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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 VERY J 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 Very J 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. Very J Inc., et al.*, Alameda County Superior Court Case No. RG 15-782612 (the “Action”).

1.2 On May 28, 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 August 19, 2015, CEH filed the Complaint in the Action, naming
4 Defendant as an original defendant in the Action.

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. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
26 remedy, argument, or defense the Parties may have in this or any other pending or future legal
27 proceedings. This Consent Judgment is the product of negotiation and compromise and is
28 accepted by the Parties solely for purposes of settling, compromising, and resolving issues

1 disputed in this action.

2 **2. INJUNCTIVE RELIEF**

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

7 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
8 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) (“ppm”).

9 2.1.2 Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight
10 (200 ppm).

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

14 **2.2 Market Withdrawal of Covered Products.** On or before the Effective Date,
15 Defendant shall cease shipping (a) the Very J Double Up Faux Leather Mini Skirt in Black &
16 Olive, SKU No. 92971583543895, Item No. VS50075#; (b) the Very J Sweetheart Swing Faux
17 Leather Dress in Teal, SKU No. 21688344810230, Item No. VD30354; (c) the Very J Show Off
18 Faux Leather Mini Skirt in Brown, SKU No. 84312345248400, Item No. VS50074; and (d) the
19 Very J Female Baseball Jacket Mocha, SKU No. VJ90295-S-Mocha (“Recall Covered
20 Products”), to stores and/or customers in California, and Defendant shall withdraw the Recall
21 Covered Products from the market in California, and, at a minimum, send instructions to any of
22 its stores and/or customers that offer the Recall Covered Products for sale in California to cease
23 offering such Recall Covered Products for sale and to either return all Recall Covered Products to
24 Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of
25 the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall
26 keep and make available to CEH for inspection and copying records and correspondence
27 regarding the market withdrawal and destruction of the Recall Covered Products. If there is a
28

1 dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in
2 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 Section 2 of this Consent Judgment, a Party seeking to enforce shall
6 provide the violating party thirty (30) days advanced written notice of the alleged violation. The
7 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
8 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
9 Party seeking to enforce may, by new action, motion, or order to show cause before the Superior
10 Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.

11 **4. PAYMENTS**

12 4.1 **Payments from Defendant.** In consideration of the mutual covenants and
13 releases provided in this Agreement, Defendant shall pay the total sum of \$30,000, as further set
14 forth in this Section. This total payment shall be made in three installments according to the
15 following schedule: (a) within five (5) days of the entry of this Consent Judgment, Defendant
16 shall pay \$10,000 as a settlement payment; (b) on or before June 1, 2016, Defendant shall pay
17 \$10,000 as a settlement payment; and (c) on or before September 1, 2016, Defendant shall pay
18 \$10,000 as a settlement payment. Each of these payments shall be made payable and allocated as
19 follows.

20 4.2 **Allocation of Payments.** Each settlement payment by Defendant shall be
21 paid in four separate checks in the amounts set forth below and delivered as set forth below. Any
22 failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late
23 fee in the amount of \$100 for each day after the delivery date the payment is received. The late
24 fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in
25 an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds
26 paid by Defendant shall be allocated as set forth below between the following categories and
27 made payable as follows:

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1 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b) in the total
2 amount of \$3,900. The civil penalty payment shall be apportioned in accordance with Health &
3 Safety Code § 25249.12 (*i.e.*, 25% to CEH and 75% to the State of California’s Office of
4 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the total OEHHA portion
5 of the civil penalty payment shall be \$2,925. \$975 of this amount shall be included with the first
6 payment due within five (5) days of the entry of this Consent Judgment, \$975 of this amount shall
7 be included with the second payment due on June 1, 2016, and \$975 of this amount shall be
8 included with the third payment due on September 1, 2016. These payments shall be made
9 payable to OEHHA and associated with taxpayer identification number 68-0284486, and shall be
10 delivered as follows:

11 For United States Postal Service Delivery:

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

17 For Non-United States Postal Service Delivery:

18 Attn: Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street, MS #19B
22 Sacramento, CA 95814

23 The total CEH portion of the civil penalty payment shall be \$975. \$325 of this amount shall be
24 included with the first payment due within five (5) days of the entry of this Consent Judgment,
25 \$325 of this amount shall be included with the second payment due on June 1, 2016, and \$325 of
26 this amount shall be included with the third payment due on September 1, 2016. These payments
27 shall be made payable to the Center For Environmental Health and associated with taxpayer
28 identification number 94-3251981, and 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 total amount of

1 \$5,900. CEH will use such funds to continue its work educating and protecting people from
2 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
3 to monitor compliance with the reformulation requirements of this and other similar Consent
4 Judgments and to purchase and test Covered Products to confirm compliance with such
5 reformulation requirements. In addition, as part of its *Community Environmental Action and*
6 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
7 environmental justice groups working to educate and protect people from exposures to toxic
8 chemicals. The method of selection of such groups can be found at the CEH web site at
9 www.ceh.org/justicefund. \$1,970 of this amount shall be included with the first payment due
10 within five (5) days of the entry of this Consent Judgment, \$1,970 of this amount shall be
11 included with the second payment due on June 1, 2016, and \$1,960 of this amount shall be
12 included with the third payment due on September 1, 2016. These payments shall be made
13 payable to the Center For Environmental Health and associated with taxpayer identification
14 number 94-3251981, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San
15 Francisco, CA 94117.

16 4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and
17 costs in the total amount of \$20,200. \$6,730 of this amount shall be included with the first
18 payment due within five (5) days of the entry of this Consent Judgment, \$6,730 of this amount
19 shall be included with the second payment due on June 1, 2016, and \$6,740 of this amount shall
20 be included with the third payment due on September 1, 2016. Each check pursuant to this
21 section shall be made payable to the Lexington Law Group and associated with taxpayer
22 identification number 94-3317175, and shall be delivered to Lexington Law Group, 503
23 Divisadero Street, San Francisco, CA 94117.

24 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

28 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent

1 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
2 motion to modify the Consent Judgment.

3 **6. CLAIMS COVERED AND RELEASE**

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

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

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

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 Dale J. Park, Esq.
4 Law Offices of Dale J. Park
5 3333 Wilshire Blvd., Suite 320
6 Los Angeles, CA 90010
7 daleparklawyer@gmail.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. ATTORNEYS' FEES**

25 9.1 Should CEH prevail on any motion, application for an order to show cause, or
26 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
27 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
28 Defendant prevail on any such motion, application for an order to show cause, or other
proceeding, Defendant may be awarded its reasonable attorneys' fees and costs as a result of such
motion or application upon a finding by the Court that CEH's prosecution of the motion or
application lacked substantial justification. For purposes of this Consent Judgment, the term

1 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
2 Code of Civil Procedure §§ 2016, *et seq.*

3 9.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
4 its own attorneys' fees and costs.

5 9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of
6 sanctions pursuant to law.

7 **10. GOVERNING LAW AND CONSTRUCTION**

8 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
9 of California.

10 **11. ENTIRE AGREEMENT**

11 11.1 This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
13 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
14 merged herein and therein. There are no warranties, representations, or other agreements between
15 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
16 implied, other than those specifically referred to in this Consent Judgment have been made by any
17 Party hereto. No other agreements not specifically contained or referenced herein, oral or
18 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
19 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
20 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
21 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
22 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
23 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
24 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

25 **12. RETENTION OF JURISDICTION**

26 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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

2 13.1 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 **14. NO EFFECT ON OTHER SETTLEMENTS**




7 14.1 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 **15. EXECUTION IN COUNTERPARTS**

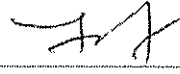
11 15.1 The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile, which taken together shall be deemed to constitute one document.
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14 **IT IS SO STIPULATED:**

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Dated: <u>FEB 5</u> , 2016	CENTER FOR ENVIRONMENTAL HEALTH
	
	Signature
	
	Printed Name
	
	Title

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Dated: <u>02/04</u> , 2016	VERY J INC.  _____ Signature <u>KISUB JUNG</u> _____ Printed Name <u>CFO</u> _____ Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA