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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 18-933923  
Plaintiff, )  
v. ) **[PROPOSED] CONSENT**  
CORNERSTONE APPAREL, INC., *et al.*, ) **JUDGMENT AS TO JET.COM, INC.**  
Defendants. )  
\_\_\_\_\_ )

**1. DEFINITIONS**

1.1 “Covered Products” means belts that are both (1) sold or offered for sale by Settling Defendant, and (2) Manufactured, distributed, or sold by a Vendor.

1.2 “Effective Date” means the date on which this Consent Judgment is entered by the Court.

1.3 “Lead Limits” means the maximum concentrations of lead and lead compounds (“Lead”) by weight specified in Section 3.1.

1           1.4           “Manufactured” and “Manufactures” means to manufacture, produce, or  
2 assemble.

3           1.5           “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,  
4 with or without a suspension of finely divided coloring matter, which changes to a solid film  
5 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.  
6 This term does not include printing inks or those materials which actually become a part of the  
7 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
8 the substrate, such as by electroplating or ceramic glazing.

9           1.6           “Vendor” means Mystic, Inc. or Sunny Girl Pty Ltd.

10       **2.       INTRODUCTION**

11       2.1           The parties to this Consent Judgment are Plaintiff Center for Environmental  
12 Health (“CEH”) and Defendant Jet.com, Inc. (“Settling Defendant”) (collectively, the “Parties”).

13       2.2           On January 30, 2019, CEH served a 60-Day Notice of Violation under  
14 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
15 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) on Settling Defendant, the California Attorney  
16 General, the District Attorneys of every County in the State of California, and the City Attorneys  
17 for every City in the State of California with a population greater than 750,000. The Notice  
18 alleges that Settling Defendant violated Proposition 65 by exposing persons to Lead contained in  
19 Covered Products without first providing a clear and reasonable Proposition 65 warning.

20       2.3           On February 13, 2019, CEH filed the operative First Amended Complaint in  
21 the above-captioned action. On April 26, 2019, CEH filed an amendment pursuant to California  
22 Code of Civil Procedure § 474, naming Settling Defendant as a defendant in the place of Doe 1 in  
23 the action.

24       2.4           Settling Defendant and/or an affiliate of Settling Defendant sell or sold  
25 Covered Products in the State of California.

26       2.5           For purposes of this Consent Judgment only, the Parties stipulate that this  
27 Court has jurisdiction over the allegations of violations contained in the operative Complaint

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1 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
2 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
3 and that this Court has jurisdiction to enter this Consent Judgment.

4           2.6           Nothing in this Consent Judgment is or shall be construed as an admission by  
5 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
6 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
7 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
8 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
9 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
10 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
11 this action.

### 12       **3.       INJUNCTIVE RELIEF**

13           3.1           **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall  
14 not purchase, import, Manufacture, supply to an unaffiliated third party, or sell or offer for sale  
15 any Covered Product that will be sold or offered for sale to consumers within the State of  
16 California that contains a material or is made of a component that exceeds the following Lead  
17 Limits:

18                   3.1.1   Paint or other Surface Coatings: 90 parts per million (“ppm”).

19                   3.1.2   Polyvinyl chloride (“PVC”): 200 ppm.

20                   3.1.3   All other materials or components other than cubic zirconia (sometimes  
21                   called cubic zirconium, CZ), crystal, glass, or rhinestones: 300 ppm.

#### 22           3.2           **Action Regarding Specific Products.**

23                   3.2.1   On or before the Effective Date, Settling Defendant shall cease selling in  
24 California: (a) the Mystic Belt in Red, sold with the Mystic Teaching Classy Sheath Dress  
25 in Blue Floral, ModCloth Item No. 100000175583, Style No. D11138BHS; (b) the Mystic  
26 Belt in Purple, sold with Mystic Jacquard A-Line Dress in Purple, ModCloth Item No.  
27 100000270074, Style No. D15592CJY-P; and (c) the Sunny Girl Belt in Tan, sold with

1 the Sunny Girl Outline of Work Midi Dress in Black, ModCloth Item No. 999998607622,  
2 Style No. 102930D (the “Section 3.2 Products”). On or before the Effective Date, Settling  
3 Defendant shall also: (i) cease shipping the Section 3.2 Products to any of its stores and/or  
4 customers that resell the Section 3.2 Products in California, and (ii) to the extent that any  
5 Section 3.2 Products remain in the stream of commerce, send instructions to its stores  
6 and/or customers that resell the Section 3.2 Products in California instructing them either  
7 to: (a) return all units of the Section 3.2 Product to Settling Defendant for destruction; or  
8 (b) directly destroy all units of the Section 3.2 Products.

9 3.2.2 Any destruction of any Section 3.2 Product shall be in compliance with all  
10 applicable laws.

#### 11 **4. ENFORCEMENT**

12 4.1 Any Party may, after meeting and conferring, by motion or application for an  
13 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
14 Judgment. Enforcement of the terms and conditions of Section 3.1 of this Consent Judgment  
15 shall be brought exclusively pursuant to Sections 4.2 through 4.3.

16 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section  
17 3.1 by issuing a Notice of Violation pursuant to this Section 4.2.

18 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling  
19 Defendant within 45 days of the later of either the date the alleged violation(s) was or  
20 were observed or the date that CEH learns that the Covered Product was manufactured or  
21 sold by Settling Defendant, provided, however, that CEH may have up to an additional 45  
22 days to provide Settling Defendant with the test data required by Section 4.2.3(d) below if  
23 it has not yet obtained it from its laboratory.

24 4.2.2 **Frequency of Notices of Violation.** “Identical” Covered Products—  
25 products bearing the same name and style regardless of color or size differences—shall be  
26 subject to only a single Notice of Violation within any twelve (12) month time period.

27 4.2.3 **Supporting Documentation.** The Notice of Violation shall, at a  
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1 minimum, set forth for each Covered Product: (a) the date(s) the alleged violation(s) was  
2 observed, (b) the location at which the Covered Product was offered for sale, (c) a  
3 description of the Covered Product giving rise to the alleged violation, and of each  
4 material or component that is alleged not to comply with the Lead Limits, including a  
5 picture of the Covered Product and all identifying information on tags and labels, and (d)  
6 all test data obtained by CEH regarding the Covered Product and related supporting  
7 documentation, including all laboratory reports, quality assurance reports, and quality  
8 control reports associated with testing of the Covered Products. Such Notice of Violation  
9 shall be based at least in part upon total acid digest testing performed by an independent  
10 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by  
11 themselves sufficient to support a Notice of Violation, although any such testing may be  
12 used as additional support for a Notice. The Parties agree that the sample Notice of  
13 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of  
14 subsections (c) and (d) of this Section 4.2.3.

15 **4.2.4 Additional Documentation.** CEH shall promptly make available for  
16 inspection and/or copying, upon request by and at the expense of Settling Defendant, all  
17 supporting documentation related to the testing of the Covered Products and associated  
18 quality control samples, including chain of custody records, all laboratory logbook entries  
19 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
20 from all analytical instruments relating to the testing of Covered Product samples and any  
21 and all calibration, quality assurance, and quality control tests performed or relied upon in  
22 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
23 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
24 any exemplars of Covered Products tested.

25 **4.2.5 Multiple Notices.** If Settling Defendant has received more than four  
26 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
27 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
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1 Consent Judgment. For purposes of determining the number of Notices of Violation  
2 pursuant to this Section 4.2.5, a Notice of Violation that meets one or more of the  
3 conditions of Section 4.3.3(b) shall be excluded.

4 4.3 **Notice of Election.** Within thirty (30) days of receiving a Notice of Violation  
5 pursuant to Section 4.2, including the test data required pursuant to 4.2.3(d), Settling Defendant  
6 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
7 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be  
8 deemed an election to contest the Notice of Violation. Any contributions to the Fashion  
9 Accessory Testing Fund required under this Section 4.3 shall be made payable to the Center for  
10 Environmental Health and included with Settling Defendant’s Notice of Election.

11 4.3.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of  
12 Election shall include all then-available documentary evidence regarding the alleged  
13 violation, including any test data. Within thirty (30) days the parties shall meet and confer  
14 to attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
15 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
16 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
17 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
18 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
19 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
20 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or  
21 obtaining a decision from the Court, CEH or Settling Defendant acquire additional test or  
22 other data regarding the alleged violation, they shall promptly provide all such data or  
23 information to the other Party.

24 4.3.2 **Non-Contested Notices.** If the Notice of Violation is not contested,  
25 Settling Defendant shall include in its Notice of Election a detailed description of  
26 corrective action that it has undertaken or proposes to undertake to address the alleged  
27 violation. Any such correction shall, at a minimum, provide reasonable assurance that the  
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1 Covered Product(s) will no longer be offered by Settling Defendant or its customers for  
2 sale in California. If there is a dispute over the sufficiency of the proposed corrective  
3 action or its implementation, CEH shall promptly notify Settling Defendant and the  
4 Parties shall meet and confer before seeking the intervention of the Court to resolve the  
5 dispute. In addition to the corrective action, Settling Defendant shall make a contribution  
6 to the Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the  
7 provisions of Section 4.3.3 applies.

8 **4.3.3 Limitations in Non-Contested Matters.**

9 (a) If it elects not to contest a Notice of Violation before any motion  
10 concerning the violation(s) at issue has been filed, the monetary liability of Settling  
11 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section  
12 4.3.3, if any.

13 (b) The contribution to the Fashion Accessory Testing Fund shall be:

14 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling  
15 Defendant, prior to receiving and accepting for distribution or sale the  
16 Covered Product identified in the Notice of Violation, obtained test results  
17 demonstrating that all of the materials or components in the Covered  
18 Product identified in the Notice of Violation complied with the applicable  
19 Lead Limits, and further provided that such test results meet the same  
20 quality criteria to support a Notice of Violation as set forth in Section 4.2.2  
21 and that the testing was performed within two years prior to the date of the  
22 sales transaction on which the Notice of Violation is based. Settling  
23 Defendant shall provide copies of such test results and supporting  
24 documentation to CEH with its Notice of Election; or

25 (ii) Not required or payable, if the Notice of Violation identifies the  
26 same Covered Product or Covered Products, differing only in size or color,  
27 that have been the subject of another Notice of Violation within the  
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1 preceding 12 months.

2 **5. PAYMENTS**

3 **5.1 Payments by Settling Defendant.** Within twenty (20) calendar days of the  
4 Effective Date, Settling Defendant shall pay the total sum of \$35,000, as set forth below, as a total  
5 settlement payment. The total settlement amount for Settling Defendant shall be paid in five  
6 separate checks made payable and allocated as follows:

7 5.1.1 Settling Defendant shall pay the sum of \$4,670 as a civil penalty pursuant  
8 to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in  
9 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of  
10 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the  
11 OEHHA portion of the civil penalty payment in the amount of \$3,502.50 shall be made payable  
12 to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall  
13 be delivered as follows:

14 For United States Postal Service Delivery:

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

18 For Non-United States Postal Service Delivery:

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

22 The CEH portion of the civil penalty payment in the amount of \$1,167.50 shall be made  
23 payable to the Center for Environmental Health and associated with taxpayer identification  
24 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
25 Street, San Francisco, CA 94117.

26 5.1.2 Settling Defendant shall pay the sum of \$3,500 as an Additional Settlement  
27 Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code



1 of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's Toxics and Youth  
2 Fund and use them to support CEH programs and activities that seek to educate the public about  
3 lead and other toxic chemicals in consumer products that are marketed to youth, expand its use of  
4 social media to communicate with youth in California about the risks of exposures to lead and  
5 other toxic chemicals in the products they use and about ways to reduce those exposures, work  
6 with industries that market products to youth to reduce exposure to lead and other toxic  
7 chemicals, and thereby reduce the public health impacts and risks of exposure to lead and other  
8 toxic chemicals in consumer products that are marketed to youth in California. CEH shall obtain  
9 and maintain adequate records to document that ASP funds are spent on these activities and CEH  
10 agrees to provide such documentation to the Attorney General within thirty days of any request  
11 from the Attorney General. The payment pursuant to this Section shall be made payable to the  
12 Center for Environmental Health and associated with taxpayer identification number 94-3251981.  
13 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
14 CA 94117.

15           5.1.3     Settling Defendant shall also separately pay the sum of \$26,830 as  
16 reimbursement of a portion of CEH's reasonable attorneys' fees and costs (including but not  
17 limited to expert and investigative costs). This payment shall be delivered to Lexington Law  
18 Group, 503 Divisadero Street, San Francisco, CA 94117. The attorneys' fees and cost  
19 reimbursement shall be made in two separate checks as follows: (a) \$22,545 payable to the  
20 Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b)  
21 \$4,285 payable to the Center for Environmental Health and associated with taxpayer  
22 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,  
23 503 Divisadero Street, San Francisco, CA 94117.

## 24     **6.     MODIFICATION**

25           6.1           **Written Consent.** This Consent Judgment may be modified from time to  
26 time by express written agreement of the Parties with the approval of the Court, or by an order of  
27 this Court upon motion and in accordance with law.



1 Judgment, the notice shall be sent by first class and electronic mail to:

2 Thomas L. Van Wyngarden  
3 Pillsbury Winthrop Shaw Pittman LLP  
4 725 South Figueroa Street, Suite 2800  
5 Los Angeles, CA 90017-5406  
6 tom.vanwyngarden@pillsburylaw.com

7 8.3 Any Party may modify the person and address to whom the notice is to be sent  
8 by sending the other Party notice by first class and electronic mail.

9 **9. COURT APPROVAL**

10 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
11 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
12 shall support entry of this Consent Judgment.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
14 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
15 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

16 **10. ATTORNEYS' FEES**

17 10.1 Should CEH prevail on any motion, application for an order to show cause, or  
18 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
19 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
20 Settling Defendant prevail on any motion, application for an order to show cause, or other  
21 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs incurred  
22 as a result of such motion or application upon a finding by the Court that CEH's prosecution of  
23 the motion or application lacked substantial justification. For purposes of this Consent Judgment,  
24 the term substantial justification shall carry the same meaning as used in the Civil Discovery Act  
25 of 1986, Code of Civil Procedure §§ 2016, *et seq.*

26 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
27 its own attorneys' fees and costs.

28 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of

1 sanctions pursuant to law.

2 **11. OTHER TERMS**

3 11.1 The terms of this Consent Judgment shall be governed by the laws of the State  
4 of California.

5 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
6 Defendant, its respective divisions, subdivisions, and subsidiaries, and the successors or assigns  
7 of any of them.

8 11.3 This Consent Judgment contains the sole and entire agreement and  
9 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
10 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
11 merged herein and therein. There are no warranties, representations, or other agreements between  
12 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
13 implied, other than those specifically referred to in this Consent Judgment have been made by any  
14 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
15 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
16 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
21 that Settling Defendant might have against any other party.

22 11.5 This Court shall retain jurisdiction of this matter to implement or modify the  
23 Consent Judgment.

24 11.6 The stipulations to this Consent Judgment may be executed in counterparts  
25 and by means of facsimile or portable document format (pdf), which taken together shall be  
26 deemed to constitute one document.

27 11.7 Each signatory to this Consent Judgment certifies that he or she is fully  
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1 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
2 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
3 Party.

4 11.8 The Parties, including their counsel, have participated in the preparation of  
5 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
6 This Consent Judgment was subject to revision and modification by the Parties and has been  
7 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
8 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
9 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
10 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
11 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
12 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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14 **IT IS SO ORDERED:**

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16 Dated: \_\_\_\_\_ Judge of the Superior Court

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**IT IS SO STIPULATED:**

Dated: April 16, 2020

**CENTER FOR ENVIRONMENTAL HEALTH**



Signature

Michael Green

Printed Name

CEO

Title

Dated: \_\_\_\_\_, 2020

**JET.COM, INC.**

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: \_\_\_\_\_, 2020

CENTER FOR ENVIRONMENTAL HEALTH

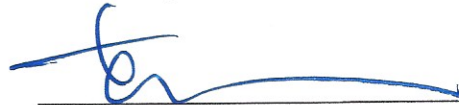
Signature

Printed Name

Title

Dated: APRIL 23, 2020

JET.COM, INC.



Signature

THOMAS L. VAN KLYNGAARDEN

Printed Name

PARTNER

PILLSBURY WINTHROP

Title

SHAW-PITMAN LLP