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ENDORSED  
FILED  
San Francisco County Superior Court

NOV 21 2006

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CENTER FOR ENVIRONMENTAL HEALTH

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11 CANDELA SALES CO., INC.

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

16 CENTER FOR ENVIRONMENTAL HEALTH,  
17 a non-profit corporation,,

Case No. CGC-05446289

18 Plaintiff,

~~PROPOSED~~ CONSENT JUDGEMNT  
AS TO CANDELA SALES COMPANY,  
INC.

19 v.

20 MICHAELS STORES, INC., et al.,

21 Defendants.

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1    **1. INTRODUCTION**

2           1.1    On November 2, 2005, plaintiff the Center for Environmental Health ("CEH"), a  
3 non-profit corporation acting in the public interest, filed a complaint ("Complaint") in San  
4 Francisco County Superior Court, entitled *Center for Environmental Health v. Michaels Stores,*  
5 *Inc., et al.*, San Francisco County Superior Court Case Number CGC-05446289 (the "Action"), for  
6 civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
7 § 25249.5 *et seq.* ("Proposition 65"). On or about May 19, 2005, CEH served Candela Sales  
8 Company, Inc. ("Candela") and the appropriate public enforcement agencies with the requisite  
9 60-day notice ("Notice") that Candela was in violation of Proposition 65. On February 22, 2006,  
10 CEH named Candela as a "Doe" defendant, amending the complaint to include Candela as a  
11 defendant. Candela and CEH are referred to herein as the Parties.

12           1.2    For purposes of this Consent Judgment, the term "Products" means imitation pearls  
13 and imitation pearl accessories (including imitation pearl necklaces and bracelets) made of  
14 materials containing lead and/or lead compounds (referred to interchangeably herein as "Lead").

15           1.3    Candela is a corporation that employs 10 or more persons and has sold Products in  
16 retail stores it operates in the State of California. Candela avers that upon receipt of the Notice and  
17 learning of CEH's allegations, it ceased making the Products available for sale in all retail stores it  
18 operates and arranged for their proper and permanent disposal. Candela further avers that it has not  
19 obtained any new inventory of Products since that time and has terminated its previous supplier of  
20 the Products.

21           1.4    The Complaint alleges that Candela exposed individuals who use or otherwise  
22 handle the Products to Lead, chemicals known to the State of California to cause cancer, birth  
23 defects and other reproductive harm, without first providing clear and reasonable warning to such  
24 persons regarding the carcinogenicity and reproductive toxicity of Lead in violation of Health &  
25 Safety Code § 25249.6, the warning provision of Proposition 65.

26           1.5    For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over the subject matter of the violations alleged in the Complaint and personal  
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1 jurisdiction over Candela as to the acts alleged in the Complaint, that venue is proper in the County  
2 of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
3 final resolution of all claims which were or could have been raised in the Complaint based on the  
4 facts alleged therein.

5 1.6 The Parties enter into this Consent Judgment pursuant to a settlement of all disputed  
6 claims between the Parties as alleged in the Complaint. By executing this Consent Judgment, the  
7 Parties and each of them do not admit any facts or conclusions of law, including, but not limited to,  
8 any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any  
9 other statutory, common law or equitable requirements relating to the Products. It is the Parties'  
10 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
11 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
12 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
13 issue of law, or violation of law. Except as otherwise provided herein, nothing in this Consent  
14 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may  
15 have in this or any other or future legal proceedings. This Consent Judgment is the product of  
16 negotiation and compromise and is accepted by the Parties, for purposes of settling, compromising  
17 and resolving issues disputed in the Action, including future compliance by Candela with Section 2  
18 of this Consent Judgment and shall not be used for any other purpose, or in any other matter.

19 **2. COMPLIANCE - REFORMULATION**

20 2.1 **Lead Reformulation.** After August 31, 2006 (the "Reformulation Date"), Candela  
21 shall not (i) manufacture or purchase for distribution or sale, or (ii) sell or make available for sale,  
22 any Product that contains Lead in concentrations that exceed 200 ppm or which is comprised of any  
23 component (including, but not limited to, the surface coating, the substrate to which the surface  
24 coating is attached, or any string or wire upon which the Product may be strung) that contains Lead  
25 in concentrations that exceed 200 ppm.

26 2.2 **Certification of level from suppliers.** For Products obtained after the  
27 Reformulation Date, unless it obtains a Product from a supplier that has entered into a court-  
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1 approved Consent Judgment with CEH or the California Attorney General addressing the suppliers  
2 Proposition 65 obligations with respect to the potential presence of Lead in the Products (an "Other  
3 Settling Defendant"), Candela shall obtain written certification with corresponding test results from  
4 their suppliers of the Products on at least an annual basis certifying that the Products and any  
5 components from which the Products are comprised contain Lead concentrations that are less than  
6 200 ppm of Lead. Candela shall maintain records of any certifications for a period of three years  
7 from the date of their receipt and make them available to Plaintiff on request.

8           **2.2.1 Test Results.** Any test results relied on by Candela for purposes of Section  
9 2.2 above shall be based on the testing protocol attached hereto as Exhibit A (the "Test Protocol")  
10 performed by an independent, accredited laboratory; such a laboratory may be located overseas,  
11 provided that it is internationally accredited and also has offices located in the United States.

12           **2.3 Testing.** In order to help ensure compliance with the requirements of Sections 2.1,  
13 for all Products obtained after the Reformulation Date, unless such Products are obtained from  
14 Other Settling Defendants, Candela shall conduct periodic testing to confirm that the Products and  
15 the components thereof contain less than 200 ppm of Lead. Testing pursuant to this Section shall  
16 be conducted pursuant to the Test Protocol. All testing pursuant to this Section shall be performed  
17 by an independent, accredited laboratory located in the United States. The results of all testing  
18 performed pursuant to this Section shall be retained for a period of three years from the date of their  
19 receipt and made available to CEH upon reasonable request.

20           **2.3.1 Frequency of Sample Testing.** The frequency of testing pursuant to  
21 Section 2.3 shall be as follows: Starting in 2007 and at least once per calendar year for each  
22 supplier for any shipments received thereafter, Candela must test three randomly selected Products  
23 from each Product line for each supplier of the Products that is not an Other Settling Defendant  
24 (unless less than three Product lines have been received from such a supplier, in which instance all  
25 Product lines shall be tested) using the Test Protocol, provided that Candela need not test more than  
26 twenty Products annually. Candela shall continue the random testing pursuant to this Section for a  
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1 minimum of three years and until such time as Candela has accumulated two consecutive years of  
2 random test results that meet the reformulation requirements of Section 2.1.

3           **2.3.2 Products that exceed stipulated levels pursuant to Candela's Testing.** If  
4 the results of any testing required pursuant to Section 2.3.1 shows levels of Lead in any of the  
5 Products tested exceeding 200 ppm for a Product or a component thereof, Candela shall: (1) not sell  
6 any Products that were purchased under the particular purchase order that the Product that tested  
7 over 200 ppm was purchased under; (2) refuse to accept and attempt to return all of such Products;  
8 and (3) send a notice to the supplier explaining that such Products do not comply with the  
9 supplier's certification for such Products.

10           In the event that Candela thereafter chooses to sell Products from that supplier in the future, it  
11 must first conduct testing on a per shipment basis for a quarterly period and verify compliance with  
12 the 200 ppm Lead standard according to the terms described in this Consent Judgment.

13           **2.4 Confirmatory testing by CEH.** CEH may conduct periodic testing of Products  
14 sold in California. Any such testing will be conducted pursuant to the Test Protocol at an  
15 independent, accredited laboratory with offices located in the United States. In the event that  
16 CEH's testing demonstrates Lead levels in excess of 200 ppm for such Products following the  
17 Reformulation Date, CEH shall, unless it otherwise determines it not necessary to raise an issue or  
18 determines that the Products in question were supplied by an Other Settling Defendant, inform  
19 Candela of the situation and provide it with the test results and any reasonably available  
20 information permitting it to identify the Product(s) and their supplier. Candela shall, within  
21 10 business days of receipt of CEH's notice, provide CEH, at the address listed in Section 12, with  
22 information demonstrating its compliance with Sections 2.1 and, if the Products in question were  
23 not sourced from an Other Settling Defendant, 2.2 of this Consent Judgment. Within thirty (30)  
24 days following such notice, Candela and CEH shall meet and confer with respect to the situation  
25 that gave rise to CEH's notice.

26           **2.4.1 Further obligations if CEH gives notice.** If, after meeting and conferring  
27 regarding a notice CEH provides pursuant to Section 2.4, CEH and Candela do not mutually  
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1 conclude that a Product is in material compliance with the standard set forth in Section 2.1 above,  
2 then Candela shall immediately terminate its further sales of the Products obtained from the  
3 supplier in question and either (a) dispose of any remaining inventory, or (b) deplete the remaining  
4 inventory employing the following warning affixed to the Product or its immediate packaging in  
5 conjunction with their sale such that it is likely to be read and understood by a consumer prior to  
6 purchase or use:

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

10 If the Products in question were not sourced from an Other Settling Defendant and Candela  
11 thereafter wishes to sell Products subsequently acquired from such supplier, Candela shall test five  
12 (5) randomly selected Products from each shipment of Products received from the supplier pursuant  
13 to the Test Protocol. If no Product or any component thereof produces test results greater than  
14 200 ppm of Lead using the Test Protocol, Candela may, upon the provision of notice to CEH  
15 attaching the relevant test results, proceed to offer the Products obtained from that supplier for sale  
16 in California.

17                   **2.4.2 Stipulated penalties.** If Candela is in compliance with Section 2.2 and 2.3  
18 following Reformulation Date it shall not be liable for civil penalties for Products for which CEH  
19 demonstrates non-compliance, but shall take such remedial actions as are prescribed in  
20 subsections 2.4.1 above (as applicable) and, if the Products in question were not sourced from an  
21 Other Settling Defendant, reimburse CEH for its reasonable investigatory, testing, and legal  
22 expenses associated therewith. However, if CEH provides notice pursuant to Section 2.3 and  
23 Candela is not in compliance with Sections 2.2 and 2.3 (to the extent applicable), Candela shall, in  
24 addition to reimbursing CEH for its reasonable investigatory, testing, and legal expenses associated  
25 therewith, also be liable for stipulated payments to CEH as follows:

26                   First Notice:           \$1,000  
27                   Second Notice:       \$2,500  
28                   Third Notice:         \$5,000  
                    Subsequent Notices: \$10,000

1    **3.    SETTLEMENT PAYMENTS**

2            3.1    **Monetary Payment in Lieu of Penalty.** A total of \$2,500 shall be paid to CEH by  
3    Candela in lieu of any penalties to be levied (other than as specified in subsection 2.4.2 above)  
4    pursuant to Health and Safety Code § 25249.7(b). CEH shall use such funds to continue its work  
5    protecting people from exposures to toxic chemicals.

6            3.2    **Attorneys' Fees and Costs.** A total of \$5,000 to be paid by Candela to the  
7    Lexington Law Group, LLP shall be used to reimburse CEH and its attorneys for their reasonable  
8    investigation fees and costs, attorneys' fees, and any other costs incurred as a result of  
9    investigating, bringing this matter to Candela's attention, and litigating and negotiating a settlement  
10   in the public interest.

11          3.3    **Timing of payments.** The payments required under this Section shall be delivered  
12   to the address set forth in Section 12 below within ten (10) days of entry of this Consent Judgment.  
13   Any failure by Candela to comply with the payment terms herein shall be subject to a stipulated  
14   late fee in the amount of \$100 for each day after the delivery date the payment is received. The late  
15   fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an  
16   enforcement proceeding brought pursuant to Section 5 of this Consent Judgment.

17   **4.    MODIFICATION OF CONSENT JUDGMENT**

18          4.1    This Consent Judgment may be modified by written agreement of CEH and  
19   Candela, or upon motion of CEH or Candela as provided by law.

20   **5.    ENFORCEMENT OF CONSENT JUDGMENT**

21          5.1    CEH may, by motion or application for an order to show cause before the Superior  
22   Court of the County of San Francisco, enforce the terms and conditions contained in this Consent  
23   Judgment. Should CEH prevail on any motion or application under this Section and provided CEH  
24   has proceeded in good faith, CEH shall be entitled to its reasonable attorneys' fees and costs  
25   associated with such motion or application. Prior to bringing any such motion for a violation of  
26   Section 2 of this Consent Judgment, CEH shall provide notice and meet and confer with Candela in  
27   an informal attempt to resolve such dispute.

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1     **6.     APPLICATION OF CONSENT JUDGMENT**

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

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

5             7.1     This Consent Judgment is a full, final and binding resolution between CEH, acting  
6     on behalf of itself and the general public, and Candela of any violation of Proposition 65 or any  
7     other statutory or common law claim that was or could have been asserted in the Complaint against  
8     Candela or each of its affiliates, directors, officers, employees, agents, attorneys, stores (including  
9     Party Warehouse Stores) or customers (collectively, "Defendant Releasees") based on failure to  
10    warn about exposure to Lead contained in any Products distributed or sold by Candela on or prior  
11    to the date of entry of this Consent Judgment. Compliance with this Consent Judgment by Candela  
12    shall hereinafter constitute compliance with Proposition 65 by Candela and Defendant Releasees  
13    with respect to Lead in Products sold by Candela. This release does not limit or effect the  
14    obligations of any Party created under this Consent Judgment.

15    **8.     SEVERABILITY**

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

18    **9.     SPECIFIC PERFORMANCE**

19             9.1     The Parties expressly recognize that Candela's obligations under this Consent  
20    Judgment are unique. In the event that Candela is found to be in breach of this Consent Judgment  
21    for failure to comply with the provisions of Section 2 hereof, CEH, in addition to any other  
22    available rights or remedies, may sue in equity for specific performance, and Candela expressly  
23    waives the defense that a remedy in damages will be adequate.

24    **10.    GOVERNING LAW**

25             10.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
26    California.

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1 **11. RETENTION OF JURISDICTION**

2 11.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms  
3 this Consent Judgment.

4 **12. PROVISION OF NOTICE**

5 12.1 All notices required pursuant to this Consent Judgment and correspondence shall be  
6 sent to the following:

7 For CEH: Eric S. Somers  
8 Lexington Law Group, LLP  
9 1627 Irving Street  
10 San Francisco, CA 94122

11 For Candela: Robert Falk  
12 Morrison & Foerster LLP  
13 425 Market Street  
14 San Francisco, CA 94105

15 Robert Spencer  
16 Vice President  
17 Candela Sales Co.  
18 1125 Park Street  
19 Alameda, CA 94501

20 **13. COURT APPROVAL**

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

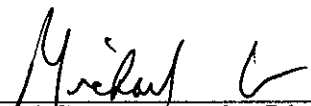
23 **14. EXECUTION AND COUNTERPARTS**

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

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

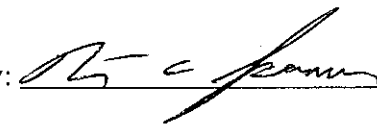
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<b>AGREED TO:</b>  Date: <u>9/15/06</u>  CENTER FOR ENVIRONMENTAL HEALTH  By: <u></u> Michael Green, Executive Director	<b>AGREED TO:</b>  Date: _____  CANDELA SALES COMPANY, INC.  By: _____
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<b>AGREED TO:</b>  Date: _____  CENTER FOR ENVIRONMENTAL HEALTH  By: _____ Michael Green, Executive Director	<b>AGREED TO:</b>  Date: <u>9/5/06</u>  CANDELA SALES COMPANY, INC.  By: <u></u>
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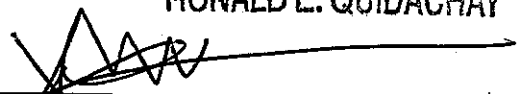
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**JUDGMENT**

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

Dated: 11/21/06

**RONALD E. QUIDACHAY**

  
\_\_\_\_\_  
Judge, Superior Court of the State of California

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  
11 acids 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  
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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