

FEB 14 2007

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

1 LEXINGTON LAW GROUP, LLP
Eric S. Somers, State Bar No. 139050
2 Mark N. Todzo, State Bar No. 168389
Howard Hirsch, State Bar No. 213209
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
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13 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
14 Plaintiff,)
15 v.)
16)
17 MICHAELS STORES, INC., et al.,)
18 Defendants.)
19

Case No. CGC-05-446289

**[PROPOSED] CONSENT JUDGMENT
RE: MARGOLA IMPORT
CORPORATION**

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1 **1. 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 Defendant Margola Import Corporation (“Margola” or “Defendant”) is a
9 corporation that employs ten or more persons and manufactures, distributes, ships, and/or sells
10 imitation pearls and rhinestones that CEH alleges are made of materials containing lead and/or
11 lead compounds (the “Products”). Margola does not sell the Products directly to consumers but
12 sells wholesale to other jewelry, apparel and hobby craft companies that primarily use the
13 Products to make other consumer products such as jewelry, clothing and hobby craft packages.
14 Margola and CEH are referred to herein as the “Parties.”

15 1.3 On or about June 9, 2005, CEH served Margola and the appropriate public
16 enforcement agencies with the requisite 60-day notice that Margola was in violation of
17 Proposition 65. On or about February 22, 2006, CEH amended the complaint to name Margola
18 as a Defendant in this Action. CEH’s notice and the Complaint in this Action allege that
19 Margola’s actions exposes individuals to lead and/or lead compounds (“Lead”), chemicals
20 known to the State of California to cause cancer, birth defects and other reproductive harm,
21 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 Margola’s conduct violates Health & Safety Code §25249.6, the warning provision of
24 Proposition 65.

25 1.4 For 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 Margola 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.

3 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of
4 all disputed claims between the Parties as alleged in the Complaint. By executing this Consent
5 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that
6 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
8 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
9 issue of law, or violation of law. Except as otherwise provided herein, nothing in this Consent
10 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties
11 may have in this or any other or future legal proceedings. This Consent Judgment is the product
12 of negotiation and compromise and is accepted by the parties, for purposes of settling,
13 compromising and resolving issues disputed in the Action, including future compliance by
14 Margola with Section 2 of this Consent Judgment and shall not be used for any other purpose.

15 **2. COMPLIANCE - REFORMULATION AND WARNING**

16 **2.1 Pearl Product Reformulation.** After December 31, 2006 (the
17 "Compliance Date"), Margola shall not manufacture, distribute, ship, or sell, or cause to be
18 manufactured, distributed, shipped or sold, any imitation pearls or imitation pearl buttons (a
19 "Pearl Product") that contain Lead in concentrations that exceed 200 parts per million ("ppm") or
20 are comprised of any material that contains Lead in concentrations that exceed 200 ppm.

21 **2.1.1 Certification Of Lead Level From Suppliers Of Pearl**
22 **Products.** As of the Compliance Date, Margola shall obtain written certification with
23 corresponding test results from each of its suppliers of the Pearl Products on at least an annual
24 basis certifying that neither the Pearl Products nor any materials of which the Pearl Products are
25 comprised contain Lead concentrations exceeding 200 ppm. Margola shall maintain records of
26 any certifications for a period of three years from the date of their receipt and make them
27 available to Plaintiff on request.

28 **2.1.2 Testing of Pearl Products.** In order to help ensure

1 compliance with the requirements of Section 2.1 and 2.1.1, Margola shall conduct testing to
2 confirm that the Pearl Products it manufactures, distributes, ships, or sells, or causes to be
3 manufactured, distributed, shipped, or sold, contain less than 200 ppm Lead. Testing pursuant to
4 this section shall be conducted pursuant to the testing protocol set forth in California Health and
5 Safety Code §25214.4 (the "Test Protocol") and shall be performed by an independent,
6 accredited laboratory located in the United States. The results of all testing performed pursuant
7 to this section shall be retained for a period of three years from the date of the test and shall be made
8 available to CEH upon reasonable request.

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10 **2.1.2.1 Frequency of Sample Testing.** The frequency of
11 testing pursuant to Section 2.1.2 shall be as follows: Starting in 2007 and at least once per
12 calendar year for each supplier for any shipments received thereafter, Margola must test three
13 randomly selected Pearl Products from each product line for each supplier of the Pearl Products
14 (unless less than three product lines have been received from such a supplier, in which instance
15 all product lines shall be tested) using the Test Protocol, provided that Margola need not test
16 more than twenty Pearl Products annually. Margola shall continue the random testing pursuant
17 to this Section for a minimum of three years and until such time as Margola has accumulated two
18 consecutive years of random test results that meet the reformulation requirements of Section 2.1.

19 **2.1.3 Pearl Products That Exceed 200 ppm Pursuant To**
20 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.1.2 shows levels
21 of Lead exceeding 200 ppm for a Pearl Product, Margola shall: (1) not distribute, ship, or sell, or
22 cause to be distributed, shipped, or sold any such Pearl Product, and (2) if such Pearl Products
23 were not manufactured by Margola, refuse to accept and attempt to return all of the Pearl
24 Products that were purchased under the particular purchase order to the supplier with a letter
25 explaining that such Pearl Products do not comply with the supplier's certification. In the event
26 that Margola thereafter chooses to sell Pearl Products from that supplier in the future, it must first
27 conduct testing on a per shipment basis for a quarterly period and verify compliance with the 200
28 ppm Lead standard according to the terms described in this Consent Judgment.

2.1.4 Confirmatory Testing of Pearl Products By CEH. CEH

1 intends to conduct periodic testing of the Pearl Products Margola manufactures, distributes,
2 ships, or sells, or causes to be manufactured, distributed, shipped, or sold, in California. Any
3 such testing will be conducted pursuant to the Test Protocol at an independent laboratory. In the
4 event that CEH's testing demonstrates Lead levels in excess of 200 ppm for one or more Pearl
5 Products, CEH shall inform Margola of the violation(s), including information sufficient to
6 permit Margola to identify the Pearl Product(s). Margola shall, within 10 days following such
7 notice, provide CEH, at the address listed in Section 11, with its supplier certification and testing
8 information demonstrating its compliance with Sections 2.1.1 and 2.1.2 of this Consent
9 Judgment. Margola shall then increase the amount of testing performed on the Pearl Products
10 supplied by the supplier of the Pearl Product(s) for which CEH demonstrates a test with Lead
11 levels exceeding 200 ppm to six randomly selected Pearl Products per product line for the twelve
12 month period immediately following a Pearl Product test exceeding 200 ppm. Margola shall also
13 be liable for stipulated payments in lieu of penalties for Pearl Products for which CEH produces
14 tests demonstrating Lead levels exceeding 200 ppm as set forth below. These payments shall be
15 made to CEH and used for the purposes described in Section 3.1. The stipulated payments in
16 lieu of penalties and other remedies provided for herein are in addition to any other remedies
17 available to enforce the terms of this Consent Judgment.

18 **2.1.5 Stipulated Penalty Regarding Pearl Products.** If
19 Margola is in compliance with Sections 2.1.1 and 2.1.2 following the Compliance date, it shall
20 not be liable for civil penalties for Pearl Products for which CEH demonstrates non-compliance
21 under Section 2.1.4, but shall take such remedial actions as are prescribed in Section 2.1.3, and
22 reimburse CEH for its reasonable investigatory, testing, and legal expenses associated therewith.
23 However, if CEH provides notice pursuant to Section 2.1.4 and Margola is not in compliance
24 with Section 2.1.1 and 2.1.2 (to the extent applicable), Margola shall, in addition to taking the
25 remedial actions prescribed in Section 2.1.3 and reimbursing CEH for its reasonable
26 investigatory, testing; and legal expenses associated therewith, also be liable for stipulated
27 payments to CEH as follows:

28 First Occurrence: \$1,000

1 § 25249.7(b). CEH shall use such funds to continue its work protecting people from exposures
2 to toxic chemicals. As part of this work, CEH intends to conduct periodic testing and monitoring
3 of the Products as set forth in Sections 2.1.4 and 2.2.1.

4 **3.3 Attorneys' Fees and Costs:** The sum of \$11,700 shall be allocated to
5 reimburse CEH and its attorneys for a portion of their reasonable investigation fees and costs,
6 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
7 Margola's attention, litigating and negotiating a settlement in the public interest.

8 **4. MODIFICATION OF CONSENT JUDGMENT**

9 4.1 This Consent Judgment may be modified by written agreement of CEH
10 and Margola, or upon motion of CEH or Margola as provided by law.

11 **5. ENFORCEMENT OF CONSENT JUDGMENT**

12 5.1 CEH may, by motion or application for an order to show cause before the
13 Superior Court of the County of San Francisco, enforce the terms and conditions contained in
14 this Consent Judgment. Should CEH prevail on any motion or application under this section,
15 CEH shall be entitled to recover its reasonable attorneys' fees and costs associated with such
16 motion or application. Prior to bringing any such motion for a violation of this Consent
17 Judgment, CEH shall provide notice and meet and confer with Margola in an informal attempt to
18 resolve such dispute.

19 **6. APPLICATION OF CONSENT JUDGMENT**

20 6.1 This Consent Judgment shall apply to and be binding upon the Parties
21 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
22 them.

23 **7. CLAIMS COVERED**

24 7.1 This Consent Judgment is a full, final and binding resolution between
25 CEH and Margola of any violation of Proposition 65 that could have been asserted against
26 Margola in the Complaint based on Margola's failure to warn about exposure to Lead contained
27 in the Products, with respect to any Products manufactured, distributed, shipped or sold by
28 Margola on or prior to the date of entry of this Consent Judgment. This release does not limit or

1 effect the obligations of any party created under this Consent Judgment.

2 **8. SEVERABILITY**

3 **8.1** In the event that any of the provisions of this Consent Judgment are held
4 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
5 affected.

6 **9. GOVERNING LAW**

7 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
8 State of California.

9 **10. RETENTION OF JURISDICTION**

10 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
11 the terms this Consent Judgment.

12 **11. PROVISION OF NOTICE**

13 **11.1** All notices required pursuant to this Consent Judgment and
14 correspondence shall be sent to the following:

15 For CEH:

16 Eric S. Somers
17 Lexington Law Group, LLP
18 1627 Irving Street
19 San Francisco, CA 94122

20 For Margola:

21 Jay M. Newman
22 Newman & Newman, P.C.
23 460 Park Avenue
24 New York, New York 10022

25 **12. COURT APPROVAL**

26 **12.1** If this Consent Judgment is not approved by the Court, it shall be of no
27 further force or effect. The Parties agree to support a Motion for Approval of this Consent
28 Judgment.

13. EXECUTION AND COUNTERPARTS

13.1 The stipulations to this Consent Judgment may be executed in counterparts

1 and by means of facsimile, which taken together shall be deemed to constitute one document.

2 **14. AUTHORIZATION**

3 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
5 into and execute the Consent Judgment on behalf of the party represented and legally bind that
6 party. The undersigned have read, understand and agree to all of the terms and conditions of this

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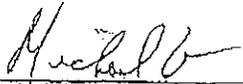
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Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO BY:

CENTER FOR ENVIRONMENTAL HEALTH

MARGOLA IMPORT CORPORATION



Michael Green
Executive Director
Center for Environmental Health

Signature

Printed Name

Title

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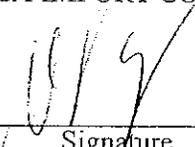
Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO BY:

CENTER FOR ENVIRONMENTAL HEALTH

MARGOLA IMPORT CORPORATION

Michael Green
Executive Director
Center for Environmental Health


Signature

NEIL J. CHALFIN
Printed Name

PRESIDENT
Title

ORDER AND JUDGMENT

1
2 Based upon the stipulated Consent Judgment between the Parties, the settlement is
3 approved and judgment is hereby entered according to the terms herein.
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5 Dated: FEB 14 2007

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7 **PATRICK J. MAHONEY**

8 Judge, Superior Court of the State of California
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