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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. )  
 )  
VERY J INC., *et al.*, )  
 )  
Defendants. )  
 )  
 )

Case No. RG 15-782612

**[PROPOSED] CONSENT JUDGMENT  
AS TO WHOLESALFASHION  
SQUARE.COM, 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 WholesaleFashionSquare.com, 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 September 1, 2016, 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, to the District Attorneys of every county in California, to 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.

3 1.3 On August 19, 2015, CEH filed the original Complaint in the Action. On or  
4 about November 8, 2016, CEH filed a Doe Amendment adding Defendant to the Action.

5 1.4 Defendant is a corporation that employs ten (10) or more persons and that  
6 manufactures, distributes, and/or sells Covered Products in the 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.     DEFINITIONS**

3             2.1           “Covered Products” means clothing made with leather, vinyl, or imitation  
4     leather materials that are manufactured, distributed, sold, and/or offered for sale by Defendant.

5             2.2           “Effective Date” is the date of entry of this Consent Judgment.

6             2.3           “Lead Limits” means the maximum concentrations of lead and lead  
7     compounds by weight specified in Section 3.1.

8             2.4           “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,  
9     with or without a suspension of finely divided coloring matter, which changes to a solid film  
10    when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.  
11    This term does not include printing inks or those materials which actually become a part of the  
12    substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
13    the substrate, such as by electroplating or ceramic glazing.

14    **3.     INJUNCTIVE RELIEF**

15            3.1           **Reformulation of Covered Products.** As of the Effective Date, Defendant  
16    shall not manufacture, ship, sell, or offer for sale any Covered Product in California or anywhere  
17    else unless such Covered Product complies with the following Lead Limits:

18                   3.1.1   Paint or other Surface Coatings: no more than 0.009 percent Lead by  
19    weight (90 parts per million) (“ppm”).

20                   3.1.2   Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight  
21    (200 ppm).

22                   3.1.3   All other materials other than cubic zirconia (sometimes called cubic  
23    zirconium, CZ), crystal, glass, or rhinestones: no more than 0.03 percent Lead by weight (300  
24    ppm).

25            3.2           **Action Regarding Specific Products.** On or before the Effective Date,  
26    Defendant shall cease shipping the Dani Collection Shop The Trends Women’s Floral Lace-  
27    Sleeve Leatherette Jacket in Pink, Style No. JK3148, Overstock Item No. 16489024 (the “Recall  
28    Covered Product”), to stores and/or customers in California, and Defendant shall withdraw the

1 Recall Covered Product from the market in California, and, at a minimum, send instructions to  
2 any of its stores and/or customers that offer the Recall Covered Product for sale in California to  
3 cease offering such Recall Covered Product for sale and to either return all Recall Covered  
4 Product to Defendant for destruction, or to directly destroy the Recall Covered Product. Any  
5 destruction of the Recall Covered Product shall be in compliance with all applicable laws.  
6 Defendant shall keep and make available to CEH for inspection and copying records and  
7 correspondence regarding the market withdrawal and destruction of the Recall Covered Product.  
8 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking  
9 any remedy in court.

#### 10 **4. ENFORCEMENT**

11 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show  
12 cause to enforce the terms of Section 3 of this Consent Judgment, a Party seeking to enforce shall  
13 provide the violating party thirty (30) days advanced written notice of the alleged violation. The  
14 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach  
15 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the  
16 Party seeking to enforce may, by new action, motion, or order to show cause before the Superior  
17 Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.

#### 18 **5. PAYMENTS**

19 5.1 **Payments from Defendant.** Within fourteen (14) days of the entry of this  
20 Consent Judgment, Defendant shall pay the total sum of \$25,000.

21 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be  
22 paid in four (4) separate checks made payable and allocated as follows:

23 5.2.1 Defendant shall pay \$3,295 as a civil penalty pursuant to Health & Safety  
24 Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &  
25 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of  
26 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of  
27 the civil penalty payment in the amount of \$2,471.25 shall be made payable to OEHHA and  
28

1 associated with taxpayer identification number 68-0284486. This payment shall be delivered as  
2 follows:

3 For United States Postal Service Delivery:

4 Attn: Mike Gyurics  
5 Fiscal Operations Branch Chief  
6 Office of Environmental Health Hazard Assessment  
7 P.O. Box 4010, MS #19B  
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Attn: Mike Gyurics  
11 Fiscal Operations Branch Chief  
12 Office of Environmental Health Hazard Assessment  
13 1001 I Street, MS #19B  
14 Sacramento, CA 95814

15 The CEH portion of the civil penalty payment in the amount of \$823.75 shall be made  
16 payable to the Center for Environmental Health and associated with taxpayer identification  
17 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
18 Street, San Francisco, CA 94117.

19 5.2.2 Defendant shall pay \$2,465 as an Additional Settlement Payment (“ASP”)  
20 in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California  
21 Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics and  
22 Youth Fund and use them to support CEH programs and activities that seek to educate the public  
23 about lead and other toxic chemicals in consumer products that are marketed to youth, expand its  
24 use of social media to communicate with youth in California about the risks of exposures to lead  
25 and other toxic chemicals in the products they use and about ways to reduce those exposures,  
26 work with industries that market products to youth to reduce exposure to lead and other toxic  
27 chemicals, and thereby reduce the public health impacts and risks of exposure to lead and other  
28 toxic chemicals in consumer products that are marketed to youth in California. CEH shall obtain  
and maintain adequate records to document that ASPs are spent on these activities and CEH  
agrees to provide such documentation to the Attorney General within thirty days of any request  
from the Attorney General. The payment pursuant to this Section shall be made payable to the  
Center for Environmental Health and associated with taxpayer identification number 94-

1 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
2 Francisco, CA 94117.

3 5.2.3 Defendant shall pay \$19,240 as reimbursement of reasonable attorneys'  
4 fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks  
5 as follows: (a) \$15,860 payable to the Lexington Law Group and associated with taxpayer  
6 identification number 94-3317175; and (b) \$3,380 payable to the Center For Environmental  
7 Health and associated with taxpayer identification number 94-3251981. These payments shall be  
8 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

## 9 **6. MODIFICATION AND DISPUTE RESOLUTION**

10 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
11 express written agreement of the Parties, with the approval of the Court, or by an order of this  
12 Court upon motion and in accordance with law.

13 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent  
14 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a  
15 motion to modify the Consent Judgment.

## 16 **7. CLAIMS COVERED AND RELEASE**

17 7.1 This Consent Judgment is a full, final, and binding resolution between CEH  
18 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,  
19 partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to  
20 whom they distribute or sell Covered Products directly or indirectly including, but not limited to,  
21 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
22 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or  
23 common law claims that have been or could have been asserted in the public interest against  
24 Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to  
25 warn about exposure to Lead arising in connection with Covered Products manufactured,  
26 distributed, or sold by Defendant prior to the Effective Date.

27 7.2 CEH, for itself, its past and current representatives and attorneys, and acting  
28 on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), releases, waives,

1 and forever discharges any and all claims against Defendant, Defendant Releasees, and  
2 Downstream Defendant Releasees, arising from any violation of Proposition 65 or any other  
3 statutory or common law claims that have been or could have been asserted in the public interest  
4 regarding the failure to warn about exposure to Lead arising in connection with Covered Products  
5 manufactured, distributed, or sold by Defendant prior to the Effective Date.

6 7.3 CEH also, in its individual capacity, provides a general release herein which  
7 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of  
8 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and  
9 demands of CEH, of any nature, character or kind, known or unknown, suspected or unsuspected,  
10 arising out of the subject matter of the notice as to Covered Products manufactured, distributed or  
11 sold by Defendant prior to the Effective Date. CEH acknowledges that it is familiar with section  
12 1542 of the California Civil Code, which provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
16 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
17 HER SETTEMENT WITH THE DEBTOR

18 CEH, in its individual capacity, expressly waives and relinquishes any and all rights and benefits  
19 that it may have under, or which may be conferred on it by the provisions of Section 1542 of the  
20 California Civil Code as well as under any other state or federal statute or common law principle  
21 of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining  
22 to the released matters. In furtherance of such intention, the release hereby given shall be and  
23 remain in effect as a full and complete release notwithstanding the discovery or existence of any  
24 such additional or different claims or facts arising out of the released matters.

25 7.4 Compliance with the terms of this Consent Judgment by Defendant and the  
26 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the  
27 Defendant Releasees, and their Downstream Defendant Releasees, with respect to any alleged  
28 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant  
after the Effective Date.

1     **8.     PROVISION OF NOTICE**

2             8.1             When any Party is entitled to receive any notice under this Consent Judgment,  
3     the notice shall be sent by first class and electronic mail as follows:

4                     8.1.1     **Notices to Defendant.** The person for Defendant to receive notices  
5     pursuant to this Consent Judgment shall be:

6                                     Brian J. Bergman  
7                                     Bergman Dacey Goldsmith  
8                                     10880 Wilshire Blvd., Ste. 900  
9                                     Los Angeles, CA 90024  
10                                    bbergman@bdgfirm.com

11                    8.1.2     **Notices to Plaintiff.** The person for CEH to receive notices pursuant to  
12     this Consent Judgment shall be:

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

18             8.2             Any Party may modify the person and address to whom the notice is to be sent  
19     by sending the other Party notice by first class and electronic mail.

20     **9.     COURT APPROVAL**

21             9.1             This Consent Judgment shall become effective on the Effective Date, provided  
22     however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
23     Defendant shall support approval of such Motion.

24             9.2             If this Consent Judgment is not entered by the Court, it shall be of no force or  
25     effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
26     purpose.

27     **10.    GOVERNING LAW AND CONSTRUCTION**

28             10.1            The terms of this Consent Judgment shall be governed by the laws of the State  
   of California.

**11.    ENTIRE AGREEMENT**

           11.1            This Consent Judgment contains the sole and entire agreement and



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

14 **12. RETENTION OF JURISDICTION**

15 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

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

18 13.1 Each signatory to this Consent Judgment certifies that he or she is fully  
19 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
20 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
21 Party.

22 **14. NO EFFECT ON OTHER SETTLEMENTS**

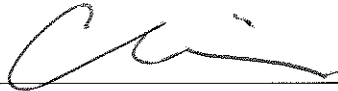
23 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any  
24 claim against another entity on terms that are different than those contained in this Consent  
25 Judgment.

26 **15. EXECUTION IN COUNTERPARTS**

27 15.1 The stipulations to this Consent Judgment may be executed in counterparts  
28 and by means of facsimile, which taken together shall be deemed to constitute one document.

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**IT IS SO STIPULATED:**

|                                   |  |
|-----------------------------------|--|
| <p>Dated: <u>18 Nov</u>, 2016</p> | <p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p></p> <p>Signature</p> <p><u>CAROL PIZZANO</u></p> <p>Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u></p> <p>Title</p> |
| <p>Dated: _____, 2016</p>         | <p><b>WHOLESALEFASHIONSQUARE.COM, INC.</b></p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p>  |

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

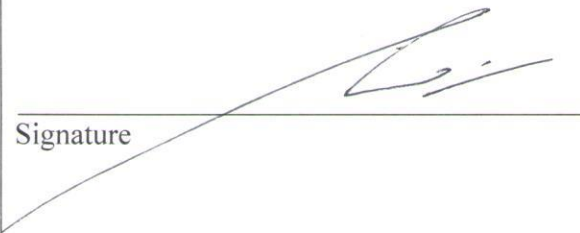
Dated: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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**IT IS SO STIPULATED:**

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|--------------------|---|
| Dated: _____, 2016 | <p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <hr/> <p>Signature</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p> |
|--------------------|---|

|                              |  |
|------------------------------|--|
| Dated: <u>Dec. 05</u> , 2016 | <p><b>WHOLESALEFASHIONSQUARE.COM, INC.</b></p> <hr/>  <p>Signature</p> <hr/> <p><u>MICHAEL KREMERMAN</u></p> <p>Printed Name</p> <hr/> <p><u>CFO</u></p> <p>Title</p> |
|------------------------------|--|

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

Dated: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA