

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
vs.)
)
CECICO, INC., *et al.*,)
)
Defendants.)

Case No. RG 14-722774
**[PROPOSED] CONSENT JUDGMENT
AS TO C. LUCE, INC. DBA TCEC**

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 C. Luce, Inc. dba TCEC (“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 October 31, 2014, CEH provided a “Notice of Violation” relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) to the

1 California Attorney General, the District Attorneys of every county in California, the City
2 Attorneys of every California city with a population greater than 750,000, and to Defendant
3 regarding the presence of lead and lead compounds (collectively referred to herein as “Lead”) in
4 clothing made with leather, vinyl, or imitation leather materials (“Covered Products”).

5 1.3 On April 24, 2014, CEH filed the original Complaint in the Action. On March
6 9, 2015, CEH filed the operative First Amended Complaint naming Defendant as a defendant in
7 the Action.

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

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

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

1 remedy, argument, or defense the Parties may have in this or any other pending or future legal
2 proceedings. This Consent Judgment is the product of negotiation and compromise and is
3 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
4 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 manufacture, ship, sell, or offer for sale any
8 Covered Product in California or anywhere else unless such Covered Product complies with the
9 following Lead Limits:

10 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
11 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

12 2.1.2 Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight
13 (200 ppm).

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

17 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
18 Defendant shall cease shipping the (i) the TCEC Asymmetrical Zip Faux Leather Jacket in Olive,
19 SKU No. 1-712-187520503, Item No. 187520503, Style No. CJ5228, and (ii) the Foreign
20 Exchange Mini Skirt with Quilts in Burgundy, Item No. 102014, Style No. CS2225FE (“Recall
21 Covered Products”), to stores and/or customers in California, and Defendant shall withdraw the
22 Recall Covered Products from the market in California, and, at a minimum, send instructions to
23 any of its stores and/or customers that offer the Recall Covered Products for sale in California to
24 cease offering such Recall Covered Products for sale and to either return all Recall Covered
25 Products to Defendant for destruction, or to directly destroy the Recall Covered Products. Any
26 destruction of the Recall Covered Products shall be in compliance with all applicable laws.
27 Defendant shall keep and make available to CEH for inspection and copying records and
28 correspondence regarding the market withdrawal and destruction of the Recall Covered Products.

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

3 **3. ENFORCEMENT**

4 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
5 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
6 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
7 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
8 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
9 enforce may, by new action, motion, or order to show cause before the Superior Court of
10 Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.

11 **4. PAYMENTS**

12 4.1 **Payments From Defendant.** Defendant shall pay the total sum of \$35,000 as
13 a settlement payment. This total payment shall be made in two installments according to the
14 following schedule: (a) within 5 days of the Effective Date, Defendant shall pay \$17,500 as a
15 settlement payment; (b) within 45 days of the Effective Date, Defendant shall pay \$17,500 as a
16 settlement payment. Each of these payments shall be paid in three separate checks delivered to
17 the address set forth in Section 7.1.2 and shall be made payable and allocated as set forth in
18 Section 4.2. Any failure by Defendant to comply with the payment terms herein shall be subject
19 to a stipulated late payment fee of \$100 per day, which amount shall be recoverable by CEH,
20 together with its reasonable attorneys' fees and costs, in an enforcement proceeding brought
21 pursuant to Section 3.

22 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
23 paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
24 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
25 as follows:

26 4.2.1 Defendant shall pay a total sum of \$4,600 as a penalty pursuant to Health
27 & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
28 Safety Code § 25249.12. \$2,300 of this amount shall be included with the first payment due

1 within 5 days of the Effective Date, and \$2,300 of this amount shall be included with the second
2 payment due within 45 days of the Effective Date. Each penalty check shall be made payable to
3 the Center for Environmental Health.

4 4.2.2 Defendant shall pay a total sum of \$6,900 as payment to CEH in lieu of
5 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
6 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
7 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
8 funds to monitor compliance with the reformulation requirements of this and other similar
9 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
10 reformulation requirements. In addition, as part of its *Community Environmental Action and*
11 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
12 environmental justice groups working to educate and protect people from exposures to toxic
13 chemicals. The method of selection of such groups can be found at the CEH web site at
14 www.ceh.org/justicefund. \$3,450 of this amount shall be included with the first payment due
15 within 5 days of the Effective Date, and \$3,450 of this amount shall be included with the second
16 payment due within 45 days of the Effective Date. Each payment in lieu of penalty check shall be
17 made payable to the Center for Environmental Health.

18 4.2.3 Defendant shall pay a total sum of \$23,500 as reimbursement of reasonable
19 attorneys' fees and costs. \$11,750 of this amount shall be included with the first payment due
20 within 5 days of the Effective Date, and \$11,750 of this amount shall be included with the second
21 payment due within 45 days of the Effective Date. Each attorneys' fees and cost reimbursement
22 check shall be made payable to the Lexington Law Group.

23 **5. MODIFICATION AND DISPUTE RESOLUTION**

24 5.1 **Modification.** This Consent Judgment may be modified from time to time by
25 express written agreement of the Parties, with the approval of the Court, or by an order of this
26 Court upon motion and in accordance with law.

27 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
28 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a

1 motion to modify the Consent Judgment.

2 **6. CLAIMS COVERED AND RELEASE**

3 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
4 and Defendant and Defendant’s parents, shareholders, divisions, subdivisions, subsidiaries,
5 partners, sister companies, and their successors and assigns (“Defendant Releasees”), and all to
6 whom they distribute or sell Covered Products including, but not limited to, distributors,
7 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream
8 Defendant Releasees”), of any violation of Proposition 65 or any other statutory or common law
9 claims that have been or could have been asserted in the public interest against Defendant,
10 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
11 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
12 by Defendant prior to the Effective Date.

13 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
14 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
15 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
16 violation of Proposition 65 or any other statutory or common law claims that have been or could
17 have been asserted in the public interest regarding the failure to warn about exposure to Lead
18 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
19 prior to the Effective Date.

20 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
21 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
22 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged
23 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
24 after the Effective Date.

25 **7. PROVISION OF NOTICE**

26 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
27 the notice shall be sent by first class and electronic mail as follows:
28

1 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
2 pursuant to this Consent Judgment shall be:

3 Mark Brutzkus
4 Ezra Brutzkus Gubner LLP
5 21650 Oxnard Street, Suite 500
6 Woodland Hills, CA 91367-4911
7 mbrutzkus@ebg-law.com

8 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
9 this Consent Judgment shall be:

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

15 7.2 Any Party may modify the person and address to whom the notice is to be sent
16 by sending the other Party notice by first class and electronic mail.

17 **8. COURT APPROVAL**

18 8.1 This Consent Judgment shall become effective on the Effective Date, provided
19 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
20 Defendant shall support approval of such Motion.

21 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
22 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
23 purpose.

24 **9. GOVERNING LAW AND CONSTRUCTION**

25 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
26 of California.

27 **10. ENTIRE AGREEMENT**

28 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

1 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
2 implied, other than those specifically referred to in this Consent Judgment have been made by any
3 Party hereto. No other agreements not specifically contained or referenced herein, oral or
4 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
5 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
6 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
7 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
8 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
9 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
10 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11 **11. RETENTION OF JURISDICTION**

12 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

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

15 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
17 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
18 Party.

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

20 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
21 claim against another entity on terms that are different than those contained in this Consent
22 Judgment.

23 **14. EXECUTION IN COUNTERPARTS**

24 14.1 The stipulations to this Consent Judgment may be executed in counterparts
25 and by means of facsimile, which taken together shall be deemed to constitute one document.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

<p>Dated: <u>April 22</u>, 2015</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p><u>Chris</u></p> <p>Signature</p> <p><u>CHRIS PIZZARO</u></p> <p>Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u></p> <p>Title</p>
<p>Dated: _____, 2015</p>	<p>C. LUCE, INC. DBA TCEC</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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

<p>Dated: _____, 2015</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>
<p>Dated: <u>4, 20</u> _____, 2015</p>	<p>C. LUCE, INC. DBA TCEC</p> <p><i>Chong Ma Chong</i> _____ Signature</p> <p><u>CHong Ma CHong</u> _____ Printed Name</p> <p><u>President.</u> _____ Title</p>

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

Dated: _____

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA