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

Case No. RG 15-792125

**[PROPOSED] CONSENT JUDGMENT
AS TO REPUBLIC CLOTHING
CORPORATION AND REPUBLIC
CLOTHING GROUP 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 Republic Clothing Corporation and Republic Clothing Group Inc. (collectively, “Defendants”), on the other hand, to settle certain claims asserted by CEH against Defendants 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 December 10, 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

1 Attorneys of every Californian city with a population greater than 750,000, and to Defendants
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”). The
4 December 10, 2015 Notice of Violation identified the Carmen Marc Valvo Carmen Cut & Sew
5 Rope Dress in Black, Ross SKU No. 400127713713, Style Nos. CD400015, CD408051,
6 9840285W, CD510014, and CD510016 (“Rope Dress”) as a “non-exclusive example” of the
7 Covered Products.

8 1.3 On November 4, 2015, CEH filed the Complaint in the Action. On March 22,
9 2016, CEH filed a Doe Amendment to the Complaint naming Defendants as defendants in that
10 Action.

11 1.4 Defendants manufacture, distribute, and/or sell the Rope Dress in the State of
12 California.

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

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

1 of any fact, conclusion of law, issue of law, or violation of law. Defendants deny the material,
2 factual and legal allegations in CEH's Complaint and expressly deny any wrong doing
3 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
4 remedy, argument, or defense the Parties may have in this or any other pending or future legal
5 proceedings. This Consent Judgment is the product of negotiation and compromise and is
6 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
7 disputed in this action.

8 **2. INJUNCTIVE RELIEF**

9 2.1 **Reformulation of Covered Products.** As of the date of entry by the Court of
10 this Consent Judgment (the "Effective Date"), Defendants shall not manufacture, ship, sell, or
11 offer for sale any Covered Product in California unless such Covered Product complies with the
12 following Lead Limits:

13 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
14 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) ("ppm").

15 2.1.2 Polyvinyl chloride ("PVC"): no more than 0.02 percent Lead by weight
16 (200 ppm).

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

20 2.2 **Market Withdrawal of the Rope Dress.** On or before the Effective Date,
21 Defendants shall cease shipping the Rope Dress to stores and/or customers in California, and
22 Defendants shall withdraw the Rope Dress from the market in California.

23 2.3 On or before the Effective Date, Defendants shall send instructions to any of
24 its stores and/or customers that offer the Rope Dress for sale in California to cease offering such
25 Rope Dress for sale in California and to either return all Rope Dresses to Defendants for
26 destruction, or to directly destroy the Rope Dress. Any destruction of the Rope Dress shall be in
27 compliance with all applicable laws.

28

1 2.4 Defendants shall keep and make available to CEH for inspection and copying
2 non-privileged records and correspondence regarding the market withdrawal of the Rope Dress.
3 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking
4 any remedy in court.

5 **3. ENFORCEMENT**

6 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show
7 cause to enforce the terms set forth in Section 2 of this Consent Judgment, a Party seeking to
8 enforce shall provide the violating party thirty (30) days advanced written notice in the form of a
9 Notice of Violation, proof of purchase, and a copy of any test results which purportedly support
10 the Notice of Violation. The Parties shall then meet and confer during such thirty (30) day period
11 in an effort to try to reach agreement on an appropriate cure for the alleged violation.

12 3.2 Only after compliance with Section 3.1 herein may CEH enforce the terms of
13 this Consent Judgment by a new action, motion, or order to show cause before the Superior Court
14 of Alameda.

15 **4. PAYMENTS**

16 4.1 **Payments from Defendants.** Within ten (10) days of the entry of this
17 Consent Judgment, Defendants shall pay the total sum of \$40,000.

18 4.2 **Allocation of Payments.** The total settlement amount for Defendants shall be
19 paid in four (4) separate checks made payable and allocated as follows:

20 4.2.1 Defendant shall pay the sum of \$5,260 as a civil penalty pursuant to Health
21 & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with
22 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
23 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
24 the civil penalty payment in the amount of \$3,945 shall be made payable to OEHHA and
25 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
26 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

4.2.2 The CEH portion of the civil penalty payment in the amount of \$1,315 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 Defendants shall pay the sum of \$7,900 as payment to CEH in lieu of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). 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 (4%) 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 in lieu of penalty check 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.

4.2.4 Defendants shall pay the sum of \$26,840 as reimbursement of reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made

1 payable to the Lexington Law Group and associated with taxpayer identification number 94-
2 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
3 Francisco, CA 94117.

4 **5. MODIFICATION AND DISPUTE RESOLUTION**

5 5.1 **Modification.** This Consent Judgment may be modified from time to time by
6 express written agreement of the Parties, with the approval of the Court, or by an order of this
7 Court upon motion and in accordance with law.

8 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
9 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
10 motion to modify the Consent Judgment.

11 **6. CLAIMS COVERED AND RELEASE**

12 6.1 This Consent Judgment is a full, final, and binding resolution between (a)
13 CEH on behalf of itself and the public interest and (b) Defendants and Defendants' parents,
14 shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, affiliates
15 ("affiliates" means a person or entity who directly or indirectly owns or controls, is owned or
16 controlled by, or is under common ownership or control with Defendants), former affiliates,
17 current and past directors, officers, employees and attorneys, and their successors and assigns
18 ("Defendant Releasees"), and each entity to whom any of them directly or indirectly distribute
19 sell or have sold Covered Products, including, but not limited to, distributors, wholesalers,
20 customers, retailers (including but not limited to Ross Stores, Inc. and LCEL Collectibles Inc.),
21 franchisees, cooperative members, licensors and licensees ("Downstream Defendant Releasees"),
22 of any violation of Proposition 65 that has been or could have been asserted in the public interest
23 against Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the
24 failure to warn about exposure to Lead arising in connection with Covered Products
25 manufactured, distributed, or sold by Defendants prior to the Effective Date.

26 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
27 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
28 Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any

1 violation of Proposition 65 that has been or could have been asserted in the public interest
2 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
3 manufactured, distributed, or sold by Defendants prior to the Effective Date.

4 6.3 Compliance with the terms of this Consent Judgment by Defendants and the
5 Defendant Releasees shall constitute compliance with Proposition 65 by Defendants, 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 Defendants
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 Defendants.** The person for Defendants to receive notices
13 pursuant to this Consent Judgment shall be:

14 Meredith Jones-McKeown
15 Sheppard, Mullin, Richter and Hampton, LLP
16 Four Embarcadero Center, 17th Floor
17 San Francisco CA 94111
18 Telephone: (415) 434-9100
19 Facsimile: (415) 434-3947
20 mjonesmckeown@sheppardmullin.com

21 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
22 this Consent Judgment shall be:

23 Howard Hirsch
24 Lexington Law Group
25 503 Divisadero Street
26 San Francisco, CA 94117
27 hhirsch@lexlawgroup.com

28 7.2 Any Party may modify the person and address to whom the notice is to be sent
by sending the other Party notice by first class and electronic mail.

29 **8. COURT APPROVAL**

30 8.1 This Consent Judgment shall become effective on the Effective Date, provided
31 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and

1 Defendants shall support approval of such Motion.

2 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
3 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
4 purpose.

5 **9. GOVERNING LAW AND CONSTRUCTION**

6 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
7 of California.

8 **10. ENTIRE AGREEMENT**

9 10.1 This Consent Judgment contains the sole and entire agreement and
10 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
11 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
12 merged herein and therein. There are no warranties, representations, or other agreements between
13 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
14 implied, other than those specifically referred to in this Consent Judgment have been made by any
15 Party hereto. No other agreements not specifically contained or referenced herein, oral or
16 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
17 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
18 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
19 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
20 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
21 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
22 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

23 **11. RETENTION OF JURISDICTION**

24 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.

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

27 12.1 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 **13. NO EFFECT ON OTHER SETTLEMENTS**

4 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
5 claim against another entity on terms that are different than those contained in this Consent
6 Judgment.



7 **14. EXECUTION IN COUNTERPARTS**

8 14.1 The stipulations to this Consent Judgment may be executed in counterparts
9 and by means of facsimile, which taken together shall be deemed to constitute one document.

10
11 **IT IS SO STIPULATED:**

12 Dated: <u>6 May</u> , 2016	13 CENTER FOR ENVIRONMENTAL HEALTH 14  15 _____ 16 Signature 17 <u>CHARLIE PIZARRO</u> 18 _____ 19 Printed Name 20 <u>ASSOCIATE DIRECTOR</u> 21 _____ 22 Title
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Dated: <u>5/9/16</u> , 2016	REPUBLIC CLOTHING CORPORATION  _____ Signature <u>ANSON CTO</u> _____ Printed Name <u>cto</u> _____ Title
Dated: <u>5/9/16</u> , 2016	REPUBLIC CLOTHING GROUP INC.  _____ Signature <u>ANSON CTO</u> _____ Printed Name <u>cto</u> _____ Title

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

Dated:

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA