.

10 3.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Defendant
11 within 45 days of the date the alleged violation(s) was or were observed, provided,
12 however, that: (i) CEH may have up to an additional 45 days to provide Defendant with
13 the test data required by Section 3.2.2(d) below if it has not yet obtained it from its
14 laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a Covered
15 Product so long as: (a) the identity of the supplier cannot be discerned from the labeling of
16 the Covered Product; and (b) the Notice of Violation to the supplier is served within 45
17 days of the date the supplier is identified by CEH.

18 3.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
19 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
20 (b) the location at which the Covered Product was offered for sale, (c) a description of the
21 Covered Product giving rise to the alleged violation, and of each material or component
22 that is alleged not to comply with the Lead Limits, including a picture of the Covered
23 Product and all identifying information on tags and labels, and (d) all test data obtained by
24 CEH regarding the Covered Product and related supporting documentation, including all
25 laboratory reports, quality assurance reports and quality control reports associated with
26 testing of the Covered Product. Such Notice of Violation shall be based at least in part
27 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
28 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a

1 Notice of Violation, although any such testing may be used as additional support for a
2 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A
3 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section
4 3.2.2.

5 **3.2.3 Additional Documentation.** CEH shall promptly make available for
6 inspection and/or copying upon request by and at the expense of Defendant, all supporting
7 documentation related to the testing of the Covered Products and associated quality
8 control samples, including chain of custody records, all laboratory logbook entries for
9 laboratory receiving, sample preparation, and instrumental analysis, and all printouts from
10 all analytical instruments relating to the testing of Covered Product samples and any and
11 all calibration, quality assurance, and quality control tests performed or relied upon in
12 conjunction with the testing of the Covered Product, obtained by or available to CEH that
13 pertains to the Covered Product's alleged noncompliance with Section 2.1 and, if
14 available, any exemplars of Covered Product tested.

15 **3.2.4 Multiple Notices.** If Defendant has received more than four Notices of
16 Violation in any 12-month period, at CEH's option, CEH may seek whatever fines, costs,
17 penalties, or remedies are provided by law for failure to comply with the Consent
18 Judgment. For purposes of determining the number of Notices of Violation pursuant to
19 this Section 3.2.4, the following shall be excluded:

20 (a) Multiple notices identifying Covered Products Manufactured for or
21 sold to Defendant from the same Vendor; and

22 (b) A Notice of Violation that meets one or more of the conditions of
23 Section 3.3.3(c).

24 **3.3 Notice of Election.** Within 30 days of receiving a Notice of Violation
25 pursuant to Section 3.2, including the test data required pursuant to 3.2.2(d), Defendant shall
26 provide written notice to CEH stating whether it elects to contest the allegations contained in the
27 Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
28 deemed an election to contest the Notice of Violation. Any monetary payments required under

1 this Section 3.3 shall be made payable to the Center for Environmental Health as reimbursement
2 for costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to
3 reimburse attorneys' fees and costs incurred in connection with these activities.

4 **3.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
5 Election shall include all then-available documentary evidence regarding the alleged
6 violation, including any test data. Within 30 days the parties shall meet and confer to
7 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
8 CEH may file an enforcement motion or application pursuant to Section 3.1. If Defendant
9 withdraws its Notice of Election to contest the Notice of Violation before any motion
10 concerning the violations alleged in the Notice of Violation is filed pursuant to Section
11 3.1, Defendant shall make a payment in the amount of \$12,500 and shall comply with all
12 of the non-monetary provisions of Section 3.3.2. If, at any time prior to reaching an
13 agreement or obtaining a decision from the Court, CEH or Defendant acquires additional
14 test or other data regarding the alleged violation, it shall promptly provide all such data or
15 information to the other Party.

16 **3.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
17 Defendant shall include in its Notice of Election a detailed description of corrective action
18 that it has undertaken or proposes to undertake to address the alleged violation. Any such
19 correction shall, at a minimum, provide reasonable assurance that the Covered Product
20 will no longer be offered by Defendant or its customers for sale in California. If there is a
21 dispute over the sufficiency of the proposed corrective action or its implementation, CEH
22 shall promptly notify Defendant and the Parties shall meet and confer before seeking the
23 intervention of the Court to resolve the dispute. In addition to the corrective action,
24 Defendant shall make a payment in the amount of \$10,000, unless one of the provisions of
25 Section 3.3.3 applies.

26 **3.3.3 Limitations in Non-Contested Matters.**

27 (a) If it elects not to contest a Notice of Violation before any motion
28 concerning the violation(s) at issue has been filed, the monetary liability of Defendant

1 shall be limited to the contributions required by Section 3.3.2 and this Section 3.3.3, if
2 any.

3 (b) If more than one Defendant has manufactured, sold, offered for
4 sale, or distributed a Covered Product identified in a non-contested Notice of Violation,
5 only one required contribution may be assessed against all Defendants as to the noticed
6 Covered Product.

7 (c) Defendant's required payment shall be:

8 (i) One thousand seven hundred fifty dollars (\$1,750) if
9 Defendant, prior to receiving and accepting for distribution or sale the Covered
10 Product identified in the Notice of Violation, obtained test results demonstrating
11 that the materials or components in the Covered Product identified in the Notice of
12 Violation complied with the applicable Lead Limits, and further provided that such
13 test results would be sufficient to support a Notice of Violation and that the testing
14 was performed within two years prior to the date of the sales transaction on which
15 the Notice of Violation is based. Defendant shall provide copies of such test
16 results and supporting documentation to CEH with its Notice of Election; or

17 (ii) Not required or payable, if the Notice of Violation identifies
18 the same Covered Product or Covered Products, differing only in size or color, that
19 have been the subject of another Notice of Violation within the preceding 12
20 months; or

21 (iii) One thousand five hundred dollars (\$1,000), if the Notice of
22 Violation identifies a Covered Product that Defendant can demonstrate it had
23 purchased prior to the Effective Date, provided however, that no contribution is
24 required or payable if the Defendant has already been required to pay a total of ten
25 thousand dollars (\$10,000) pursuant to this subsection.

26 **4. PAYMENTS**

27 4.1 **Payments from Defendant.** Defendant shall pay the total sum of \$20,000 as
28 a settlement payment. This total payment shall be made in two installments according to the

1 following schedule: (a) on or before June 1, 2015, Defendant shall pay \$10,000 as a settlement
2 payment; and (b) on or before July 1, 2015, Defendant shall pay \$10,000 as a settlement payment.
3 Each of these installment payments shall be paid in three separate checks delivered to the address
4 set forth in Section 7.1.2 and shall be made payable and allocated as set forth in Section 4.2. Any
5 failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late
6 payment fee of \$100 per day, which amount shall be recoverable by CEH, together with its
7 reasonable attorneys' fees and costs, in an enforcement proceeding brought pursuant to Section
8 3.1.

9 4.2 **Allocation of Payments.** Each installment of \$10,000 shall be paid in three
10 separate checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503
11 Divisadero Street, San Francisco, California 94117, and made payable and allocated as follows:

12 4.2.1 Defendant shall pay a total sum of \$2,600 as a penalty pursuant to Health
13 & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
14 Safety Code § 25249.12. \$1,300 of this amount shall be included with the first payment due on
15 June 1, 2015, and \$1,300 of this amount shall be included with the second payment due on July 1,
16 2015. Each penalty check shall be made payable to the Center for Environmental Health.

17 4.2.2 Defendant shall pay a total sum of \$3,900 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. \$1,950 of this amount shall be included with the first payment due on
28 June 1, 2015, and \$1,950 of this amount shall be included with the second payment due on July 1,

1 2015. Each payment in lieu of penalty check shall be made payable to the Center for
2 Environmental Health.

3 4.2.3 Defendant shall pay a total sum of \$13,500 as reimbursement of reasonable
4 attorneys' fees and costs. \$6,750 of this amount shall be included with the first payment due on
5 June 1, 2015, and \$6,750 of this amount shall be included with the second payment due on July 1,
6 2015. Each check pursuant to this section shall be made payable to the Lexington Law Group.

7 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

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

14 **6. CLAIMS COVERED AND RELEASE**

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

25 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
26 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
27 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
28 violation of Proposition 65 or any other statutory or common law claims that have been or could

1 have been asserted in the public interest regarding the failure to warn about exposure to Lead
2 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
3 prior to the Effective Date.

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

9 **7. PROVISION OF NOTICE**

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

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

14 Moey Shabot
15 Maverick Apparel LLC
16 1407 Broadway, Suite 3803
17 New York, NY 10018
18 mshabot@maverickapparel.com

19 With a copy to:

20 Jeffrey B. Margulies
21 Fulbright & Jaworski L.L.P.
22 555 South Flower Street, 41st Floor
23 Los Angeles, CA 90071
24 jeff.margulies@nortonrosefulbright.com

25 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
26 this Consent Judgment shall be:

27 Howard Hirsch
28 Lexington Law Group
29 503 Divisadero Street
30 San Francisco, CA 94117
31 hhirsch@lexlawgroup.com

32 7.2 Any Party may modify the person and address to whom the notice is to be sent
33 by sending the other Party notice by first class and electronic mail.

1 **8. COURT APPROVAL**

2 8.1 This Consent Judgment shall become effective on the Effective Date, provided
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
4 Defendant shall support approval of such Motion.

5 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
7 purpose.

8 **9. GOVERNING LAW AND CONSTRUCTION**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
10 of California.

11 **10. ENTIRE AGREEMENT**

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

26 **11. RETENTION OF JURISDICTION**

27 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.

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

2 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
5 Party.

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


7 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
8 claim against another entity on terms that are different than those contained in this Consent
9 Judgment.

10 **14. EXECUTION IN COUNTERPARTS**


11 14.1 The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile, which taken together shall be deemed to constitute one document.

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14 **IT IS SO STIPULATED:**

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Dated: <u>April 22</u> , 2015	CENTER FOR ENVIRONMENTAL HEALTH  _____ CHARLY PIZARRO _____ Printed Name ASSOCIATE DIRECTOR _____ Title
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Dated: <u>April 17</u> , 2015	MAVERICK APPAREL LLC  _____ Murray Shohet _____ Printed Name Member Manager _____ Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA