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ENDORSED
FILED
San Francisco County Superior Court

NOV 21 2006

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

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CENTER FOR ENVIRONMENTAL HEALTH

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Deputy Clerk~~

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11 KERN INTERNATIONAL, INC.; SHERMAN
SPECIALTY, INC.; BEADS BY THE DOZEN, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

17 CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,,
18
19 Plaintiff,
20 v.
21 MICHAELS STORES, INC., et al.,
22 Defendants.

Case No. CGC-05446289

~~[PROPOSED]~~ CONSENT JUDGEMNT
AS TO SHERMAN SPECIALTY INC.
AND BEADS BY THE DOZEN, INC.;
DISMISSAL OF KERN
INTERNATIONAL, INC.

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 in San Francisco County
4 Superior Court, entitled *Center for Environmental Health v. Michaels Stores, Inc., et al.*, San
5 Francisco County Superior Court Case Number CGC-05446289 (the “Action”), for civil penalties
6 and injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5 *et*
7 *seq.* (“Proposition 65”). On February 22, 2006, CEH named Kern International, Inc. and Sherman
8 Specialty as “Doe” defendants, amending the complaint to include Kern International, Inc. and
9 Sherman Specialty as defendants.

10 1.2 For purposes of this Consent Judgment, the term “Products” means imitation pearls
11 and imitation pearl-containing accessories made of materials containing lead and/or lead
12 compounds. Products that were sold by Kern International, Inc. or Beads By The Dozen are
13 identified in Exhibit A.

14 1.3 Defendant Sherman Specialty, Inc. (“Sherman”) is a corporation that employs 10 or
15 more persons and has distributed and/or sold Products in the State of California that were
16 purchased from Kern International, Inc. or Beads By The Dozen.

17 1.4 Defendant Kern International, Inc. (“Kern”) is the subsidiary of Beads By The
18 Dozen, Inc. (“Beads”). Beads avers that it employs 10 or more persons. Kern and/or Beads has
19 distributed and/or sold Products in the State of California.

20 1.5 On or about May 19, 2005, CEH served Kern and Sherman and the appropriate
21 public enforcement agencies with the requisite 60-day notice that Kern and Sherman were in
22 violation of Proposition 65. On or about July 27, 2006, CEH served Beads and the appropriate
23 public enforcement agencies with the requisite 60-day notice that Beads was in violation of
24 Proposition 65. Given that more than 60 days will have passed prior to the Court’s consideration of
25 a motion for approval and entry of this Consent Judgment, concurrently with the entry of this
26 Consent Judgment, Beads shall be deemed to have been added to the complaint CEH filed in this
27 Action (“Complaint”) as a named defendant and Kern, which avers that it employs less than
28 10 persons, shall be deemed to have been dismissed without prejudice from the Complaint. Beads

1 and Sherman are collectively referred to herein as Defendants. Defendants and CEH are referred to
2 as the Parties.

3 1.6 CEH's notices and the Complaint allege that Defendants exposed individuals who
4 use or otherwise handle the Products to lead and/or lead compounds (referred to interchangeably
5 herein as "Lead"), chemicals known to the State of California to cause cancer, birth defects and
6 other reproductive harm, without first providing clear and reasonable warning to such persons
7 regarding the carcinogenicity and reproductive toxicity of Lead. The notices and Complaint allege
8 that Defendants' conduct violates Health & Safety Code § 25249.6, the warning provision of
9 Proposition 65.

10 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over the subject matter of the violations alleged in the Complaint and personal
12 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the
13 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
14 full and final resolution of all claims which were or could have been raised in the Complaint based
15 on the facts alleged therein.

16 1.8 The Parties enter into this Consent Judgment pursuant to a settlement of all disputed
17 claims between the Parties as alleged in the Complaint. By executing this Consent Judgment, the
18 Parties and each of them do not admit any facts or conclusions of law, including, but not limited to,
19 any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any
20 other statutory, common law or equitable requirements relating to the Products. It is the Parties'
21 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
22 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
23 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
24 issue of law, or violation of law. Except as otherwise provided herein, nothing in this Consent
25 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
26 have in this or any other or future legal proceedings. This Consent Judgment is the product of
27 negotiation and compromise and is accepted by the Parties, for purposes of settling, compromising
28 and resolving issues disputed in the Action, including future compliance by Defendants with

1 Section 2 of this Consent Judgment and shall not be used for any other purpose, or in any other
2 matter.

3 **2. COMPLIANCE - REFORMULATION**

4 **2.1 Lead Reformulation.** After September 30, 2006 (the "Initial Compliance Date"),
5 Defendants shall not manufacture or purchase for distribution or sale, any Product that contains
6 Lead in concentrations that exceed 600 parts per million ("ppm") in total or in any of its
7 components (including, but not limited to, the surface coating, the substrate to which the surface
8 coating is attached, or any string or wire upon which the Product may be strung). After December
9 31, 2006 (the "Reformulation Date"), Defendants shall not manufacture or purchase for distribution
10 or sale, any Product that contains Lead in concentrations that exceed 200 ppm or which is
11 comprised of any component (including, but not limited to, the surface coating, the substrate to
12 which the surface coating is attached, or any string or wire upon which the Product may be strung)
13 that contains Lead in concentrations that exceed 200 ppm.

14 **2.1.1 Products In Inventory.** As of the Initial Compliance Date, neither Beads
15 nor Sherman shall sell, or make available for sale, to a customer in California, Products which do
16 not meet the 600 ppm Lead standard set forth in Section 2.1, unless such Products contain the
17 warning set forth in Section 2.1.2 below. As of the Reformulation Date, neither Beads nor
18 Sherman shall sell, or make available for sale, to a customer in California, Products which do not
19 meet the 200 ppm Lead standard set forth in Section 2.1, unless such Products contain the warning
20 set forth in Section 2.1.2 below. As of March 31, 2007, neither Beads nor Sherman shall sell, or
21 make available for sale, to a customer in California, Products which do not meet the 200 ppm Lead
22 standard set forth in Section 2.1. As of September 30, 2007, neither Beads nor Sherman shall sell
23 Products nationally that do not meet the 200 ppm Lead standard set forth in Section 2.1.

24 **2.1.2 Product Warnings.** Products in inventory that were purchased prior to the
25 Initial Compliance Date or the Reformulation Date, as applicable, may be sold as provided in
26 Section 2.1.1 provided that the following warning is affixed to the Product or its immediate
27 packaging:
28

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

4 Such warning shall be displayed in a layout, format and font size such that it is at least as prominent,
5 conspicuous and large as any other text concerning the Product to which it relates, and in any case
6 shall be displayed in a manner such that it is likely to be read and understood by a consumer prior to
7 purchase of the Product at issue.

8 2.2 **Certification of level from suppliers.** For all Products obtained after the Initial
9 Compliance Date, Defendants shall obtain written certification with corresponding test results from
10 their suppliers of the Products at least on an annual basis certifying that the Products and any
11 components from which the Products are comprised contain Lead concentrations that are less than
12 600 ppm; after the Reformulation Date, this certification shall be obtained at a level at or below
13 200 ppm of Lead. A written certification received by one Defendant may be relied on by other
14 Defendants that sell the certified Products. Beads shall, to the extent applicable, maintain any
15 records of the certifications for a period of three years from the date of their receipt and make them
16 available to Plaintiff on request. Sherman shall only be required to maintain records of the
17 certifications for Products purchased from entities other than Beads, if any.

18 2.3 **Testing.** In order to help ensure compliance with the requirements of Sections 2.1,
19 Beads shall conduct periodic testing to confirm that the Products and the components thereof
20 contain less than 600 ppm of Lead following the Initial Compliance Date and 200 ppm or less of
21 Lead following the Reformulation Date. Testing pursuant to this Section shall be conducted
22 pursuant to the testing protocol attached hereto as Exhibit B (the "Test Protocol"). All testing
23 pursuant to this Section shall be performed by an independent, accredited laboratory; such a
24 laboratory may be located overseas, provided that it is internationally accredited and also has
25 offices located in the United States. The results of all testing performed pursuant to this Section
26 shall be retained for a period of three years and made available to CEH upon reasonable request.
27 The frequency and amount of testing required shall vary as follows:

28 2.3.1 **Sample Testing.** For shipments received from each supplier after the Initial
 Compliance Date, Beads must test five randomly selected Product lines per supplier per year

1 (unless less than five Product lines have been received from a supplier, in which instance all
2 Product lines shall be tested) using the Test Protocol. For Products supplied to Defendant Sherman
3 by entities other than Beads, if any, Sherman must either conduct the testing itself or require that
4 its supplier conduct the testing according to the same terms as are prescribed for Beads in this
5 Consent Judgment. For any Product Sherman obtains directly from a supplier located outside the
6 United States, if any, Sherman must arrange to conduct the testing itself according to the same
7 terms as are prescribed for Beads in this Consent Judgment.

8 **2.3.2 Products that exceed 600 ppm/200 ppm Lead Standard pursuant to**
9 **Defendants' Testing.** If, following the Initial Compliance Date, the results of the testing required
10 pursuant to Section 2.3.1 shows levels of Lead in any of the Products tested exceeding 600 ppm for
11 a Product or a component thereof, or if, following the Reformulation Date, the results of the testing
12 required pursuant to Section 2.3.1 show levels of Lead in any of the Products tested exceeding
13 200 ppm for a Product or a component thereof, Defendants, as applicable, shall not allow such
14 Products to be sold or made available for sale to customers, provided however, that Defendants
15 may sell remaining Products that are then in inventory if the following warning is affixed to the
16 Product or its immediate packaging such that it is likely to be read and understood by a consumer
17 prior to purchase or use:

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

20 In the event that Defendants thereafter choose to sell Products from that supplier, they must first
21 conduct testing on a per shipment basis for a quarterly period and verify compliance with the then
22 applicable 600 ppm or 200 ppm Lead standard according to the terms described in this paragraph.

23 **2.4 Confirmatory testing by CEH.** CEH may conduct periodic testing of Products in
24 the future. Any such testing will be conducted pursuant to the Test Protocol at an independent,
25 accredited laboratory with offices located in the United States. In the event that CEH's testing
26 demonstrates Lead levels in excess of 600 ppm or 200 ppm for such Products following the Initial
27 Compliance Date and Reformulation Date respectively, CEH shall, unless such Products have been
28 sold with the warning set forth in paragraph 2.3.2 above or CEH otherwise determines it not

1 period and verify compliance with the then applicable 600 ppm or 200 ppm Lead standard
2 according to the terms described in this paragraph.

3 **2.4.2 Stipulated penalties.** If a Defendant is in compliance with Sections 2.2 and
4 2.3, or otherwise can demonstrate that it has not distributed, sold or made Products available for
5 potential sale following the Initial Compliance Date or Reformulation Date (as applicable), it shall
6 not be liable for civil penalties for Products for which CEH demonstrates non-compliance, but shall
7 take such remedial actions as are prescribed in subsections 2.4.1 above and/or 2.4.3 below (as
8 applicable) and reimburse CEH for its reasonable investigatory, testing, and legal expenses
9 associated therewith. However, if CEH provides notice pursuant to Section 2.4 and a Defendant is
10 not in compliance with Sections 2.2 and 2.3 (to the extent applicable), or otherwise cannot
11 demonstrate that it has not distributed, sold or made Products available for potential sale above the
12 then applicable 600 ppm or 200 ppm Lead standard following the Initial Compliance Date or
13 Reformulation Date (as applicable), such Defendant shall, in addition to reimbursing CEH for its
14 reasonable investigatory, testing, and legal expenses associated therewith, also be liable for
15 stipulated payments to CEH as follows:

16 First Notice: \$5,000
17 Second Notice: \$10,000
18 Third Notice: \$15,000
19 Subsequent Notices: \$20,000

20 **2.4.3 Recall of Products testing in excess of 600 ppm Lead.** Should, after
21 December 31, 2007, CEH's testing demonstrate that a Product or any components thereof contain
22 Lead levels in excess of 600 ppm ("Recall Product"), upon CEH's request, Defendants, as
23 applicable, shall send a recall letter in the form attached hereto as Exhibit C to all customers that
24 may have received the Recall Product informing them that they must pull all items of the Recall
25 Product from public distribution. Defendants shall send certification to CEH that they have
26 completed this process as applicable. Such certification shall indicate how many units of the
27 Products were, to the extent known, removed from public distribution via the recall.

28

1 **3. SETTLEMENT PAYMENTS**

2 3.1 **Monetary Payment in Lieu of Penalty.** A total of \$7,000 shall be paid to CEH by
3 Beads in lieu of any penalties to be levied against Defendants (other than as specified in
4 subsection 2.4.2 above) pursuant to Health and Safety Code § 25249.7(b). CEH shall use such
5 funds to continue its work protecting people from exposures to toxic chemicals.

6 3.2 **Attorneys' Fees and Costs.** A total of \$18,000 to be paid by Beads 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 Defendants' attention, and litigating and negotiating a
10 settlement in the public interest. Except as otherwise set forth herein, Defendants shall have no
11 responsibility to reimburse CEH or its attorneys for any other costs or fees.

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

19 **4. MODIFICATION OF CONSENT JUDGMENT**

20 4.1 This Consent Judgment may be modified by written agreement of CEH and a
21 Defendant, or upon motion of CEH or a Defendant as provided by law.

22 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

3 **6. APPLICATION OF CONSENT JUDGMENT**

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

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

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

17 **8. SEVERABILITY**

18 8.1 In the event that any of the provisions of this Consent Judgment are held by a court
19 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

20 **9. SPECIFIC PERFORMANCE**

21 9.1 The Parties expressly recognize that Defendants' obligations under this Consent
22 Judgment are unique. In the event that any Defendant is found to be in breach of this Consent
23 Judgment for failure to comply with the provisions of Section 2 hereof, CEH, in addition to any
24 other available rights or remedies, may sue in equity for specific performance, and each Defendant
25 expressly waives the 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 State of
28 California.

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

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1 For Defendants: Robert Falk
Morrison & Foerster LLP
2 425 Market Street
San Francisco, CA 94105

3 For Beads/Kern: Dan Kelly
4 Beads by the Dozen
333 Edwards Ave
5 New Orleans, LA 70123

6 For Sherman: Adam Krosser, President
Sherman Specialty, Inc.
7 300 Jericho Quad
Jericho, New York 11753
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9 **13. COURT APPROVAL**

10 13.1 If this Consent Judgment is not approved by the Court, it shall be of no further force
11 or effect. The Parties agree to support a Motion for Approval of this Consent Judgment.

12 **14. EXECUTION AND COUNTERPARTS**

13 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
14 means of facsimile, which taken together shall be deemed to constitute one document.

15 **15. AUTHORIZATION**

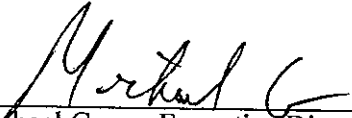
16 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
17 by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute
18 the Consent Judgment on behalf of the Party represented and legally bind that Party. The
19 undersigned have read, understand and agree to all of the terms and conditions of this Consent
20 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

21 **16. MISCELLANEOUS**

22 16.1 Neither Defendant shall be responsible for the acts or omissions of the other in
23 complying with the terms of this Consent Judgment in the future.
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1 AGREED TO:

2 CENTER FOR ENVIRONMENTAL HEALTH

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5 Michael Green, Executive Director
Center for Environmental Health

6 SHERMAN SPECIALTY, INC.

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9 _____
Signature

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11 _____
Printed Name

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13 _____
Title

14 KERN INTERNATIONAL, INC.

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17 _____
Signature

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Printed Name

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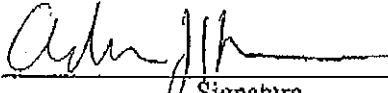
1 AGREED TO:
2 CENTER FOR ENVIRONMENTAL HEALTH

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5 Michael Green, Executive Director
Center for Environmental Health

6 SHERMAN SPECIALTY, INC.

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8 
Signature

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10 Adam J. Krassen
Printed Name

11

12 President
Title

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14 KERN INTERNATIONAL, INC.

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Signature

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Printed Name

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Title

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1 AGREED TO:

2 CENTER FOR ENVIRONMENTAL HEALTH

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Michael Green, Executive Director
Center for Environmental Health

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6 SHERMAN SPECIALTY, INC.

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Signature

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Printed Name

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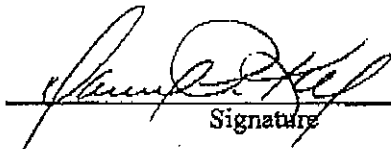
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14 KERN INTERNATIONAL, INC.

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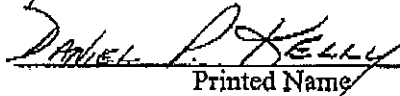
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Signature

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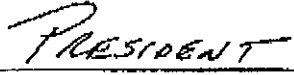
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Printed Name

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Title

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1 BEADS BY THE DOZEN, INC.

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Signature

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DANIEL P. KELLY
Printed Name

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PRESIDENT
Title

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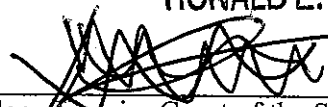
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ORDER AND JUDGMENT

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

Dated: 11/21/06

RONALD E. QUIDACHAY


Judge, Superior Court of the State of California
RONALD E. QUIDACHAY

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EXHIBIT A

Products Covered as to Kern International/Beads By The Dozen

“Products” means imitation pearl beads and imitation pearl bead accessories made of materials containing lead and/or lead compounds, including imitation pearl bead mardis gras-style items.

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
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.

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

10. Lead content shall be expressed in parts per million (ppm).

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EXHIBIT C
Letter of Instruction re Recall Notice

[Defendant Letterhead]

IMPORTANT LEGAL NOTICE

Date: []

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

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

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

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

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

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