

1 LEXINGTON LAW GROUP, LLP
Eric S. Somers, State Bar No. 139050
2 Mark N. Todzo, State Bar No. 168389
1627 Irving Street
3 San Francisco, CA 94122
Telephone: (415) 759-4111
4 Facsimile: (415) 759-4112
5 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

6 ROBERT L. FALK (S.B. NO. 142007)
7 MILES H. IMWALLE (S.B. NO. 230244)
MORRISON & FOERSTER LLP
8 425 Market Street
San Francisco, California 94105-2482
9 Tel: (415) 268-7000
Fax: (415) 268-7522

ENDORSED
FILED
San Francisco County Superior Court

JUL 06 2006

GORDON PARK-LI, Clerk
BY: DONNA K. LOK
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

15 CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,,
16
Plaintiff,
17
v.
18 MICHAELS STORES, INC., HIRSHBERG
19 SCHUTZ & CO., INC.; and Defendant DOES 1
through 150, inclusive,
20
Defendants.
21

Case No. CGC-05446289

~~PROPOSED~~ CONSENT JUDGEMNT
AS TO MICHAELS STORES, INC.
AND HORIZON GROUP USA, INC.;
DISMISSAL OF HIRSHBERG
SCHUTZ & CO., INC.

1 **1. INTRODUCTION**

2 1.1 On November 2, 2005, plaintiff the Center for Environmental Health (“CEH”), a non-
3 profit corporation acting in the public interest, filed a complaint in San Francisco County Superior
4 Court, entitled *Center for Environmental Health v. Michaels Stores, Inc., et al.*, San Francisco County
5 Superior Court Case Number CGC-05446289 (the “Action”), for civil penalties and injunctive relief
6 pursuant to the provisions of California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”).

7 1.2 Defendant Michaels Stores, Inc. (“Michaels”) is a corporation that employs 10 or
8 more persons and manufactures, distributes and/or sells imitation pearls and imitation pearl buttons
9 and accessories made of materials containing lead and/or lead compounds (the “Products”) in the
10 State of California. Products with respect to Horizon Group USA, Inc. include Products sold
11 anywhere in California, not just at Michaels stores, and are more specifically defined in Exhibit A.

12 1.3 Defendant Horizon Group USA, Inc. (“Horizon”) is the parent corporation of
13 Hirschberg Schutz and Co., Inc.; it employs 10 or more persons and manufactures, distributes and/or
14 sells the Products in the State of California. Michaels and Horizon are referred to herein as
15 Defendants. Defendants and CEH are referred to as the Parties.

16 1.4 On or about March 28, 2005, CEH served Michaels and Hirschberg Schutz and Co.,
17 Inc. and the appropriate public enforcement agencies with the requisite 60-day notice that Michaels
18 and Hirschberg Schutz and Co., Inc. were in violation of Proposition 65. On or about November 4,
19 2005, CEH served Horizon and the appropriate public enforcement agencies with the requisite 60-day
20 notice that Horizon was in violation of Proposition 65. Given that more than 60 days will have
21 passed prior to the Court’s consideration of a motion for approval and entry of this Consent
22 Judgment, concurrently with the entry of this Consent Judgment, Horizon Group U.S.A., Inc. shall be
23 deemed to have been added to the complaint CEH filed in this Action (“Complaint”) as a named
24 defendant and Hirschberg Schutz and Co., Inc. shall be deemed to have been dismissed without
25 prejudice from the Complaint.

26 1.5 CEH’s notices and the Complaint allege that Defendants expose individuals who use
27 or otherwise handle the Products to lead and/or lead compounds (referred to interchangeably herein
28 as “Lead”), chemicals known to the State of California to cause cancer, birth defects and other

1 reproductive harm, without first providing clear and reasonable warning to such persons regarding
2 the carcinogenicity and reproductive toxicity of Lead. The notices and Complaint allege that
3 Defendants' conduct violates Health & Safety Code §25249.6, the warning provision of Proposition
4 65.

5 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over the subject matter of the violations alleged in the Complaint and personal
7 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the
8 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full
9 and final resolution of all claims which were or could have been raised in the Complaint based on the
10 facts alleged therein.

11 1.7 The Parties enter into this Consent Judgment pursuant to a settlement of all disputed
12 claims between the Parties as alleged in the Complaint. By executing this Consent Judgment, the
13 Parties and each of them do not admit any facts or conclusions of law, including, but not limited to,
14 any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any
15 other statutory, common law or equitable requirements relating to the Products. It is the Parties'
16 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of any
17 fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
18 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
19 issue of law, or violation of law. Except as otherwise provided herein, nothing in this Consent
20 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
21 have in this or any other or future legal proceedings. This Consent Judgment is the product of
22 negotiation and compromise and is accepted by the Parties, for purposes of settling, compromising
23 and resolving issues disputed in the Action, including future compliance by Defendants with Section
24 2 of this Consent Judgment and shall not be used for any other purpose, or in any other matter.

25 2. COMPLIANCE - REFORMULATION

26 2.1 **Lead Reformulation.** After May 31, 2006 (the "Initial Compliance Date"),
27 Defendants shall not manufacture, or purchase for distribution or sale in California, any Product that
28 contains Lead in concentrations that exceed 600 parts per million ("ppm") in total or in any of its

1 components (including, but not limited to, the surface coating, the substrate to which the surface
2 coating is attached, or any string or wire upon which the Product may be strung). After December
3 31, 2006 (the "Reformulation Date"), Defendants shall not manufacture, or purchase for distribution
4 or sale in California, any Product that contains Lead in concentrations that exceed 200 ppm or which
5 is comprised of any component that contains Lead in concentrations that exceed 200 ppm.

6 **2.1.1 Requirements as to Products in Inventory.** As of September 30, 2006,
7 neither Horizon or Michaels shall sell in California, Products which do not meet the 600 ppm Lead
8 standard set forth above unless such Products are accompanied by the warning language set forth in
9 paragraph 2.3.2 below. As of September 30, 2007, neither Horizon or Michaels shall sell Products in
10 California that do not meet the 200 ppm Lead standard set forth above unless such Products are
11 accompanied by the warning language set forth in paragraph 2.3.2 below.

12 **2.2 Certification of level from suppliers.** For all Products obtained after the Initial
13 Compliance Date, Defendants shall obtain written certification with corresponding test results from
14 their suppliers of the Products at least on an annual basis certifying that the Products and any
15 components from which the Products are comprised contain Lead concentrations that are less than
16 600 ppm; after the Reformulation Date, this certification shall be obtained at a level at or below 200
17 ppm of Lead. A written certification received by one Defendant may be relied on by other
18 Defendants that sell the certified Products. Horizon shall maintain records of the certifications and
19 make them available to Plaintiff on request. Michaels shall only be required to maintain records of
20 the certifications for Products purchased from entities other than Horizon, if any.

21 **2.3 Testing.** In order to help ensure compliance with the requirements of Sections 2.1,
22 Horizon shall conduct periodic testing to confirm that the Products and the components thereof
23 contain less than 600 ppm of Lead following the Initial Compliance Date and 200 ppm or less of
24 Lead following the Reformulation Date. Testing pursuant to this Section shall be conducted pursuant
25 to the testing protocol attached hereto as Exhibit B (the "Test Protocol"). All testing pursuant to this
26 Section shall be performed by an independent, accredited laboratory; such a laboratory may be
27 located overseas, provided that it is internationally accredited and also has offices located in the
28 United States. The results of all testing performed pursuant to this Section shall be retained for a

1 period of three years and made available to CEH upon reasonable request. The frequency and
2 amount of testing required shall vary as follows:

3 **2.3.1 Sample Testing.** Starting in 2006, for shipments initially received from each
4 supplier after the Initial Compliance Date, and at least once per calendar year for each supplier for
5 any shipments received thereafter, Horizon must test five randomly selected Product lines per
6 supplier (unless less than five Product lines have been received from a supplier, in which instance all
7 Product lines shall be tested) using the Test Protocol. For Products supplied to Defendant Michaels
8 by entities other than Horizon, if any, Michaels must either conduct the testing itself or require that its
9 supplier conduct the testing according to the same terms as are prescribed for Horizon in this Consent
10 Judgment. For any Product Michaels obtains directly from a supplier located outside the United
11 States, if any, Michaels must arrange to conduct the testing itself according to the same terms as are
12 prescribed for Horizon in this Consent Judgment.

13 **2.3.2 Products that exceed 600 ppm/200 ppm Lead Standard pursuant to**
14 **Defendants' Testing.** If, following the Initial Compliance Date, the results of the testing required
15 pursuant to Section 2.3.1 shows levels of Lead in any of the Products tested exceeding 600 ppm for a
16 Product or a component thereof, or if, following the Reformulation Date, the results of the testing
17 required pursuant to Section 2.3.1 show levels of Lead in any of the Products tested exceeding 200
18 ppm for a Product or a component thereof, Defendants shall not allow such Products to be made
19 available for sale to consumers in California unless the following warning is affixed to the Product or
20 its immediate packaging such that it is likely to be read and understood by a consumer prior to
21 purchase or use:

22 **WARNING:** This product contains lead, a chemical known to the
23 State of California to cause birth defects or other reproductive harm.
24 Wash hands after handling.

25 In the event that Horizon thereafter chooses to sell Products from that supplier in the future, it must
26 first conduct testing on a per shipment basis for a quarterly period and verify compliance with the
27 then applicable 600 ppm or 200 ppm Lead standard according to the terms described in this
28 paragraph.

1 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of the
2 Products. Any such testing will be conducted pursuant to the Test Protocol at an independent,
3 accredited laboratory with offices located in the United States. In the event that CEH's testing
4 demonstrates Lead levels in excess of 600 ppm or 200 ppm for the Products following the Initial
5 Compliance Date and Reformulation Date respectively, CEH shall, unless such Products have been
6 sold with the warning set forth in paragraph 2.3.2 above or CEH otherwise determines it not
7 necessary to raise an issue, inform Defendants of the situation and provide them with the test results
8 and any reasonably available information permitting Defendants to identify the Product(s), their
9 supplier, and if the date of manufacture of the Product(s) in question preceded or followed the Initial
10 Compliance Date or Reformulation Date. Defendants shall, within 10 business days of receipt of
11 CEH's notice, provide CEH, at the address listed in Section 12, with its supplier certification and
12 testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment.
13 Within thirty (30) days following such notice, the Parties shall meet and confer with respect to the
14 situation that gave rise to CEH's notice.

15 **2.4.1 Horizon's further testing obligations if CEH gives notice.** If, after meeting
16 and conferring regarding a notice CEH provides pursuant to Section 2.4, CEH and Horizon do not
17 mutually conclude that a Product is in material compliance with the standard set forth in Section 2.1
18 above then as applicable, Horizon shall temporarily terminate its further distribution of the Products
19 for sale in California from the supplier in question and provide CEH with confirmation thereof. If
20 Horizon thereafter wishes to resume sales of Products acquired from such supplier, it shall test five
21 (5) randomly selected Products from each shipment of Products received from the supplier. If during
22 the ensuing quarterly period, no Product or any component thereof produces test results greater than
23 600 ppm of Lead or 200 ppm of Lead as then applicable, Horizon may, upon the provision of notice
24 to CEH attaching the relevant test results, resume testing on a yearly basis as per Section 2.3. If
25 during the quarterly period, test results exceed the 600 ppm or 200 ppm Lead standards as then
26 applicable, Horizon may not distribute Products from such supplier for sale in California for at least
27 one year, unless the following warning is affixed to the Product or its immediate packaging such that
28 it is likely to be read and understood by a consumer prior to purchase or use:

1 **WARNING:** This product contains lead, a chemical known to the
2 State of California to cause birth defects or other
 reproductive harm. Wash hands after handling.

3 In the event that Horizon thereafter chooses to sell Products from that supplier in the future without
4 the foregoing warning, it must first conduct testing on a per shipment basis for a quarterly period and
5 verify compliance with the then applicable 600 ppm or 200 ppm Lead standard according to the terms
6 described in this paragraph.

7 **2.4.2 Michaels' obligations if CEH gives it notice of noncompliance for Products**
8 **supplied by entities other than Horizon.** If CEH notifies Michaels that its testing of Products
9 supplied to Michaels by an entity other than Horizon produced results in excess of the 600 ppm or
10 200 ppm Lead standard as then applicable, and after meeting and conferring CEH and Michaels do
11 not mutually conclude that a Product is in material compliance with the standard set forth in Section
12 2.1 above, Michaels must terminate sales of that supplier's Products to consumers in California and
13 disqualify the supplier for at least one quarter, after which it shall require that supplier to test and
14 certify that all Products meet the standard set forth in Section 2.1 above on a per shipment basis for at
15 least the following quarter.

16 **2.4.3 Stipulated penalties.** If Defendants are in compliance with Sections 2.2 and
17 2.3, Defendants shall not be liable for civil penalties for Products for which CEH demonstrates non-
18 compliance, but shall take such remedial actions as are prescribed in subsections 2.4.1 and 2.4.2
19 above (as applicable) and reimburse CEH for its reasonable investigatory, testing, and legal expenses
20 associated therewith. However, if CEH provides notice pursuant to Section 2.4 and a Defendant is
21 not in compliance with Sections 2.2 and 2.3, such Defendant shall, in addition to reimbursing CEH
22 for its reasonable investigatory, testing, and legal expenses associated therewith, also be liable for
23 stipulated payments to CEH as follows:

24 First Occurrence: \$5,000
25 Second Occurrence: \$10,000
 Third Occurrence: \$15,000
26 Thereafter: \$20,000

27 **2.4.4 Recall of Products testing in excess of 600 ppm Lead.** Should, after
28 September 30, 2007, CEH's testing demonstrate that a Product or any components thereof contain

1 Lead levels in excess of 600 ppm ("Recall Product"), upon CEH's request, Michaels shall send a
2 recall letter in the form attached hereto as Exhibit C to all of its California distribution facilities and
3 retail outlets that may have received the Recall Product informing them that they must pull all items
4 of the Recall Product from public distribution. Michaels shall send certification to CEH that they
5 have completed this process as applicable. Such certification shall indicate how many units of the
6 Products were removed from public distribution via the recall.

7 **3. SETTLEMENT PAYMENTS**

8 3.1 **Monetary Payment in Lieu of Penalty.** A total of \$10,000 shall be paid to CEH by
9 Horizon in lieu of any penalties to be levied against Defendants (other than as specified in subsection
10 2.4.3 above) pursuant to Health and Safety Code § 25249.7(b). CEH shall use such funds to continue
11 its work protecting people from exposures to toxic chemicals. As part of this work, CEH intends to
12 conduct periodic testing of the Products as set forth in Section 2.4.

13 3.2 **Attorneys' Fees and Costs.** A total of \$20,000 to be paid by Horizon to the
14 Lexington Law Group shall be used to reimburse CEH and its attorneys for their reasonable
15 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating,
16 bringing this matter to Defendants' attention, and litigating and negotiating a settlement in the public
17 interest. Except as set forth in subsection 2.4.3 above, Defendants shall have no responsibility to
18 reimburse CEH or its attorneys for any other costs or fees.

19 3.3 **Timing of payments.** The payments required under this Section shall be delivered to
20 the address set forth in Section 12 below within fifteen (15) days of entry of this Consent Judgment
21 by the Court. Any failure by Defendants to comply with the payment terms herein shall be subject to
22 a stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
23 received. The late fees required under this Section shall be recoverable, together with reasonable
24 attorneys' fees, in an enforcement proceeding brought pursuant to Section 5 of this Consent
25 Judgment.

26 **4. MODIFICATION OF CONSENT JUDGMENT**

27 4.1 This Consent Judgment may be modified by written agreement of CEH and
28 Defendant, or upon motion of CEH or Defendant as provided by law.

1 **5. ENFORCEMENT OF CONSENT JUDGMENT**

2 5.1 CEH may, by motion or application for an order to show cause before the Superior
3 Court of the County of San Francisco, enforce the terms and conditions contained in this Consent
4 Judgment. Should CEH prevail on any motion or application under this Section, CEH shall be
5 entitled to its reasonable attorneys' fees and costs associated with such motion or application. Prior
6 to bringing any such motion for a violation of Section 2 of this Consent Judgment, CEH shall provide
7 notice and meet and confer with a Defendant in an informal attempt to resolve such dispute.

8 **6. APPLICATION OF CONSENT JUDGMENT**

9 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
10 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

11 **7. CLAIMS COVERED/RELEASE OF LIABILITY**

12 7.1 This Consent Judgment is a full, final and binding resolution between CEH, acting on
13 behalf of itself and the general public, and Defendants of any violation of Proposition 65 or any other
14 statutory or common law claim that was or could have been asserted in the Complaint against
15 Defendants or each of their parents, subsidiaries, affiliates, directors, officers, employees, agents,
16 attorneys, distributors, retailers or customers (collectively, "Defendant Releasees") based on failure
17 to warn about exposure to Lead contained in any Products manufactured, distributed or sold by
18 Defendants on or prior to the date of entry of this Consent Judgment. Compliance with this Consent
19 Judgment by a Defendant shall hereinafter constitute compliance with Proposition 65 by that
20 Defendant and its Defendant Releasees with respect to Lead in that Defendant's Products. This
21 release does not limit or effect the obligations of any party created under this Consent Judgment.

22 **8. SEVERABILITY**

23 8.1 In the event that any of the provisions of this Consent Judgment are held by a court to
24 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

25 **9. SPECIFIC PERFORMANCE**

26 9.1 The Parties expressly recognize that Defendants' obligations under this Consent
27 Judgment are unique. In the event that any Defendant is found to be in breach of this Consent
28 Judgment for failure to comply with the provisions of Section 2 hereof, CEH, in addition to any other

1 available rights or remedies, may sue in equity for specific performance, and each Defendant
2 expressly waives the defense that a remedy in damages will be adequate.

3 **10. GOVERNING LAW**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 **11. RETENTION OF JURISDICTION**

7 11.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
8 this Consent Judgment.

9 **12. PROVISION OF NOTICE**

10 12.1 All notices required pursuant to this Consent Judgment and correspondence shall be
11 sent to the following:

- 12 For CEH: Eric S. Somers
13 Lexington Law Group, LLP
14 1627 Irving Street
San Francisco, CA 94122
- 15 For Defendants: Robert Falk
16 Morrison & Foerster LLP
425 Market Street
17 San Francisco, CA 94105
- 18 For Horizon/
Hirschberg Raymond Bialick
Horizon Group USA, Inc.
19 76 Stirling Road, Suite 101
Warren, New Jersey 07059
- 20 For Michaels Marjorie Powell
21 Michaels Stores, Inc.
8000 Bent Branch Drive
22 Irving, Texas 75063-6023

23 **13. COURT APPROVAL**

24 13.1 If this Consent Judgment is not approved by the Court, it shall be of no further force or
25 effect. The Parties agree to support a Motion for Approval of this Consent Judgment.

26 **14. EXECUTION AND COUNTERPARTS**

27 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
28 means of facsimile, which taken together shall be deemed to constitute one document.

1 **15. AUTHORIZATION**

2 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
3 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
4 Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned
5 have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except
6 as explicitly provided herein, each party is to bear its own fees and costs.

7 **AGREED TO:**

8 **CENTER FOR ENVIRONMENTAL HEALTH**

9
10 
11 Michael Green, Executive Director
12 Center for Environmental Health

12 **MICHAELS STORES, INC.**

13
14
15 _____
16 Signature

17 _____
18 Printed Name

19 _____
20 Title

21 **HORIZON GROUP USA, INC.**

22
23 _____
24 Signature

25 _____
26 Printed Name

27 _____
28 Title

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Michael Green, Executive Director
Center for Environmental Health

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MICHAELS STORES, INC.

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Signature
Harvey Kauten

Printed Name
EVP - Chief Merchant

Title

HORIZON GROUP USA, INC.

Signature

Printed Name

Title

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3 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
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8 **CENTER FOR ENVIRONMENTAL HEALTH**

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Michael Green, Executive Director
Center for Environmental Health

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MICHAELS STORES, INC.

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Signature

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Printed Name

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HORIZON GROUP USA, INC.

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Raymond Bialick
Signature

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RAYMOND BIALICK
Printed Name

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PRESIDENT
Title

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between the Parties, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: JUL 0 6 2006

PETER J. BUSCH

Judge, Superior Court of the State of California

EXHIBIT A

Products Covered as to Horizon

| Item # | Description |
|--------------|--------------------------------|
| EAP12488-79 | Lattice w/Pearls |
| EAP8793-12 | SHEER BAND W/ROUND & CYLINDER |
| EAP8793-96 | SHEER BAND W/ROUND & CYLINDER |
| EAP12489-29 | Lattice w/Pearls |
| EAP8781-12 | NARROW BAND W/MINI FLWS & PEAR |
| EAP8781-79 | NARROW BAND W/MINI FLWS & PEAR |
| EAP8792-12 | SHEER BAND W/PEARLS & SHEER FL |
| EAP8789-23 | SEQUIN CLUSTERS W/PEARL |
| MR10886-12 | Wired Beaded Flowers w/Pearl C |
| MR10886-79 | Wired Beaded Flowers w/Pearl C |
| MR5081-12 | PICK-TULLE W/PEARL SPRAY |
| MR5081-79 | Pck Tulle with Pearl Spray Lav |
| MR5121-112 | SPRAYF-FLOWER SPRAY W/PEARLS |
| MR5121-12 | SPRAYF-FLOWER SPRAY W/PEARLS |
| MR5138-96 | SPRAYF SATIN FLOWER BLOOM |
| MR6995-96 | PICK SATIN STAR PEARL CLUSTER |
| MRP10825-05 | Spray component gold w/pearl a |
| MRP10826-01 | Spray component silver w/pearl |
| MRP10893-12 | Mega Pack Tulle with Pearl Spr |
| MRP11225-12 | Wed-Fvr Ties Prl Spray Wht. 8p |
| MRP11323-12 | Pearl Spray Mega Pack 72pk |
| MRP5100-12 | SPRAY PEARL LONG 3MM |
| MRP5103-12 | SPRAY-PEARL LOOP X6 |
| MRP5104-12 | SPRAY PEARL PIPS X12 |
| MRP5105-12 | SPRAY PEARL PIPS SINGLES X72 |
| MRP5111-12 | SPRAY PEARL SPRAY 3MM X 10 X2 |
| MRP5112-12 | SPRAY PEARL SPRAY 3MM X 6 |
| MRP5114-12 | SPRAY PEARL W/FACETED BEADS |
| MRP8754-12 | PEARL DROP & BUGLE BEADS BEADE |
| MRP8757-12 | PEARL & BUGLE BEADES BEADED |
| MRP8768-12 | PEARL & SEED BEADS BAND |
| MRP8769-112 | PEARL AND SEED BEAD LOOPING FR |
| MRP8923-12 | 3mm Pearl Canister |
| MRP8924-112 | 4mm Pearl Canister |
| MRP8924-12 | 4mm Pearl Canister |
| MRSP3979-12 | BRIDAL TRIM CORD W/PEARLS |
| MRSP3980-112 | Bridal Trim 6mm Wired Pearls |
| MRSP3982-96 | Bridal Trim 3mm unwired Pearls |
| MRSP3985-12 | Bridal Trim Pearls with Lace |
| MRSP3986-12 | Bridal Trim Pearls with Lace P |
| MRSP3986-96 | Bridal Trim Pears with Lace Pe |
| MRT460 | ACCES-3MM PEARL ASST WT 30 FT |
| MRT462 | ACCES-3MM PEARL ASST CI 30FT |
| MRT617WHT | RUFFLED LACE W/PEARLS 6FT WHT |
| TCP0927-12 | 3-D Decor Sm-Petite Pearl Bows |

1 EXHIBIT B
2 Test Protocol

3 The following protocol shall be applied to a representative sample of the imitation pearl
4 product itself as well as any coating on the product.

- 5 1. Cut 5 small, discreet portions of the material to be analyzed.
- 6 2. Metal snips, scissors, or other cutting tools used must be made of stainless steel and
7 washed and rinsed before each use and between samples.
- 8 3. Sample size should be a minimum of 0.05 g using microwave digestion
- 9 4. Combine the portions into a composite sample.
- 10 5. Samples should be digested in containers that are known to be free of lead using acids
11 that are not contaminated by lead. Analytical Reagent grade digestion acids and reagent grade
12 deionized water are required.
- 13 6. Method Blanks, consisting of all reagents used in sample preparation handled,
14 digested and made to volume in the same exact manner and in the same container type as samples,
15 shall be tested with each group of 20 or fewer samples tested.

16 The results for the Method Blank shall be reported with each group of sample results, and
17 shall be below the stated reporting limit for sample results to be considered valid.

- 18 7. Prepare the sample for analysis using microwave digestion or electrothermal digestion.
19 If electrothermal digestion is used, it should be done under USEPA Method 3050B. Microwave
20 digestion protocols from the following two methods may be used provided that the samples are
21 completely digested:

- 22 a. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in
23 Foods)
 - 24 b. USEPA Method 3050B or 3051
- 25 8. Analyze the sample for total Lead (Pb) content using Inductively Coupled Plasma
26 Mass Spectrometry (ICP-MS), Atomic Emission Spectrometry (ICP-AES), or Atomic Absorption
27 Spectrometry, using standard operating procedures.

1 9. Digestion and analysis should achieve a reported detection limit no greater than
2 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are
3 made within the calibrated range of the analytical instrument.

4 10. Lead content shall be expressed in parts per million (ppm).
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1 EXHIBIT C
2 Letter of Instruction re Recall Notice

3 [Defendant Letterhead]

4 IMPORTANT LEGAL NOTICE

5 Date: []

6 **Subject: Recall of Imitation “Pearls” and Imitation “Pearl” Products Pursuant to California**
7 **Proposition 65 Judgment**

8
9 This letter is to advise you that the imitation “pearls” and imitation “pearl” products (the
10 “Products”) identified on the attachment to this letter allegedly expose users to lead, a chemical
11 known to the State of California to cause birth defects and other reproductive harm.

12 Although suppliers of the Products have already begun reformulating them to remove amounts of
13 lead in excess of that allowed under Proposition 65, the imitation “pearl” items listed on the
14 attachment to this letter are likely to contain higher levels of lead and may no longer legally be sold
15 in California without a warning.

16 Please pull the imitation “pearl” items listed on the attached from public distribution immediately
17 and contact us concerning arrangements for their return or destruction. If needed, we will then
18 ensure that you are provided with replacement Products that can be legally sold in California
19 without Proposition 65 warnings.

20 It is important for you to follow these instructions promptly because the sale of the items listed on
21 the attached without a proper Proposition 65 warning could subject your store to legal action by the
22 California Attorney General, other public prosecutors, or any person acting in the public interest,
23 wherein monetary penalties of up to \$2,500 per violation may be sought.

24 Should you have any questions or concerns about this matter, please do not hesitate to contact [] at
25 [] by phone, or by mail at the above address.
26
27
28