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Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 13 2006

CLERK OF THE SUPERIOR COURT  
By HOLLIE M. ADAMIC  
Deputy

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

PEOPLE OF THE STATE OF CALIFORNIA,  
ex rel. BILL LOCKYER, Attorney General,

Plaintiffs,

v.

BURLINGTON COAT FACTORY  
WAREHOUSE CORPORATION, et. al.,  
Defendants.

) Lead Case No. RG 04-162075  
)  
) (Consolidated with Case Nos.  
) RG 04-162037, RG 04-169511, and  
) RG 06-269531 )

**STIPULATED CONSENT JUDGMENT  
AS TO NADRI, INC.**

Complaint Filed: June 23, 2004  
Trial Date: None

And Related and Consolidated Cases

1                   *Whereas*, on May 12, 2006, plaintiff the Center for Environmental Health  
2 (“CEH”) filed action no. RG 06-269531, which action was consolidated with three other actions  
3 including the lead case entitled *People v. Burlington Coat Factory et al.*, action no. RG  
4 04-162075;

5                   *Whereas*, Nadri, Inc. (“Nadri”) is a defendant in the action by CEH;

6                   *Whereas*, on February 21, 2006, upon noticed motion, the Court entered a  
7 Consent Judgment in the consolidated actions (the “Master Consent Judgment”);

8                   *Whereas*, on June 15, 2006, upon noticed motion, the Court amended the Master  
9 Consent Judgment by entering an Amended Consent Judgment in the consolidated actions, a true  
10 and correct copy of which is attached hereto as Exhibit 1 (in order to minimize the size of  
11 Exhibit 1, the attached Amended Consent Judgment does not include certain signature pages or  
12 Exhibit A (list of initial defendants), Exhibit E (brand names from initial defendants), Exhibit F  
13 (initial defendant notice list), Exhibit G (copies of Notices of Intent to Opt In) and Exhibit H  
14 (Roman Company signature page) (the “Amended Master Consent Judgment”);

15                   *Whereas*, CEH and Nadri have agreed to resolve this matter as to Nadri on the  
16 same injunctive terms as those contained in the Amended Master Consent Judgment;

17                   *Now Therefore*, the parties hereto agree as follows:

18                   1.       Judgment shall be entered against Nadri in this consolidated action pursuant to the  
19 terms of the Amended Master Consent Judgment, except that the following terms shall apply to  
20 Nadri in lieu of Section 5 of the Amended Master Consent Judgment.

21                   a.       Within seven calendar days of entry of this Stipulated Consent Judgment,  
22 Nadri shall pay the sum of \$30,000 as a settlement payment. The settlement payment shall be by  
23 check made payable to the Lexington Law Group, LLP Attorney Client Trust Account. The  
24 funds paid by Nadri shall be distributed as follows:

25                   i.       The sum of \$9,667 as payment to CEH in lieu of penalty pursuant  
26 to Health and Safety Code section 25249.7(b), and California Code  
27 of Regulations, title 11, section 3202(b). CEH shall use such funds  
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to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals.

- ii. The sum of \$1,000 as a civil penalty pursuant to Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code §25192.
- ii. The sum of \$19,333 as reimbursement of CEH's reasonable attorneys' fees and investigation costs.

b. The last sentence in Section 3.1 of the Amended Master Consent Judgment shall be replaced with the following sentence:

Each Settling Defendant shall provide the requirements of this Consent Judgment to its Suppliers of Covered Products no later than September 30, 2006, and shall request each Supplier to use best efforts to provide compliant product as soon as commercially practicable.

2. In all other respects, Nadri shall be treated as if it were an Initial Settling Defendant, as that term is used in the Amended Master Consent Judgment.


3. The persons for Nadri to receive Notices per § 4.2.2.2 and Exhibit F to the Amended Master Consent Judgment, until and unless modified per § 8, shall be:

Joel M. Wolosky  
Hodgson Russ LLP  
230 Park Avenue, 17<sup>th</sup> Floor  
New York, NY 10169

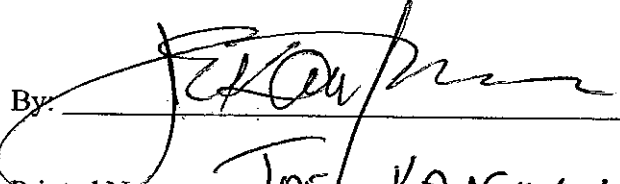
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**IT IS SO STIPULATED.**

CENTER FOR ENVIRONMENTAL HEALTH

By:   
Michael Green, Executive Director

NADRI, INC.

By:   
Printed Name: JOEL KAUFMAN  
Title: VICE PRESIDENT

**JUDGMENT SO RENDERED.**

SEP 13 2006, 2006

**ROBERT FREEDMAN**

JUDGE OF THE SUPERIOR COURT

# **EXHIBIT 1**

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ENDORSED  
FILED  
ALAMEDA COUNTY

JUN 15 2006

CLERK OF THE SUPERIOR COURT  
By HOLLIE M. ADAMIC  
Deputy

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

PEOPLE OF THE STATE OF CALIFORNIA, ex  
rel. BILL LOCKYER, Attorney General, et al.,

Plaintiffs,

vs.

BURLINGTON COAT FACTORY  
WAREHOUSE CORPORATION, et al,

Defendants.

Case No. RG 04-162075

(Consolidated with RG 04-162037, RG  
04-169511)

~~PROPOSED~~ AMENDED CONSENT  
JUDGMENT

AND RELATED CONSOLIDATED CASES.

This Amended Consent Judgment ("Consent Judgment") supercedes the Consent Judgment entered in these consolidated cases on February 21, 2006, and is entered by the Court pursuant to the Attorney General's Motion to Amend Consent Judgment, filed on May 19, 2006. The Amended Consent Judgment reflects the addition of seventeen parties as Add-On Defendants, the substitution of a party, two minor modifications to the standards for Children's Jewelry, and the clarification of testing protocols in Exhibit D. The amended provisions appear in Sections 2.1, 3.1, 3.3.4, 3.3.5, and 5.2, and Exhibits A, C, D, and F. Exhibits G and H are new.

1     **1.     INTRODUCTION**

2             1.1     On June 23, 2004, plaintiffs the Attorney General of the State of California, on  
3     behalf of the People of the State of California ("People"), and the Center for Environmental Health  
4     ("CEH"), filed complaints for civil penalties and injunctive relief in this Court. On August 10,  
5     2004, plaintiff As You Sow ("AYS") filed a similar complaint. The complaints allege that the  
6     defendants violated the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition  
7     65") and the Unfair Competition Law by selling jewelry that contains lead, a chemical known to  
8     the State of California to cause cancer and birth defects or other reproductive harm, without  
9     providing a clear and reasonable warnings that use of the jewelry would result in exposure to lead.

10            1.2     On August 27, 2004, the People amended their complaint to substitute the true  
11     name of a "Doe" defendant and dismissed a defendant. The following defendants were named and  
12     appeared in the People's amended complaint: Burlington Coat Factory Warehouse Corporation;  
13     CBI Distributing Corp; Claire's Boutiques, Inc.; Express, LLC; Federated Department Stores,  
14     Inc.; J. C. Penney Corporation, Inc.; Kmart Corporation; Macy's West, Inc.; Mervyn's;  
15     Nordstrom, Inc; Ross Stores, Inc.; Sears, Roebuck and Company; Target Corporation; and Toys  
16     "R" Us, Inc. On January 25, 2006, the People amended their complaint to add the following  
17     defendants Adina Inc.; Arden Jewelry Manufacturing Company, Inc.; Ballet Jewels L.L.C.;  
18     Bernardo Manufacturing; Buy-Rite Costume Jewelry, Inc. and Buy-Rite Designs, Inc.; Carol  
19     Dauplaise Ltd.; Carol for Eva Graham, Inc.; Carole Inc.; Retail Brand Alliance, Inc. d/b/a Carolee;  
20     Catherine Stein Designs, Inc.; Crimzon Rose Accessories, Inc.; Danecraft, Inc.; Erica Lyons;  
21     FAD Treasures; F.A.F, Inc.; Fashion Accents, Inc.; Fiesta Jewelry, Inc.; Finesse Novelty Corp.,  
22     d/b/a Accessory Solutions, Ambiance Accessory, and Jewelry Sales; Gigi Accessories; Habitat,  
23     Inc.; JJamz, Inc.; K&M Associates, L.P.; Kenilworth Creations; Kerissa Creations; Key Item  
24     Sales, Inc.; Liz Claiborne, Inc.; Haskell Jewels, LTD; MJM Jewelry Corp., d/b/a Berry Jewelry  
25     Company; Orion Fashions, Inc.; Rainbow Sales Incorporated; Jewelry Fashions, Inc.; Scorpio  
26     Accessories, LLC; Shalom International Corp.; Stephan & Co.; Tanya Creations, Inc.; TSI  
27     Holding Company (but see *infra*, Section 1.2.2); Vetta Jewelry, Inc.; and Victoria + Co. LTD  
28     ("Initial Settling Vendors"). In addition, on January 25, 2006, the People amended their complaint

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1 to add as named defendants the entities listed on Exhibit A as "Affiliate Settling Defendants."  
2 Wal-Mart Stores, Inc. ("Wal-Mart") also was named in the People's complaint, but it is not a party  
3 to this Consent Judgment. (But see *infra*, Section 1.2.4.)

4 1.2.1 Pursuant to the Stipulation for Entry of Judgment and Order entered on  
5 February 21, 2006, the following companies have opted to become Add-On Defendants: Allison  
6 Reed Group, d/b/a P&B Manufacturing/J. Roth Enterprises; Barry-Owens, Inc.; Cathedral Art  
7 Metal Company, Inc.; Cookie Lee, Inc.; Fada International Corporation; Greenbrier International,  
8 Inc., a wholly-owned subsidiary of Dollar Tree Stores, Inc.; Jonnette Jewelry Company; Lee Mode  
9 International Inc.; Linda & Jay Keane, d/b/a L&J Accessories, Inc.; QVC, Inc.; Reebok  
10 International LTD; Rogers Sports Management; Saks, Incorporated; Sequin, LLC; The Gap, Inc.;  
11 Uncas Manufacturing Company; Vine Products Manufacturing Company ("Add-On Defendants").  
12 An executed Notice of Intent to Opt In for each Add-On Defendant is attached hereto as Exhibit  
13 G. The People's complaint is hereby deemed amended to include the Add-On Defendants as  
14 defendants.

15 1.2.2 TSI Holding Company was an Initial Settling Vendor under the Consent  
16 Judgment that the Court approved on February 21, 2006. However, the People subsequently  
17 learned that the entity that should have been named in the complaint and the Consent Judgment is  
18 Roman Company, a wholly-owned subsidiary of TSI Holding Company. Therefore, the People's  
19 complaint is hereby deemed amended to name Roman Company; TSI Holding Company is hereby  
20 dismissed from *People v. Burlington Coat Factory Warehouse Corp. et al* (Case No.  
21 RG04162075) without prejudice; and the Consent Judgment and exhibits are hereby amended to  
22 replace TSI Holding Company with Roman Company as an Initial Settling Vendor. An executed  
23 signature page by Roman Company is attached as Exhibit H.

24 1.2.3 With the exception of Wal-Mart, the defendants named in the People's  
25 complaint as amended, which were not dismissed, are referred to herein as "Attorney General  
26 Defendants."

27 1.2.4 On April 20, 2006, pursuant to a stipulation between the People, CEH, and  
28 Wal-Mart, the Court entered a separate judgment against Wal-Mart. The Wal-Mart judgment



1 incorporates the terms of the Consent Judgment entered on February 21, 2006 and provides that  
2 Wal-Mart shall be treated as an Initial Settling Defendant, as that term is used therein.

3 1.3 On October 15, 2004, CEH filed its First Amended Complaint. Since that date,  
4 CEH has further amended its First Amended Complaint to substitute the true name of several  
5 "Doe" defendants and dismissed several other defendants. The following defendants were named  
6 and appeared in CEH's amended complaint: AIJJ Enterprises, Inc.; American Eagle Outfitters,  
7 Inc.; Aeropostale, Inc.; Burlington Coat Factory Warehouse Corporation; CBI Distributing Corp.;  
8 Claire's Boutiques, Inc.; Cost Plus, Inc.; Federated Department Stores, Inc.; Forever 21, Inc.;  
9 Forever 21 Retail, Inc.; Hot Topic, Inc.; Hub Distributing, Inc.; J.C. Penney Corporation, Inc.; Joe  
10 Boxer Company, LLC; Kmart Corporation; Kohl's Department Stores, Inc.; Kohl's Corporation;  
11 Lane Bryant, Inc.; Lerner New York, Inc.; Limited Too Store Planning, Inc.; Longs Drug Stores  
12 California, Inc.; Macy's West, Inc.; Mervyn's, LLC; Monogram International, Inc.; Nordstrom,  
13 Inc.; Rainbow Apparel of America, Inc.; Rainbow Apparel Distribution Center Corp.; Sears  
14 Roebuck and Co.; Styles For Less, Inc.; Target Corporation; The Buckle, Inc.; The May  
15 Department Stores, Inc.; The New 5-7-9 And Beyond, Inc.; Walt Disney World Co. (erroneously  
16 sued and served herein as Disney Consumer Products International, Inc. Disneyland International,  
17 and Walt Disney Company); Walgreen Co.; The Wet Seal, Inc.; The Wet Seal Retail, Inc.; Too,  
18 Inc.; and Zumiez, Inc. The following defendants that also were named in CEH's amended  
19 complaint are not parties to this Consent Judgment: Cornerstone Apparel, Inc.; Jordache  
20 Enterprises, Inc.; Royal Items, Inc.; The Gerson Company; Wal-Mart Stores, Inc. and Windsong  
21 Allegiance Group, LLC ("Non-Settling Defendants"). With the exception of the Non-Settling  
22 Defendants, the defendants named in CEH's complaint or any amendment thereto, that have not  
23 been dismissed, are referred to herein as "CEH Defendants."

24 1.4 The cause of action against the following CEH Defendants was limited to alleged  
25 violations of the Unfair Competition Law: Burlington Coat Factory Warehouse Corporation; CBI  
26 Distributing Corp; Claire's Boutiques, Inc.; Federated Department Stores, Inc.; J. C. Penney  
27 Company, Inc.; Kmart Corporation; Macy's West, Inc.; Mervyn's, LLC; Nordstrom, Inc; Sears,  
28 Roebuck and Company; and Target Corporation..

1           1.5     The following defendants were named and appeared in the complaint by AYS:  
2     Gottschalks, Inc.; Group USA Apparel, Inc.; and Charlotte Russe, Inc. The defendants named in  
3     AYS's complaint or any amendment thereto, that have not been dismissed, are referred to herein  
4     as "AYS Defendants."

5           1.6     The amended complaints filed by the Attorney General and CEH and the complaint  
6     filed by AYS are collectively called the "Complaints."

7           1.7     On November 8, 2004, the Court ordered that the cases be consolidated for pre-trial  
8     purposes. The parties hereby stipulate that the cases now shall be consolidated for purposes of  
9     entry of this Consent Judgment.

10          1.8     The People, CEH, and AYS ("Plaintiffs") and the Attorney General Defendants,  
11     CEH Defendants, and AYS Defendants, and any Add-On Defendants as defined in Section 2.9  
12     added to the People's Complaint pursuant to the Stipulation for Entry of Judgment (collectively  
13     "Settling Defendants") are Parties, and each is a Party to this Consent Judgment.

14          1.9     Each Settling Defendant is a corporation or other business entity that employs 10 or  
15     more persons, or employed 10 or more persons at some time relevant to the allegations of the  
16     complaint, and which manufactures, distributes and/or sells Covered Products in the State of  
17     California or has done so in the past.

18          1.10    For purposes of this Consent Judgment only, the parties stipulate that this Court has  
19     jurisdiction over the allegations of violations contained in the Complaints and personal jurisdiction  
20     over each Settling Defendant as to the acts alleged in the Complaints, venue is proper in the  
21     County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full  
22     and final resolution of all claims which were or could have been raised in the Complaints based on  
23     the facts alleged therein.

24          1.11    The People, CEH, AYS, and Settling Defendants enter into this Consent Judgment  
25     as a full and final settlement of all claims that were raised in the Complaints, or which could have  
26     been raised in the Complaints, arising out of the facts or conduct alleged therein. By execution of  
27     this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or  
28     conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or

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1 demonstrating any violations of Proposition 65, the Unfair Competition Act or any other statutory,  
2 common law or equitable requirements relating to chromium, lead and/or nickel in jewelry.  
3 Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,  
4 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
5 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
6 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or  
7 impair any right, remedy, argument or defense the Parties may have in this or any other or future  
8 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is  
9 accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
10 this action.

11 **2. DEFINITIONS**

12 2.1 The term "Person" shall have the same meaning as that term is defined in  
13 California Health & Safety Code section 25249.11, subdivision (a).

14 2.2 The term "Covered Products" means (a) the following ornaments worn by a person:  
15 an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring,  
16 necklace, pin, ring, and Body Piercing Jewelry, or (b) any bead, chain, link, pendant, or other  
17 component of such an ornament.

18 2.3 The term "Body Piercing Jewelry" means any part of a Covered Product that is  
19 manufactured or sold for placement in new piercings and/or mucous membranes, and does not  
20 include those parts of Covered Products not placed within new piercings and/or mucous  
21 membranes.

22 2.4 The term "Children's Products" means Covered Products that are made for,  
23 marketed for use by, or marketed to, Children.

24 2.4.1 For purposes of this Consent Judgment, the term "Children" means  
25 children aged 6 and younger.

26 2.4.2 A Covered Product is made for, marketed for use by, or marketed to  
27 Children if it is either:

28



1 “Initial Retailer Settling Defendants” means those Initial Settling Defendants who are not Initial  
2 Settling Vendors. The term “Add-On Settling Defendants” means those Settling Defendants that  
3 join in the Consent Judgment pursuant to the process set forth in the Stipulation for Entry of  
4 Judgment. Exhibit A to this Consent Judgment identifies each of the Initial Retailer Settling  
5 Defendants, Initial Settling Vendors, and Add-On Settling Defendants that are parties to this  
6 Consent Judgment.

7 **3. INJUNCTIVE RELIEF**

8 3.1 Reformulation of Covered Products. After the Shipping Compliance Date, a  
9 Settling Defendant that is a Supplier shall not ship Covered Products to a third party for retail sale  
10 in California unless the Covered Product complies with Section 3.2 or, for Children’s Products,  
11 Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of this Consent Judgment. After the Final  
12 Compliance Date, no Settling Defendant shall: (1) manufacture; (ii) ship; or (iii) sell or offer for  
13 sale, Covered Products for retail sale in California unless the Covered Product complies with  
14 Section 3.2 or, for Children’s Products, Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of  
15 this Consent Judgment. Each Settling Defendant shall provide the requirements of this Consent  
16 Judgment to its Suppliers of Covered Products no later than June 30, 2006, and shall request each  
17 Supplier to use best efforts to provide compliant product as soon as commercially practicable.

18 3.2 General Reformulation Requirements. Covered Products that are not Children’s  
19 Products or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3  
20 Components, or any combination thereof, as these terms are defined below and in Exhibit B.

21 3.2.1 A “Class 1 Component” is the portion of a Covered Product that contains  
22 one or more of the following materials:

23 3.2.1.1 Stainless and surgical steels.

24 3.2.1.2 Karat gold.

25 3.2.1.3 Sterling silver.

26 3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium  
27 (“platinum group metals”).

28 3.2.1.5 Natural and cultured pearls.

1                   3.2.1.6     Glass, ceramic, and crystal decorative components (e.g., cat's eye,  
2 cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

3                   3.2.1.7     Any gemstone that is cut and polished for ornamental purposes  
4 except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,  
5 phosgenite, samarskite, vanadinite, and wulfenite.

6                   3.2.1.8     Elastic, fabric, ribbon, rope, and string with no intentionally-added  
7 lead and not otherwise listed as a Class 2 component.

8                   3.2.1.9     Natural decorative materials (e.g., amber, bone, coral, feathers, fur,  
9 horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add  
10 lead.

11                  3.2.1.10    Adhesives.

12                  3.2.2     A "Class 2 Component" is the portion of a Covered Product that contains  
13 one or more of the following materials:

14                  3.2.2.1    Metal alloys with less than 10 percent lead by weight ("88 metal")  
15 that are electroplated with suitable under and finish coats and that are plated utilizing the Best  
16 Management Practices described in Exhibit C. For Covered Products shipped by a Settling  
17 Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in California,  
18 and for products sold or offered for retail sale in California by a Settling Defendant after August  
19 31, 2009, this standard shall be metal alloys with less than 6 percent lead by weight ("92 metal")  
20 that are electroplated with suitable under and finish coats and that are plated utilizing the Best  
21 Management Practices described in Exhibit C.

22                  3.2.2.2    Unplated metal containing less than 1.5 percent lead that is not  
23 defined as a Class 1 Component.

24                  3.2.2.3    Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and  
25 polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For  
26 Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a  
27 third party for retail sale in California, and for products sold or offered for retail sale in California  
28

1 by a Settling Defendant after August 31, 2009, this standard shall be no more than 0.02 percent  
2 (200 ppm) lead by weight

3 3.2.2.4 Dyes and Surface Coatings containing less than 0.06 percent (600  
4 parts per million) lead. For purposes of this Consent Judgment, "Surface Coating" shall carry the  
5 same meaning as "Paint or other similar surface coating" under 16 CFR § 1303.2(b)(1) ("Paint and  
6 other similar surface-coating materials means a fluid; semi-fluid, or other material, with or without  
7 a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is  
8 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not  
9 include printing inks or those materials which actually become a part of the substrate, such as the  
10 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as  
11 by electroplating or ceramic glazing.").

12 3.2.3 A "Class 3 Component" is any part of a Covered Product that is not a  
13 Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600  
14 parts per million) lead.

15 3.3 **Children's Products.** Children's Products shall be made entirely from:

16 3.3.1 Non-metallic materials that are Class 1 Components;

17 3.3.2 Non-metallic materials that are Class 2 Components;

18 3.3.3 Metallic materials that are either Class 1 Components or contain less than  
19 0.06 percent (600 parts per million) lead;

20 3.3.4 Glass or crystal decorative components that weigh in total no more than  
21 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02  
22 percent (200 parts per million) lead and have no intentionally added lead.

23 3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600  
24 parts per million) lead;

25 3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per  
26 million) lead; or

27 3.3.7 Any combination thereof.

28

1           3.4    **Body Piercing Jewelry.** Body Piercing Jewelry shall be made of one of the  
2 following materials:

3                   3.4.1    Surgical Implant Stainless Steel

4                   3.4.2    Surgical Implant grades of Titanium

5                   3.4.3    Niobium (Nb)

6                   3.4.4    Solid 14 karat or higher white or yellow nickel-free gold

7                   3.4.5    Solid platinum

8                   3.4.6    A dense low porosity plastic such as Tygon or PTFE with no intentionally  
9 added lead.

10    **4.    ENFORCEMENT**

11           4.1    **General Enforcement Provisions.** The Attorney General, CEH, or AYS may, by  
12 motion or application for an order to show cause before this Court, enforce the terms and  
13 conditions contained in this Consent Judgment, subject to the following:

14                   4.1.1    Any action to enforce the terms of Section 3 of this Consent Judgment  
15 shall be brought exclusively pursuant to this Section 4.

16                   4.1.2    The Attorney General may enforce the provisions of this Consent  
17 Judgment as to any Settling Defendant.

18                   4.1.3    Subject to Section 4.1.4, CEH and AYS may each enforce the provisions  
19 of this Consent Judgment as to the CEH Defendants and AYS Defendants, respectively.

20                   4.1.4    No action to enforce this Consent Judgment may be brought by CEH or  
21 AYS unless the Attorney General either joins in such action or provides written non-objection to  
22 the proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of  
23 Section 4.2.3. The Attorney General agrees to provide either a written objection or written non-  
24 objection to a proposed enforcement proceeding within 15 days of receipt of a written request for  
25 such a response from CEH or AYS, provided that the Attorney General may extend such 15 day  
26 response time by a single extension of an additional 15 days by writing to the requesting party.  
27 The fact that the Attorney General provides a written non-objection shall not be construed as  
28 endorsement of or concurrence in an enforcement action. Any written non-objection shall be



1 admissible in court only if a Settling Defendant challenges the right of CEH or AYS to enforce  
2 this Consent Judgment for failure to obtain the written non-objection.

3 4.2 Enforcement of Materials Violation.

4 4.2.1 Notice of Violation. In the event that, at any time following the  
5 Compliance Date, the Attorney General, CEH, or AYS ("Notifying Person") identifies one or  
6 more Covered Products that the Notifying Person believes in good faith do not comply with  
7 Section 3 of this Consent Judgment, the Notifying Person may issue a Notice of Violation  
8 pursuant to this Section

9 4.2.2 Service of Notice of Violation and Supporting Documentation.

10 4.2.2.1 The Notice of Violation shall be served on any Settling Defendant(s)  
11 that the Notifying Person knows offered the Covered Product for retail sale in California. The  
12 Notice of Violation shall also be served on any Settling Defendant that is a Supplier of the  
13 Covered Products identified by Brand Names listed on Exhibit E for the Covered Product(s) in  
14 question.

15 4.2.2.2 The Notice of Violation shall be sent to the person(s) identified in  
16 Exhibit F to receive notices for such Settling Defendant(s), and must be served within 45 days of  
17 the date the alleged violation(s) was or were observed.

18 4.2.2.3 The Notice of Violation shall, at a minimum, set forth for each  
19 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which  
20 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to  
21 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered  
22 Product and supporting documentation sufficient for validation of the test results, including all  
23 laboratory reports, quality assurance reports and quality control reports associated with testing of  
24 the Covered Products. Such Notice of Violation shall be based upon test data that meets the  
25 criteria of Exhibit D. Wipe, swipe, and swab testing are not sufficient to support a Notice of  
26 Violation.

27 4.2.2.4 The Notifying Person shall promptly make available for inspection  
28 and/or copying upon request all supporting documentation related to the testing of the Covered

1 Products and associated quality control samples, including chain of custody records, all laboratory  
2 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all  
3 printouts from all analytical instruments relating to the testing of Covered Product samples and  
4 any and all calibration, quality assurance, and quality control tests performed or relied upon in  
5 conjunction with the testing of the Covered Products, obtained by or available to the Notifying  
6 Person that pertains to the Covered Product's alleged noncompliance with Section 3 and, if  
7 available, any exemplars of Covered Products tested.

8           **4.2.3 Notice of Election of Response.** No more than 30 days after receiving a  
9 Notice of Violation, the Settling Defendant shall provide written notice to the Notifying Person  
10 whether it elects to contest the allegations contained in a Notice of Violation ("Notice of  
11 Election").

12           **4.2.3.1** If a Notice of Violation is contested the Notice of Election shall  
13 include all then-available documentary evidence regarding the alleged violation, including all test  
14 data, if any. If a Settling Defendant or Notifying Person later acquires additional test or other data  
15 regarding the alleged violation, it shall notify the other party and promptly provide all such data or  
16 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria  
17 of Exhibit D.

18           **4.2.3.2** If a Notice of Violation is not contested, the Notice of Election shall  
19 include a description of the Settling Defendant's corrective action pursuant to Section 4.2.6. The  
20 Notice of Election shall include the name, address, telephone number, and other contact  
21 information, of the Settling Defendant's Supplier(s) of each Covered Product identified in the  
22 Notice of Violation, and any other Settling Defendant to whom it sold any Covered Product(s)  
23 identified in the Notice of Violation.

24           **4.2.4 Meet and Confer.** If a Notice of Violation is contested, the Notifying  
25 Person, the Attorney General, and all affected Settling Defendants shall meet and confer to attempt  
26 to resolve their dispute. Within 30 days of serving a Notice of Election contesting a Notice of  
27 Violation, and if no enforcement action has been filed, the Settling Defendant may withdraw the  
28 original Notice of Election contesting the violation and serve a new Notice of Election conceding

1 the violation. If no informal resolution of a Notice of Violation results, the Notifying Person may  
2 by motion or order to show cause before the Superior Court of Alameda, seek to enforce the terms  
3 and conditions contained in this Consent Judgment. In any such proceeding, the Attorney  
4 General, CEH, and AYS may seek whatever fines, costs, penalties, or remedies are provided by  
5 law for failure to comply with the Consent Judgment.

6 4.2.5 **Non-Contested Matters.** If the Settling Defendant elects not to contest  
7 the allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section  
8 4.2.6 and shall make any contributions required by Section 4.2.7.

9 4.2.6 **Corrective Action in Non-Contested Matters.** A Settling Defendant that  
10 elects not to contest the allegation shall include in its Notice of Election a detailed description of  
11 corrective action that it has undertaken or proposes to undertake to remove the Covered Product(s)  
12 identified in the Notice of Violation for sale in California. Corrective action must include  
13 instructions to the Settling Defendant's stores and/or its customers that offer the Covered Product  
14 for sale to consumers to cease offering the Covered Product(s) identified in the Notice of Violation  
15 for sale in California as soon as practicable. The Settling Defendant shall make available to the  
16 Notifying Person for inspection and/or copying records and correspondence regarding the  
17 corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer  
18 pursuant to Section 4.2.4 before seeking any remedy in court.

19 4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in**  
20 **Non-Contested Matters.** The Settling Defendant shall be required to make a contribution to the  
21 Proposition 65 Jewelry Testing Fund as specified below:

22 4.2.7.1 If the Settling Defendant serves a Notice of Election not to contest  
23 the allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall  
24 not be required to make any contributions pursuant to this Section.

25 4.2.7.2 If the Settling Defendant serves a Notice of Election not to contest  
26 the allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the  
27 Notice of Violation, the Settling Defendant shall make a required contribution in the amount of  
28 \$2,500.00 for each Supplier from whom it purchased the Covered Product(s) identified in any

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1 Notices of Violation served within a 30-day period. A Settling Defendant retailer is not required  
2 to make any payment pursuant to this Section for a Notice of Violation that is served less than six  
3 months after the Final Compliance Date.

4 4.2.7.3 If the Settling Defendant withdraws a Notice of Election contesting  
5 the violation and serves a new Notice of Election not to contest the allegations in a Notice of  
6 Violation within 60 days after receipt of the Notice of Violation, and before any enforcement  
7 action concerning the violations alleged in the Notice of Violation is filed, the Settling Defendant  
8 shall make a required contribution in the amount of \$7,500.00 for each Supplier from whom it  
9 purchased the Covered Product(s) identified in any Notices of Violation served within a 30-day  
10 period.

11 4.2.7.4 The contributions shall be paid within 15 days of service of a Notice  
12 of Election.

13 4.2.7.5 A Settling Defendant's liability for required contributions shall be  
14 limited as follows:

15 4.2.7.5.1 A Settling Defendant  
16 that is a Supplier to one or more retailers shall be liable for one  
17 required contribution within any 30-day period, regardless of the  
18 number of retailers to whom the Covered Product is distributed.

19 4.2.7.5.2 If more than one  
20 Settling Defendant has manufactured, sold, or distributed a Covered  
21 Product identified in a Notice of Violation, only one required  
22 contribution may be assessed against all Settling Defendants  
23 potentially liable therefor in any 30-day period, in the following  
24 order of priority: (1) Manufacturers; (2) Importers; (3) Distributors,  
25 and (4) Retailers.

26 4.2.7.5.3 A Settling Defendant's  
27 monetary liability to make required contributions under Section  
28 4.2.7.2 shall be limited to \$5,000 for each 30-day period. A Settling

1 Defendant's monetary liability to make required contributions under  
2 Section 4.2.7.3 shall be limited to \$15,000 for each 30-day period.

3 4.2.7.6 If a Settling Defendant has paid either of the payments set forth in  
4 Sections 4.2.7.2 and 4.2.7.3 more than six times in any 18-month period, or more than three times  
5 in any 12-month period for Covered Products sold to the Settling Defendant from the same  
6 Supplier then, at the Notifying Person's option, the Notifying Person may seek whatever fines,  
7 costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

8 4.2.8 Limitation on Liability. The liability of a Settling Defendant that elects  
9 not to contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

10 **5. PAYMENTS**

11 5.1 **Payments by Initial Settling Defendants.** Within fifteen days of the Effective  
12 Date: (i) each Initial Settling Defendant or group of Initial Settling Defendants identified by a  
13 separate number on Exhibit A shall pay the sum of \$25,000; and (ii) each Affiliate Settling  
14 Defendant listed on Exhibit A shall pay the sum of \$10,000, for an aggregate payment of  
15 \$1,875,000. The settlement payment shall be by check made payable to the Lexington Law  
16 Group, LLP Attorney Client Trust Account. The funds paid by the Initial Settling Defendants  
17 shall be aggregated and distributed as follows:

18 5.1.1 The sum of \$250,000 shall be paid to the Proposition 65 Jewelry Testing  
19 Fund, to be used for the purpose of obtaining and testing of Covered Products, and for the purpose  
20 of preparing and compiling the information and documentation to support a Notice of Violation,  
21 pursuant to sections 4.2.2.3 and 4.2.2.4.

22 5.1.2 The sum of \$246,853 as payment to private Plaintiffs in lieu of penalty  
23 pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title  
24 11, section 3202(b), to be distributed as follows:

25 5.1.2.1 The sum of \$186,511 to CEH. CEH shall use such funds to continue  
26 its work educating and protecting people from exposures to toxic chemicals, including heavy  
27 metals. CEH shall submit a proposal to the Attorney General for use of the funds, approval of  
28 which shall not be unreasonably withheld.

1                   5.1.2.2     The sum of \$60,342 to AYS. AYS shall use such funds to continue  
2 its work educating and protecting people from exposures to toxic chemicals, including heavy  
3 metals. AYS shall submit a proposal to the Attorney General for use of the funds, approval of  
4 which shall not be unreasonably withheld.

5                   5.1.3     As reimbursement of Plaintiffs' attorney's fees and investigation costs, as  
6 follows:

7                   5.1.3.1     The sum of \$383,993 to the Office of California Attorney General.

8                   5.1.3.2     The sum of \$811,870 to CEH.

9                   5.1.3.3     The sum of \$ 82,284 to AYS.

10                  5.1.4     The amount of \$100,000 as a civil penalty pursuant to Health and Safety  
11 Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b). The civil  
12 penalty shall be distributed entirely from settlement proceeds paid for by the Initial Settling  
13 Vendors, however this allocation shall not change the amount paid by each Settling Defendant  
14 under Section 5.1. The \$25,000 portion of the \$100,000 penalty allocated pursuant to Health and  
15 Safety Code Section 25192(a)(2) shall be divided as follows: \$13,250 to CEH; \$9,500 to the  
16 Office of the California Attorney General; and \$2,250 to AYS.

17                  5.1.5     All funds paid to the Attorney General pursuant to Sections 5.1.3.1,  
18 5.2.1.3.3, and 5.2.1.4 shall be placed in an interest-bearing special Deposit Fund established by the  
19 Attorney General. Those funds, including any interest derived therefrom, shall be used by the  
20 Attorney General, until all funds are exhausted, for the costs and expenses associated with the  
21 enforcement and implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986  
22 ("Proposition 65"), including investigations, enforcement actions, other litigation or activities as  
23 determined by the Attorney General to be reasonably necessary to carry out his duties and  
24 authority under Proposition 65. Such funding may be used for the costs of the Attorney General's  
25 investigation, filing fees, and other court costs, payment to expert witnesses and technical  
26 consultants, purchase of equipment, travel, purchase of written materials, laboratory testing,  
27 sample collection, or any other cost associated with the Attorney General's duties or authority  
28 under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this Section, and

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1 any interest derived therefrom, shall solely and exclusively augment the budget of the Attorney  
2 General's Office and in no manner shall supplant or cause any reduction of any portion of the  
3 Attorney General's budget.

4       **5.2 Payments by Add-On Defendants.** Within 45 days of the Effective Date, each  
5 Add-On Settling Defendant shall pay the sum of \$40,000. The settlement payment shall be made  
6 by two checks consisting of one check in the amount of \$17,500 to Defendants' Liaison Counsel,  
7 payable to the Fulbright & Jaworski L.L.P. Client Trust Account, and one check in the amount of  
8 \$22,500 payable to the Lexington Law Group, LLP Attorney Client Trust Account. If the Add-On  
9 Settling Defendant is identified in Section 1.3 as a "Non-Settling Defendant," then it shall pay an  
10 additional \$5,000, by adding \$2,500 to the payment to Defendants' Liaison Counsel and \$2,500 to  
11 the payment to the Lexington Law Group, LLP Attorney Client Trust Account.

12               **5.2.1** The funds paid by the Add-On Settling Defendants to Lexington Law  
13 Group, LLP Attorney Client Trust Account, and any excess funds remitted by Defendants Liaison  
14 Counsel pursuant to Section 5.2.2.4, shall be aggregated and distributed as follows:

15                   **5.2.1.1** The amount of \$5,000 shall be paid by each Add-On Settling  
16 Defendant as a civil penalty pursuant to Health and Safety Code section 25249.7(b), and  
17 California Code of Regulations, title 11, section 3202(b). The \$1,250 portion of each \$5,000  
18 penalty payment allocated pursuant to Health and Safety Code Section 25192(a)(2) shall be  
19 divided as follows: \$662 to CEH; \$475 to the Office of the California Attorney General; and \$113  
20 to AYS.

21                   **5.2.1.2** The amount of \$1,500 shall be paid by each Add-On Settling  
22 Defendant to the Proposition 65 Jewelry Testing Fund, to be used for the purpose of obtaining and  
23 testing of Covered Products, and for the purpose of preparing and compiling the information and  
24 documentation to support a Notice of Violation, pursuant to sections 4.2.2.3 and 4.2.2.4.

25                   **5.2.1.3** As payment to private Plaintiffs in lieu of penalty pursuant to Health  
26 and Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b),  
27 to be distributed as follows:

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5.2.1.3.1 The sum of \$95,200 to CEH. CEH shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.2.1.3.2 The sum of \$13,600 to AYS. AYS shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. AYS shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.2.1.3.3 The sum of \$27,200 to the Office of the California Attorney General. The California Attorney General shall use such funds for the purpose of obtaining experts and consultants, and for other costs associated with the investigation and prosecution of other actions under Proposition 65.

5.2.1.4 As reimbursement of Plaintiffs' attorney's fees and investigation costs, as follows:

5.2.1.4.1 The sum of \$74,256 to the Office of California Attorney General.

5.2.1.4.2 The sum of \$54,672 to CEH.

5.2.1.4.3 The sum of \$7,072 to AYS.

5.2.2 The funds paid by the Add-On Settling Defendants to Defendants' Liaison Counsel shall be aggregated and distributed to the Initial Settling Defendants for reimbursement of Settlement-Related Costs that have inured to the benefit of all Settling Defendants. The funds received by Initial Settling Defendants pursuant to this Section comprise a small percentage of the Initial Settling Defendants' actual Settlement Related Costs. The Attorney General has reviewed these Settlement Related Costs and applied the guidelines contained in 22 California Code of Regulations section 3201, subdivisions (d) and (e), and determined that they are reasonable.



1 Distribution of funds for reimbursement of Settlement Related Costs shall be made pursuant to the  
2 following:

3 5.2.2.1 Distribution of funds under this Section shall be apportioned  
4 \$137,683 to the Initial Settling Vendors and \$159,817 to the Initial Retailer Settling Defendants.

5 5.2.2.2 The Settlement Related Costs that qualify for reimbursement  
6 pursuant to this section include the following:

7 5.2.2.2.1 No more than \$93,492  
8 for sums paid to the mediator who presided over negotiations  
9 leading to this Consent Judgment;

10 5.2.2.2.2 No more than \$479,737  
11 for sums paid for experts in toxicology, metallurgy and testing  
12 necessary for the development of compliance standards;

13 5.2.2.2.3 No more than \$492,500  
14 for sums paid for legal counsel who participated in the mediation  
15 leading to this Consent Judgment. These sums shall be subject to  
16 the following limitations:

17 (a) \$7,500 to each Initial Settling Vendor

18 (b) \$10,000 to each Initial Retailer Settling

19 Defendant whose counsel participated in the Retailers' Mediation Committee, as identified on  
20 Exhibit A.

21 (c) \$2,500 to each other Initial Retailer Settling  
22 Defendant.

23 5.2.2.3 The funds identified Sections 5.2.2.2.1 and 5.2.2.2.2 shall be  
24 distributed to each Initial Settling Vendor and each Initial Retailer Settling Defendant per capita,  
25 or in such other manner as the Initial Settling Vendors and/or Initial Retailer Settling Defendants  
26 shall agree among themselves, provided that no Initial Settling Defendant may recover payments  
27 in excess of its actual Settlement Related Costs.

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1                   5.2.2.4     Within 15 days after receiving the last add-on payments, and no  
2 later than 45 days after notice of entry of the Consent Judgment, Defendants' Liaison Counsel  
3 shall remit to Lexington Law Group, LLP Attorney Client Trust Account any funds collected  
4 pursuant to Section 5.2.2 that exceed the cap of \$1,065,729. Such excess funds shall be  
5 apportioned among the plaintiffs pursuant to Section 5.2.1.

6     **6.     MODIFICATION AND DISPUTE RESOLUTION**

7             6.1     **Modification.** This Consent Judgment may be modified from time to time by  
8 express written agreement of the Parties, with the approval of the Court, or by an order of this  
9 Court upon motion and in accordance with law.

10            6.2     **Modification to Reflect Add-On Defendants.** The Attorney General and  
11 Defendants' Liaison Counsel may jointly file with the Court an amended Consent Judgment that  
12 incorporates any modifications to Sections 1.2 and 5.2 and Exhibits A, E, and F reflecting the  
13 incorporation of Add-On Defendants to this Consent Judgment pursuant to the Stipulation for  
14 Entry of Judgment. The amended Consent Judgment shall be filed and served on all Parties. If no  
15 Party objects within 15 days of service thereof, the Court will enter the Amended Consent  
16 Judgment and this Consent Judgment will be deemed so amended.

17            6.3     **Subsequent Legislation.** If, subsequent to the Effective Date, legislation is  
18 adopted that addresses the lead content of Covered Products sold in California, any Party shall be  
19 entitled to request that the court modify this Consent Judgment for good cause shown.

20            6.4     **Reopeners.** The Parties may seek to reopen the requirements of Section 3 as to  
21 Covered Products other than Children's Products as follows:

22                 6.4.1     **Limited Reopener of Component Designation for Certain**  
23 **Components.** The parties acknowledge that the materials described in Sections 3.2.1.8 and  
24 3.2.1.9 are not generally known to contain or expose users to lead and, as such, have been  
25 designated as Class 1 Components. The Attorney General, or AYS or CEH with the written non-  
26 opposition of the Attorney General, may seek to modify this Consent Judgment by seeking the re-  
27 designation of any material described in Sections 3.2.1.8 and 3.2.1.9 from Class 1 Component to a  
28 Class 2 Component with a lead standard for such material, if, subsequent to the Effective Date, the

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1 Attorney General, AYS, or CEH obtain information that demonstrates that such material contains  
2 lead and that the use of the material in any Covered Product exposes users of the Covered Product  
3 to lead in an amount greater than 0.5 micrograms per day.

4           **6.4.2 Reopener for Class 3 Components.** Any Party may seek to modify this  
5 Consent Judgment by seeking to designate a Class 3 Component as a Class 1 Component or as a  
6 Class 2 Component with a lead specification standard.

7           **6.4.3 Required Showing to Obtain Reopeners.** A reopener pursuant to  
8 Sections 6.4.1 or 6.4.2 shall be granted if the court finds the following:

9           **6.4.3.1** A Class 3 Component shall be redesignated as a Class 1 Component  
10 if the moving party demonstrates that such material does not contain lead, or that the use of the  
11 material in any Covered Product does not expose users of the Covered Product to lead in an  
12 amount greater than 0.5 micrograms per day.

13           **6.4.3.2** A Class 3 Component, and the materials described in Sections  
14 3.2.1.8 and 3.2.1.9, shall be redesignated as a Class 2 Component with a lead specification  
15 standard if the moving party demonstrates that use of such material at or below the standard does  
16 not expose average users of the Covered Product to lead in an amount greater than 0.5 micrograms  
17 per day.

18           **6.5 Extension of Shipping Compliance Date.** A Settling Defendant that is a Supplier  
19 may request an extension of any Shipping Compliance Date applicable to a Covered Product  
20 under Section 3 if the Supplier can demonstrate to the Attorney General that it cannot comply with  
21 the Shipping Compliance Date despite all commercially reasonable efforts to comply. Any  
22 extension provided pursuant to this Section shall be conditioned upon a showing that any retailers  
23 to whom the Supplier will sell the Covered Product will be able to comply with the applicable  
24 Final Compliance Date(s), and all such retailers shall be considered affected Parties under  
25 Section 6.6.

26           **6.6 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
27 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
28 modify the Consent Judgment.

1     **7.     CLAIMS COVERED AND RELEASE**

2             7.1     This Consent Judgment is a full, final, and binding resolution between the People,  
3     CEH, AYS, and Settling Defendants, their parents, shareholders, divisions, subdivisions,  
4     subsidiaries, partners, sister companies and their successors and assigns (“Defendant Releasees”),  
5     and all entities to whom they distribute or sell Covered Products, including but not limited to  
6     distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
7     (“Downstream Defendant Releasees”), of any violation of Proposition 65, Business & Professions  
8     Code sections 17200 et seq., or any other statutory or common law claims that have been or could  
9     have been asserted in the public interest or on behalf of the general public against Settling  
10    Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to  
11    warn about exposure to chromium, lead, and nickel arising in connection with Covered Products  
12    manufactured, distributed, or sold by Settling Defendants prior to the Effective Date, or any claim  
13    based on the facts or conduct alleged in the Complaint, or facts similar to those alleged, whether  
14    based on actions committed by Settling Defendants, Defendant Releasees, or Downstream  
15    Defendant Releasees. Compliance with the terms of this Consent Judgment by Settling  
16    Defendants and Defendant Releasees, resolves any issue from the Effective Date into the future  
17    concerning compliance by Settling Defendants, Defendant Releasees and Downstream Defendant  
18    Releasees regarding failure to warn about exposure to chromium, lead, and nickel arising in  
19    connection with Covered Products manufactured, distributed or sold by Settling Defendants after  
20    the Effective Date. This Section shall not apply to any Supplier that is not a Settling Defendant  
21    unless such Supplier is a parent, subsidiary, or sister company of a Settling Defendant.

22             7.2     The People, CEH, and AYS, for themselves and acting on behalf of the public  
23    interest pursuant to Health and Safety Code § 25249.7(d) and the general public pursuant to  
24    Business and Professions Code § 17204, release, waive, and forever discharge any and all claims  
25    against each Settling Defendant, Defendant Releasee, and Downstream Defendant Releasee  
26    arising from any violation of Proposition 65, Business & Professions Code sections 17200 et seq.,  
27    or any other statutory or common law claims that have been or could have been asserted in the  
28    public interest or on behalf of the general public regarding the failure to warn about exposure to

1 chromium, lead, and nickel arising in connection with Covered Products manufactured, distributed  
2 or sold by Settling Defendants prior to or after the Effective Date, or any claim based on the facts  
3 or conduct alleged in the Complaint, or facts similar to those alleged. This Section shall not apply  
4 to any Supplier that is not a Settling Defendant unless such Supplier is a parent, subsidiary, or  
5 sister company of a Settling Defendant.

6 7.3 A Covered Product sold by a Related Company identified on Exhibit A that  
7 complies with the standards set forth in Section 3.2 shall be deemed to be sold in compliance with  
8 the warning requirement of Proposition 65 for chromium, lead, and nickel.

9 7.4 Nothing in this Section 7 shall release, or in any way affect any rights that any  
10 Settling Defendant might have against any other party, whether or not that party is a Settling  
11 Defendant.

## 12 8. PROVISION OF NOTICE

13 8.1 When any party is entitled to receive any notice under this Consent Judgment, the  
14 notice shall be sent by certified mail and electronic mail to the Party(ies) identified in Exhibit F.  
15 Any party may modify the person and address to whom the notice is to be sent by sending each  
16 other party notice by certified mail and/or other verifiable form of written communication.

## 17 9. COURT APPROVAL

18 9.1 This Consent Judgment shall become effective upon entry by the Court (the  
19 "Effective Date").

20 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
21 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

## 22 10. GOVERNING LAW AND CONSTRUCTION

23 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California.

25 10.2 The Parties, including their counsel, have participated in the preparation of this  
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
28 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
2 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
3 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
4 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
5 this regard, the Parties hereby waive California Civil Code section 1654.

## 6 **11. ATTORNEY'S FEES**

7 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
9 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent  
10 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
11 Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

12 11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement  
13 action brought pursuant to Section 4 may seek an award of attorney's fees pursuant to Code of  
14 Civil Procedure § 1021.5 against a party that acted with substantial justification. The party  
15 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this  
16 provision shall not be construed as altering any procedural or substantive requirements for  
17 obtaining such an award.

18 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of  
19 sanctions pursuant to law.

## 20 **12. ENTIRE AGREEMENT**

21 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
24 and therein. There are no warranties, representations, or other agreements between the Parties  
25 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
26 other than those specifically referred to in this Consent Judgment have been made by any Party  
27 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
28 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,

1 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the  
2 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be  
3 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,  
4 nor shall such waiver constitute a continuing waiver.

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
7 Consent Judgment.

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

9 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
10 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
11 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

12 **15. EXECUTION IN COUNTERPARTS**

13 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
14 means of facsimile, which taken together shall be deemed to constitute one document.

15 IT IS SO STIPULATED:

16 Dated: _____, 2006 17 18 19	<b>BILL LOCKYER</b> <b>ATTORNEY GENERAL</b>  By _____ EDWARD G. WEIL SUPERVISING DEPUTY ATTORNEY GENERAL
20 Dated: _____, 2006 21 22 23 24	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  By _____

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In accordance with the terms of the Consent Judgment entered on February 21, 2006, as amended on this date pursuant to the People's Motion to Modify Consent Judgment,

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

Dated: JUN 15 2006

ROBERT FREEDMAN  
Hon.  
Judge of the Superior Court of the State of California



1 **EXHIBIT B (CLASS 1, 2, AND 3 COMPONENTS AND BODY PIERCING JEWELRY)**

2 **CLASS 1 COMPONENTS**

3 Stainless and surgical steels

4 Karat gold

5 Sterling silver

6 Platinum, palladium, iridium, ruthenium, rhodium, or osmium (“platinum group metals”)

7 Natural and cultured pearls.

8 Glass, ceramic, and crystal decorative components (e.g., cat’s eye, cubic zirconia  
9 (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonne).

10 Any gemstone that is cut and polished for ornamental purposes except the following:  
11 aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite,  
12 samarskite, vanadinite, and wulfenite.

13 Elastic, fabric, ribbon, rope, and string with no intentional lead and not otherwise listed as  
14 a Class 2 component.

15 Natural decorative materials (e.g., amber, bone, coral, feathers, fur, horn, leather, shell,  
16 wood) that are in their natural state or are treated in a way that does not add lead.

17 Adhesives

18 **CLASS 2 COMPONENTS**

COMPONENT	LEAD CONTENT LIMITS
Metal substrates that are electroplated	Metal alloys with less than 10 percent lead by weight ( “88 metal”) that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit C. For Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in

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	intentionally added lead.
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**CLASS 3 COMPONENTS**

Class 3 Components shall contain no more than 0.06% lead.

Class 3 Components used in Children's Products shall contain no more than 0.02% lead.

**BODY PIERCING JEWELRY**

Body Piercing Jewelry shall be made of one of the following materials:

- Surgical Implant Stainless Steel
- Surgical Implant grades of Titanium
- Niobium (Nb)
- Solid 14 karat or higher white or yellow nickel-free gold
- Solid platinum
- A dense low porosity plastic such as Tygon or PTFE with no intentionally added lead

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	California, and for products sold or offered for retail sale in California by a Settling Defendant after August 31, 2009, this standard shall be metal alloys with less than 6 percent lead by weight ("92 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit C.
Unplated metal not defined as Class 1 Components.	1.5%
Metal (plated and unplated) used in Children's Products	0.06% (600 ppm)
Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones, polyvinyl chloride (PVC))	0.06%, (600 ppm). For Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in California, and for products sold or offered for retail sale in California by a Settling Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead by weight
Dyes and Surface Coatings	0.06% (600 ppm)
Printing inks or ceramic glazes used in Children's Products	0.06% (600 ppm)
Glass or crystal decorative components used in Children's Products	Total weight no more than 1.0 gram, excluding glass or crystal decorative components that contain less than 0.02 percent (200 parts per million) lead and have no

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1                   **EXHIBIT C (BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)**

2   **PRE-PLATING PROCEDURE**

3                   The pieces must be cleaned. Any polishing compound must be removed before plating by  
4 cleaning with aqueous cleaning solution or solvent and rinsed with water.

5                   The pieces must be activated.

6                   The pieces must be rinsed in clean water before plating.

7   **PLATING BATH MAINTENANCE**

8                   The temperature of each plating bath must be controlled to the appropriate temperature in  
9 accordance with the recommendations of the equipment and plating chemical suppliers.

10                  The nickel and nickel-substitute tanks must be agitated or aerated in accordance with the  
11 chemical suppliers' recommendations.

12                  All baths must be filtered continuously during plating and filters changed at least than  
13 monthly.

14                  pH must be measured each day of plating and adjusted within the chemical supplier's  
15 recommendations.

16                  All plating employees must be trained on the use of the equipment in accordance with  
17 recommendation of equipment manufacturer and plating chemical suppliers.

18                  The plating baths must be maintained in accordance with the plating chemical suppliers  
19 recommendations.

20                  Plating tanks must be swept at least weekly.

21                  Anodes must be inspected monthly in accordance with the anode supplier's  
22 recommendations.

23                  Racks must be stripped at least annually.

24                  The electrical equipment must be sized appropriately for each tank in accordance with  
25 equipment manufacturer's recommendations and calibrated annually.

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**PLATING PROCEDURES**

Substantial pieces such as pendants, drops, and rings without prongs or other such feature shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite, imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces can be treated to produce other finishes such as matt, oxidized, or smut black finishes.

Mechanical, functional (e.g., lobster claws, spacers, mechanical closures, connectors), or fine pieces such as prongs and fine chains may be plated to cover the exposed surface consistent with good manufacturing practices for appearance and function. Components that articulate closely together such as snake chain and tight hinges or that need to be manipulated into position will be plated to prevent binding, stiffness, and cracking of plating.

1 **EXHIBIT D (TESTING PROTOCOLS)**

2 The following test methods must be used to determine compliance with the lead standards  
3 set forth in this Consent Judgment. A material shall not meet the applicable lead standard if the  
4 mean lead level of: (1) one or two samples exceeds 300% of the component specification limit;  
5 (2) three samples exceeds 200% of the component specification limit; or (3) four or more samples  
6 exceeds the component specification limit.

7 Laboratory sample preparation protocols specific for testing the lead content of jewelry  
8 components are not readily available. The sample preparation method used in USEPA Method  
9 3050B or Method 3051 shall be followed, as modified in the following table for use with jewelry  
10 samples. The laboratory should make every effort to assure that samples removed from jewelry  
11 pieces are representative of the component to be tested, and are free of contamination from  
12 extraneous dirt and material not related to the jewelry component to be tested. All jewelry  
13 component samples shall be washed prior to testing using standard laboratory detergent, rinsed  
14 with laboratory reagent grade deionized water, and dried in a clean ambient environment. If  
15 components must be cut or scraped to obtain a sample, then metal snips, scissors, or other cutting  
16 tools used must be made of stainless steel and washed and rinsed before each use and between  
17 samples.

18 Samples should be digested in containers that are known to be free of lead using acids that  
19 are not contaminated by lead. Analytical Reagent grade digestion acids and reagent grade  
20 deionized water are required. Method Blanks, consisting of all reagents used in sample  
21 preparation handled, digested and made to volume in the same exact manner and in the same  
22 container type as samples, shall be tested with each group of 20 or fewer samples tested. The  
23 results for the Method Blank shall be reported with each group of sample results, and shall be  
24 below the stated reporting limit for sample results to be considered valid.

25 All jewelry components samples shall be prepared for testing in accordance with USEPA  
26 Method 3050B or 3051, with the following additional notes and exceptions:

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COMPONENT	NOTES AND EXCEPTIONS
Metals plated with suitable undercoats and finish coats	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.1% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Unplated metal and metal substrates not defined as Class 1 Components.	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.01% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Polyvinyl chloride (PVC)	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion, and should be chopped or comminuted prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones).	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion and should be chopped or comminuted prior to digestion. Plastic beads or stones should be crushed prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Coatings on Glass and Plastic Pearls.	The coating of glass or plastic beads should be scraped onto a surface free of dust, such as a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The razor blade or sharp instrument should be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between

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	<p>samples. Weigh the scrapings. A minimum of 50 mg of scraped coating should be used for analysis. If less than 50 mg of scraped coating is obtained from an individual pearl, then multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount. The number of pearls used to make the composite must be noted. Avoid inclusion of the substrate pearl material in the scrapings. Digest the scrapings according to USEPA Method 3050B or 3051 or equivalent procedure for hot acid digestion in preparation for trace lead analysis. Dilute the digestate in the minimum volume practical for analysis. Analyze the digested sample according to specification of Exhibit D (approved, validated methodology for inductively-coupled plasma mass spectrometry). A reporting limit of 0.001% (10 ppm) in the coating must be obtained for the analysis. The sample result must be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, then the sample must be diluted and re-analyzed within the calibrated range of the instrument.</p>
<p>Dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, crystal</p>	<p>Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.050 g, and should be chopped or comminuted prior to digestion.</p> <p>Digested samples may require dilution prior to analysis . Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.</p>
<p>Glass and crystal used in Children's Products (for weight)</p>	<p>The components should be free of any extraneous material such as adhesive before they are weighed. The scale used to weigh these components should be calibrated using NIST certified (S-class) weights of 1 and 2 grams immediately before the components are weighed. The calibration should be accurate to within 0.01 gram.</p>