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6 CENTER FOR ENVIRONMENTAL  
HEALTH

ENDORSED  
FILED  
San Francisco County Superior Court

JAN 30 2007

GORDON PARK-LI, Clerk  
BY: JOCELYN C. ROQUE  
Deputy Clerk

8  
9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN FRANCISCO

11 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

12 Plaintiff, )

13 vs. )

14 MICHAELS STORES, INC.; HIRSCHBERG )  
15 SCHUTZ & CO.; CANDELA SALES )  
COMPANY, INC.; JO-ANN STORES, INC.; )  
16 NOVTEX CORPORATION; LEVCOR )  
INTERNATIONAL, INC.; BLUMENTHAL )  
17 LANSING COMPANY, LLC; HANCOCVK )  
FABRICKS, INC.; ORIENTAL TRADING )  
18 COMPANY, INC.; MARGOLA IMPORT )  
CORPORATION; KERN INTERNATIONAL; )  
19 SHERMAN SPECIALTY, INC. and Defendant )  
DOES 11-200, inclusive, )

20 Defendants. )  
21

CASE NO. CGC 05-446289

CONSENT JUDGMENT RE:  
BLUMENTHAL LANSING COMPANY  
AND LEVCOR INTERNATIONAL

1           **I.       INTRODUCTION.**

2           1.1       On November 2, 2005, plaintiff the Center for Environmental Health  
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco  
4 County Superior Court, entitled *Center for Environmental Health v. Michaels Stores, Inc., et al.*,  
5 San Francisco County Superior Court Case Number CGC-05-446289 (the “Action”), for civil  
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
7 §25249.5 et seq. (“Proposition 65”).

8           1.2       Defendants Blumenthal Lansing Company, LLC (“Blumenthal”) and Levcor  
9 International, Inc. (“Levcor”) are corporations that each employ 10 or more persons and distribute  
10 and/or sell imitation pearl buttons and imitation pearl accessories (the “Products”), which CEH  
11 alleges are made of materials containing lead and/or lead compounds, in the State of California.  
12 Blumenthal and Levcor are referred to herein as Defendants. Defendants and CEH are referred to as  
13 the Parties.

14           1.3       On or about March 28, 2005, CEH served Blumenthal and Levcor and the  
15 appropriate public enforcement agencies with the requisite 60-day notice that Blumenthal and  
16 Levcor were in violation of Proposition 65. On or about February 22, 2006, CEH filed “Doe”  
17 amendments adding Blumenthal and Levcor as Defendants in this Action. CEH’s notice and the  
18 Complaint in this Action allege that Defendants expose individuals who use or otherwise handle  
19 the Products to lead and/or lead compounds (referred to interchangeably herein as “Lead”),  
20 chemicals known to the State of California to cause cancer, birth defects and other reproductive  
21 harm, without first providing clear and reasonable warning to such persons regarding the  
22 carcinogenicity and reproductive toxicity of Lead. The notice and Complaint allege that  
23 Defendants’ conduct violates Health & Safety Code §25249.6, the warning provision of  
24 Proposition 65.

25           1.4       For the purposes of this Consent Judgment only, the parties stipulate that this  
26 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
27 personal jurisdiction over Defendants as to the acts alleged in CEH’s Complaint, that venue is  
28 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent

1 Judgment as a full and final resolution of all claims which were or could have been raised in the  
2 Complaint based on the facts alleged therein as to all Products sold by Defendants prior to the date  
3 of entry of this Consent Judgment.

4           1.5     The Parties enter into this Consent Judgment pursuant to a settlement of  
5 certain disputed claims between the Parties as alleged in the Complaint. By executing this  
6 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties'  
7 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
8 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
9 Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
10 conclusion of law, issue of law, or violation of law. This Consent Judgment is the product of  
11 negotiation and compromise and is accepted by the parties, for purposes of settling, compromising  
12 and resolving issues disputed in this action, including future compliance by Defendants with Section  
13 2 of this Consent Judgment and shall not be used for any other purpose, or in any other matter.

14           **2.     COMPLIANCE - REFORMULATION**

15           **2.1     Lead Reformulation.** Except as set forth in Section 2.3.1, after October 1,  
16 2006 (the "Compliance Date") Defendants shall not manufacture, distribute, ship, or sell, or cause to  
17 be manufactured, distributed, or sold, any Product that contains Lead in concentrations that exceed  
18 200 parts per million ("ppm") or is comprised of any material that contains Lead in concentrations  
19 that exceed 200 ppm.

20           **2.2     Certification of Reformulation Level From Suppliers.** No later than  
21 October 31, 2006 and no less than annually thereafter, Defendants shall obtain written certification  
22 with corresponding test results (i.e., purchase order certification and periodic laboratory reports)  
23 from each of their suppliers of the Products certifying that neither the Products nor any materials of  
24 which the Products are comprised contain Lead concentrations exceeding 200 ppm.

25           **2.3     Testing By Defendants.** In order to help ensure compliance with the  
26 requirements of Section 2.1, Defendants shall conduct testing to confirm that the Products contain  
27 less than 200 ppm Lead. Testing pursuant to this section shall be conducted pursuant to the testing  
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1 protocol attached hereto as Exhibit A (the "Test Protocol"). The results of all testing performed  
2 pursuant to this section shall be retained for a period of three years from the date of the test and shall  
3 be made available to CEH upon reasonable request. Testing under this Section 2.3 need only be  
4 performed by one Defendant in the chain of distribution for a particular Product, and such testing  
5 may be performed at any accredited laboratory located in the United States and selected by either a  
6 Defendant or a supplier of the Product. Defendants shall test five randomly selected Products from  
7 each delivered shipment of each of the Products. Testing under this Section 2.3 shall be performed  
8 for a minimum of three years and until such time as such Defendant has accumulated two  
9 consecutive years of test results that consistently meet the 200 ppm Lead standard without a single  
10 failed test result.

11 **2.3.1 Products That Exceed 200 ppm Pursuant to Defendant's**

12 **Testing.** If the results of the testing required pursuant to section 2.3 shows levels of lead  
13 exceeding 200 ppm but less than 600 ppm for a Product or any component thereof, Defendants may  
14 not sell any of those Products unless the following warning is affixed to the Product or its immediate  
15 packaging:

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

19 The warning statement shall be prominent and displayed with such conspicuousness, as compared  
20 with other words, statements, or designs as to render it likely to be read and understood by an  
21 ordinary individual prior to purchase. If the results of the testing required pursuant to section 2.3  
22 shows levels of lead exceeding 600 ppm for a Product or any component thereof, Defendants shall  
23 return all of the Products that were purchased under the particular purchase order to the supplier with  
24 a letter explaining that such Products do not comply with the supplier's certification. In addition,  
25 Defendants shall increase the number of units tested to ten randomly selected Products from each  
26 delivered shipment of each of the Products from such supplier for the two shipments purchased  
27 immediately following a Product test exceeding 600 ppm. Should the testing of Products purchased  
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1 from a particular supplier demonstrate Lead levels exceeding 600 ppm more than twice, Defendants  
2 shall cease purchasing Products from such supplier for a period of at least two years.

3           **2.4 Confirmatory Testing by CEH.** CEH may conduct periodic testing  
4 of the Products. Any such testing will be conducted pursuant to the Test Protocol at an  
5 independent laboratory. In the event that CEH's testing demonstrates Lead levels in excess of  
6 200 ppm for one or more Products, CEH shall inform the Defendant at issue of the violation(s),  
7 including information sufficient to permit the Defendant to identify the Product(s). That  
8 Defendant shall, within 10 days following such notice, provide CEH, at the address listed in  
9 section 13, with any labeling, its supplier certification, and testing information demonstrating its  
10 compliance with sections 2.2 and 2.3 of this Consent Judgment. That Defendant shall then increase  
11 the amount of testing performed on the Products supplied by the supplier of the Product(s) for which  
12 CEH demonstrates a test with Lead levels exceeding 200 ppm to ten randomly selected Products  
13 from each delivered shipment from each purchase order of each of the Products from such supplier  
14 for the two purchase orders following a Product test exceeding 200 ppm. CEH will meet and confer  
15 with Defendants regarding such test results and if the parties are unable to resolve the dispute in a  
16 mutually satisfactory manner, Defendants shall also be liable for stipulated payments in lieu of  
17 penalties for Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm  
18 as set forth below. Defendants shall make these payments in addition to reimbursement of  
19 reasonable investigation, testing and legal fees and costs related to the violation. Such payments  
20 shall be made to CEH and used for the purposes described in section 4.1. The stipulated payments in  
21 lieu of penalties and other remedies provided for herein are in addition to any other remedies  
22 available to enforce the terms of this Consent Judgment. Should CEH test any of the Products that  
23 have a warning pursuant to Section 2.3.1 hereof, the Lead level for such Products tested under this  
24 Section 2.4 shall be 600 ppm instead of 200 ppm.

25           **2.4.1 No Stipulated Penalty Assuming Compliance with Sections**  
26 **2.2 and 2.3.** Assuming Defendants provide CEH with information demonstrating that they  
27 complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same purchase  
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1 order as those with tests showing Lead levels exceeding 200 ppm (or 600 ppm for Products sold with  
2 the warning pursuant to Section 2.3.1 hereof), there shall be no stipulated penalty.

3 **2.4.2 Stipulated Penalty Assuming Non-Compliance With**

4 **Sections 2.2 and 2.3.** Assuming Defendants fail to provide CEH with information demonstrating  
5 that they complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same  
6 purchase order as those with tests showing Lead levels exceeding 200 ppm (or 600 ppm for Products  
7 sold with the warning pursuant to Section 2.3.1 hereof), the stipulated penalty  
8 shall be as follows for each unit of Product for which CEH produces a test result with Lead levels  
9 exceeding 200 ppm (or 600 ppm for Products sold with the warning pursuant to Section 2.3.1  
10 hereof):

11 Third Occurrence: \$2,000

12 Fourth Occurrence: \$5,000

13 Fifth Occurrence: \$10,000

14 Thereafter: \$20,000

15 Notwithstanding the foregoing, the stipulated penalty provisions of this Section 2.4.2 shall not apply  
16 to Products that Defendants attempted to recall prior to the Compliance Date but which were not  
17 either destroyed or returned to Defendants as provided in Defendants' recall letter.

18 **2.4.3 Recall of Products Testing in Excess of 600 ppm Lead.**

19 Should CEH's testing demonstrate that a Product contains Lead levels in excess of 600 ppm  
20 ("Recall Product"), the Defendant whose Product is at issue shall send a recall letter in the form  
21 attached hereto as Exhibit B to all distribution facilities and retail outlets that may have received  
22 the Products that were purchased in the same purchase order as any Recall Product informing  
23 them that they must pull the items from public distribution and send them back to Defendant.  
24 Defendant shall destroy all such Products and send certification to CEH that it has completed this  
25 process. Such certification shall indicate how many units of the Products were returned via the  
26 Recall.

1           **3. SETTLEMENT PAYMENTS**

2           **3.1 Monetary Payment in Lieu of Penalty:** \$12,750 shall be paid to CEH in  
3 lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment shall be made  
4 by check payable to Center for Environmental Health. CEH shall use such funds to continue its  
5 work protecting people from exposures to toxic chemicals.

6           **3.2 Attorneys' Fees and Costs:** \$25,000 shall be used to reimburse CEH and its  
7 attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs  
8 incurred as a result of investigating, bringing this matter to Defendants' attention, litigating and  
9 negotiating a settlement in the public interest. This payment shall be made by check payable to  
10 Lexington Law Group, LLP.

11           **3.3 Timing of Payments.** The payments required under this section shall be  
12 delivered to the address set forth in section 13 below within 10 days of entry of this Consent  
13 Judgment by the Court. Any failure by Defendants to comply with the payment terms herein  
14 shall be subject to a stipulated late fee in the amount of \$100 for each day after the delivery date  
15 the payment is received. The late fees required under this section shall be recoverable, together  
16 with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to section 6 of  
17 this Consent Judgment.

18           **4. MODIFICATION OF CONSENT JUDGMENT**

19           **4.1** This Consent Judgment may be modified by written agreement of CEH  
20 and Defendants, or upon motion of CEH or Defendants as provided by law.

21           **5. ENFORCEMENT OF CONSENT JUDGMENT**

22           **5.1** CEH may, by motion or application for an order to show cause before the  
23 Superior Court of the County of San Francisco, enforce the terms and conditions contained in  
24 this Consent Judgment. Should CEH prevail on any motion or application under this section,  
25 CEH shall be entitled to recover its reasonable attorneys' fees and costs associated with such  
26 motion or application.

1           **6.       APPLICATION OF CONSENT JUDGMENT**

2           6.1     This Consent Judgment shall apply to and be binding upon the parties  
3 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
4 them.

5           **7.       CLAIMS COVERED**

6           7.1     This Consent Judgment is a full, final and binding resolution between CEH  
7 and Defendants of any violation of Proposition 65 or other applicable laws or regulations that could  
8 have been asserted against Defendants in the Complaint based on Defendants' failure to warn about  
9 exposure to Lead contained in the Products, with respect to any Products manufactured, distributed  
10 or sold by Defendants on or prior to the date of entry of this Consent Judgment. Compliance with  
11 this Consent Judgment by a Defendant shall hereinafter constitute compliance with Proposition 65  
12 by such Defendant with respect to Lead in Products sold by that Defendant. This release does not  
13 limit or effect the obligations of any party created under this Consent Judgment.

14           **8.       SEVERABILITY**

15           8.1     In the event that any of the provisions of this Consent Judgment are held  
16 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
17 affected.

18           **9.       SPECIFIC PERFORMANCE**

19           9.1     The parties expressly recognize that Defendants' obligations under this  
20 Consent Judgment are unique. In the event that any Defendant is found to be in breach of this  
21 Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree  
22 that it would be extremely impracticable to measure the resulting damages and that such breach  
23 would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or  
24 remedies, may sue in equity for specific performance, and each Defendant expressly waives the  
25 defense that a remedy in damages will be adequate.

26           **10.     GOVERNING LAW**

27           10.1    The terms of this Consent Judgment shall be governed by the laws of the  
28

1 State of California.

2 **11. RETENTION OF JURISDICTION**

3 11.1 This Court shall retain jurisdiction of this matter to implement and enforce  
4 the terms this Consent Judgment.

5 **12. PROVISION OF NOTICE**

6 12.1 All notices required pursuant to this Consent Judgment and  
7 correspondence shall be sent to the following:

8 For CEH:

9 Eric S. Somers  
10 Lexington Law Group, LLP  
11 1627 Irving Street  
12 San Francisco, CA 94122

13 For Defendants:

14 Nancy J. Rich  
15 Katten Muchin Rosenman LLP  
16 525 West Monroe Street  
17 Chicago, IL 60661-3693

18 **13. COURT APPROVAL**

19 13.1 If this Consent Judgment is not approved by the Court, it shall be of no  
20 further force or effect. The Parties agree to support a Motion for Approval of this Consent  
21 Judgment.

22 **14. EXECUTION AND COUNTERPARTS**

23 14.1 The stipulations to this Consent Judgment may be executed in counterparts  
24 and by means of facsimile, which taken together shall be deemed to constitute one document.

25 **15. AUTHORIZATION**

26 15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
27 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter  
28 into and execute the Consent Judgment on behalf of the party represented and legally bind that  
party. The undersigned have read, understand and agree to all of the terms and conditions of this  
Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
costs.

1 **AGREED TO:**

2 Dated: <sup>October</sup> September 11, 2006

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director

7 Dated: September \_\_, 2006

BLUMENTHAL LANSING COMPANY, LLC

Signature

Printed Name

Title

17 Dated: September \_\_, 2006

LEVCOR INTERNATIONAL, INC.

Signature

Printed Name

Title

1 **AGREED TO:**

2 Dated: September \_\_, 2006

CENTER FOR ENVIRONMENTAL HEALTH

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4

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\_\_\_\_\_  
Michael Green, Executive Director

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7 <sup>OCT 10</sup>  
Dated: ~~September~~ \_\_, 2006

BLUMENTHAL LANSING COMPANY, LLC

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\_\_\_\_\_  
*Edward F. Cooke*

10

Signature

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EDWARD F. COOKE

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Printed Name

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PRESIDENT

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Title

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17 <sup>OCT 10</sup>  
Dated: ~~September~~ \_\_, 2006

LEVCOR INTERNATIONAL, INC.

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*Edward F. Cooke*

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Signature

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EDWARD F. COOKE

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Printed Name

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V.P.

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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: JAN 30 2007

**PATRICK J. MAHONEY**

Judge, Superior Court of the State of California

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1 **EXHIBIT A**

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 shall be  
17 below the stated reporting limit for sample results to be considered valid.

18 7. Prepare the sample for analysis using microwave digestion or electrothermal  
19 digestion. If electrothermal digestion is used, it should be done under USEPA Method 3050B.  
20 Microwave digestion protocols from the following two methods may be used provided that the  
21 samples are 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  
3 are 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 B  
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 imitation pearl buttons and imitation pearl accessories (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  
13 Although suppliers of the Products have already begun reformulating them to remove  
14 amounts of lead in excess of that allowed under Proposition 65, the imitation “pearl” items listed on  
15 the attachment to this letter are likely to contain higher levels of lead and may no longer legally be  
16 sold.

17 Please pull the imitation “pearl” items listed on the attached from public distribution  
18 immediately and contact us concerning arrangements for their return or destruction. If needed, we  
19 will then ensure that you are provided with replacement Products that can be legally.

20  
21 Should you have any questions or concerns about this matter, please do not hesitate to  
22 contact [ ] at [ ] by phone, or by mail at the above address.