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**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 22 2008

Adalpin, Exec. Off./Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA, ex)
rel. BILL LOCKYER, Attorney General, et al.,)
Plaintiffs,)
vs.)
BURLINGTON COAT FACTORY)
WAREHOUSE CORPORATION, et al,)
Defendants.)
_____)
AND RELATED CONSOLIDATED CASES.)

Case No. RG 04-162075
(Consolidated with RG 04-162037, RG
04-169511)
[PROPOSED] CONSENT JUDGMENT
AS TO WINCRAFT, INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and WinCraft, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the complaint in the matter entitled *Center for Environmental Health v. Nadri, Inc., et al.*, Alameda County Superior Court Case No. RG 06-269531 (the "*Nadri Action*").

1.2 On May 12, 2006, CEH filed the original complaint in the *Nadri Action*, which was later consolidated with three other actions including the lead case entitled *People v. Burlington*

1 *Coat Factory et al.* (Alameda Superior Court Case No. RG 04-162075).

2 1.3 On February 21, 2006, upon noticed motion, the Court entered a Consent Judgment
3 against a group of other defendants in the consolidated actions (the "Master Consent Judgment").

4 1.4 On June 15, 2006, upon noticed motion, the Court amended the Master Consent
5 Judgment by entering an Amended Consent Judgment in the consolidated actions (the "Amended
6 Master Consent Judgment").

7 1.5 On December 27, 2006, CEH provided a "Notice of Violation of Proposition 65" to
8 the California Attorney General, the District Attorneys of every county in California, the City
9 Attorneys of every California city with a population greater than 750,000, and to Wincraft, Inc.,
10 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

11 1.6 On November 8, 2007, the Complaint in the *Nadri* Action was amended to name
12 additional defendants, including Defendant Wincraft, Inc.

13 1.7 Defendant is a corporation that employs 10 or more persons, and which
14 manufactures, distributes and/or sells Covered Products in the State of California.

15 1.8 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
16 stipulate that this Court has jurisdiction over the allegations of violations contained in the
17 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
18 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
19 Consent Judgment as a full and final resolution of all claims which were or could have been raised
20 in the Complaint based on the facts alleged therein with respect to Covered Products
21 manufactured, distributed, and/or sold by Defendant.

22 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement
23 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
24 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
25 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
26 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
27 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
28 requirements relating to lead in jewelry. Nothing in this Consent Judgment shall be construed as

1 an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor
2 shall compliance with the Consent Judgment constitute or be construed as an admission by the
3 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
4 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
5 have in this or any other or future legal proceedings. This Consent Judgment is the product of
6 negotiation and compromise and is accepted by the Parties for purposes of settling, compromising,
7 and resolving issues disputed in this action.

8 1.10 CEH and Defendant intend, and the Court finds, that the injunctive terms contained
9 in Sections 2, 3.1 through 3.4, and 4 of this Consent Judgment are “substantially identical terms as
10 provided in Sections 2, 3 and 4 of the amended consent judgment,” as those terms are used in
11 Health & Safety Code §25214.3(d).

12 2. DEFINITIONS

13 2.1 The term “Person” shall have the same meaning as that term is defined in
14 California Health & Safety Code §25249.11(a).

15 2.2 The term “Covered Products” means (a) the following ornaments worn by a person:
16 an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring,
17 necklace, pin, ring, and Body Piercing Jewelry, or (b) any bead, chain, link, pendant, or other
18 component of such an ornament.

19 2.3 The term “Body Piercing Jewelry” means any part of a Covered Product that is
20 manufactured or sold for placement in new piercings and/or mucous membranes, and does not
21 include those parts of Covered Products not placed within new piercings and/or mucous
22 membranes.

23 2.4 The term “Children’s Products” means Covered Products that are made for,
24 marketed for use by, or marketed to, Children.

25 2.4.1 For purposes of this Consent Judgment, the term “Children” means
26 children aged 6 and younger.

27 2.4.2 A Covered Product is made for, marketed for use by, or marketed to
28 Children if it is either:

1 2.4.2.1 Represented in its packaging, display, or advertising, as appropriate
2 for use by Children; or

3 2.4.2.2 Sold in conjunction with, attached to, or packaged together with
4 other products that are packaged, displayed, or advertised as appropriate for use by Children; or

5 2.4.2.3 Sized for Children and not intended for use by adults.

6 2.4.2.4 Sold in

7 2.4.2.4.1 a vending machine; or

8 2.4.2.4.2 a retail store, catalogue, or online website, in which
9 Defendant exclusively offers for sale products that are packaged,
10 displayed, or advertised as appropriate for use by Children; or

11 2.4.2.4.3 those discrete portions of a retail store, catalogue, or
12 online website, in which Defendant offers for sale products that are
13 packaged, displayed, or advertised as appropriate for use by
14 Children.

15 2.5 The term "Supplier" means a Person that directly supplies Covered Products that
16 are or will be offered for retail sale in California to Defendant.

17 2.6 Any time a measurement of lead content is referred to in this Consent Judgment by
18 a percentage, it means percent lead by weight.

19 2.7 The term "Effective Date" means the date this Consent Judgment is entered by the
20 Court.

21 **3. INJUNCTIVE RELIEF**

22 3.1 **Reformulation of Covered Products.** Subject to the Additional Injunctive Relief
23 agreed to by Defendant as defined and set forth in Section 3.5, after the Effective Date, Defendant
24 shall not: (1) manufacture; (ii) ship; or (iii) sell or offer for sale Covered Products for retail sale in
25 California unless the Covered Product complies with Section 3.2 or, for Children's Products,
26 Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of this Consent Judgment. Defendant shall
27 provide the requirements of this Consent Judgment to its Suppliers of Covered Products no later
28 than the Effective Date.

1 3.2 **Reformulation Requirements.** Covered Products that are not Children’s Products
2 or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3 Components,
3 or any combination thereof, as these terms are defined below.

4 3.2.1 A “Class 1 Component” is the portion of a Covered Product that contains
5 one or more of the following materials:

6 3.2.1.1 Stainless and surgical steels.

7 3.2.1.2 Karat gold.

8 3.2.1.3 Sterling silver.

9 3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium
10 (“platinum group metals”).

11 3.2.1.5 Natural and cultured pearls.

12 3.2.1.6 Glass, ceramic, and crystal decorative components (e.g., cat’s eye,
13 cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

14 3.2.1.7 Any gemstone that is cut and polished for ornamental purposes
15 except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
16 phosgenite, samarskite, vanadinite, and wulfenite.

17 3.2.1.8 Elastic, fabric, ribbon, rope, and string with no intentionally-added
18 lead and not otherwise listed as a Class 2 component.

19 3.2.1.9 Natural decorative materials (e.g., amber, bone, coral, feathers, fur,
20 horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add
21 lead.

22 3.2.1.10 Adhesives.

23 3.2.2 A “Class 2 Component” is the portion of a Covered Product that contains
24 one or more of the following materials:

25 3.2.2.1 Metal alloys with less than 10 percent lead by weight (“88 metal”)
26 that are electroplated with suitable under and finish coats and that are plated utilizing the Best
27 Management Practices described in Exhibit B. For Covered Products shipped by Defendant as a
28 Supplier after December 31, 2008, to a third party for retail sale in California, and for Covered

1 Products sold or offered for retail sale in California by Defendant after August 31, 2009, this
2 standard shall be metal alloys with less than 6 percent lead by weight (“92 metal”) that are
3 electroplated with suitable under and finish coats and that are plated utilizing the Best
4 Management Practices described in Exhibit B.

5 3.2.2.2 Unplated metal containing less than 1.5 percent lead that is not
6 defined as a Class 1 Component.

7 3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and
8 polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For
9 Covered Products shipped by Defendant as a Supplier after December 31, 2008, to a third party for
10 retail sale in California, and for Covered Products sold or offered for retail sale in California by
11 Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead
12 by weight

13 3.2.2.4 Dyes and Surface Coatings containing less than 0.06 percent (600
14 parts per million) lead. For purposes of this Consent Judgment, “Surface Coating” shall carry the
15 same meaning as “Paint or other similar surface coating” under 16 CFR §1303.2(b)(1) (“Paint and
16 other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without
17 a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is
18 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not
19 include printing inks or those materials which actually become a part of the substrate, such as the
20 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as
21 by electroplating or ceramic glazing.”).

22 3.2.3 A “Class 3 Component” is any part of a Covered Product that is not a
23 Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600
24 parts per million) lead.

25 3.3 **Children’s Products.** Children’s Products shall be made entirely from:

26 3.3.1 Non-metallic materials that are Class 1 Components other than glass or
27 crystal decorative components;

28 3.3.2 Non-metallic materials that are Class 2 Components;

1 3.3.3 Metallic materials that are either Class 1 Components or contain less than
2 0.06 percent (600 parts per million) lead;

3 3.3.4 Glass or crystal decorative components that weigh in total no more than
4 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02
5 percent (200 parts per million) lead and have no intentionally added lead.

6 3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600
7 parts per million) lead;

8 3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per
9 million) lead; or

10 3.3.7 Any combination thereof.

11 3.4 **Body Piercing Jewelry.** Body Piercing Jewelry shall be made of one of the
12 following materials:

13 3.4.1 Surgical Implant Stainless Steel

14 3.4.2 Surgical Implant grades of Titanium

15 3.4.3 Niobium (Nb)

16 3.4.4 Solid 14 karat or higher white or yellow nickel-free gold

17 3.4.5 Solid platinum

18 3.4.6 A dense low porosity plastic such as Tygon or PTFE with no intentionally
19 added lead.

20 3.5 **Additional Injunctive Relief.** Defendant has agreed to comply with the following
21 additional injunctive relief in addition to that set forth in Sections 3.1 through 3.4:

22 3.5.1 **600 ppm Standard.** On or after March 1, 2009, the metallic materials
23 used in all Covered Products manufactured, distributed, shipped or sold by Defendant shall be
24 either Class 1 Components or contain less than 0.06 percent (600 parts per million) lead. Between
25 March 1, 2008, and March 1, 2009, the metallic materials used in Defendant's Covered Products
26 shall comply with Section 3.2.2.1 above.

27 3.5.2 **National Application of Reformulation Standards.** All Covered
28 Products manufactured, distributed, shipped or sold by Defendant within the United States shall

1 comply with the lead content requirements set forth in Sections 3.2, 3.3, 3.4 and 3.5.1 of this
2 Consent Judgment.

3 **3.5.3 Market Withdrawal of Covered Products.** On or before the Effective
4 Date, Defendant shall cease shipping the Rhinestone Kings Pin, SKU # 1136, that was identified
5 in the 60 Day Notice of Violation sent by CEH to Defendant dated December 27, 2006 (the
6 "Recall Product") to stores and/or customers in California, and Defendant shall withdraw the
7 Recall Product from the market in California, and, at a minimum, send instructions to any of its
8 stores and/or customers that offer the Recall Product for sale in California to cease offering such
9 Recall Product for sale in California and to either return all Recall Product to Defendant for
10 destruction, or to directly destroy the Recall Product. Any destruction of the Recall Product shall
11 be in compliance with all applicable laws. Defendant shall keep and make available to CEH for
12 inspection and copying records and correspondence regarding the market withdrawal and
13 destruction of Recall Products. If there is a dispute over the corrective action, the Parties shall
14 meet and confer before seeking any remedy in court.

15 **4. ENFORCEMENT**

16 **4.1 General Enforcement Provisions.** The Attorney General or CEH may, by motion
17 or application for an order to show cause before this Court, enforce the terms and conditions
18 contained in this Consent Judgment, subject to the following:

19 **4.1.1** Any action to enforce the terms of Section 3 of this Consent Judgment
20 shall be brought exclusively pursuant to this Section 4.

21 **4.1.2** No action to enforce this Consent Judgment may be brought by CEH
22 unless the Attorney General either joins in such action or provides written non-objection to the
23 proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of
24 Section 4.2.4. The Attorney General agrees to provide either a written objection or written non-
25 objection to a proposed enforcement proceeding within 15 days of receipt of a written request for
26 such a response from CEH, provided that the Attorney General may extend such 15 day response
27 time by a single extension of an additional 15 days by writing to the requesting party. The fact
28 that the Attorney General provides a written non-objection shall not be construed as endorsement

1 of or concurrence in an enforcement action. Any written non-objection shall be admissible in
2 court only if Defendant challenges the right of CEH to enforce this Consent Judgment for failure
3 to obtain the written non-objection.

4 4.1.3 For purposes of this Section 4 only, the term "Defendant" includes a
5 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
6 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
7 amended consent judgment," as those terms are used in Health & Safety Code §25214.3(d).

8 4.2 **Enforcement of Materials Violation.**

9 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
10 Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products
11 that the Notifying Person believes in good faith do not comply with Section 3 of this Consent
12 Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section 4.

13 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

14 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
15 Section 6.5 to receive notices for Defendant, and must be served within 45 days of the date the
16 alleged violation(s) was or were observed. The Notice of Violation shall also be served on
17 Defendant as a Supplier of the Covered Products identified by Brand Names listed on Exhibit D to
18 the Amended Master Consent Judgment for the Covered Product(s) in question.

19 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
20 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
21 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to
22 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
23 Product and supporting documentation sufficient for validation of the test results, including all
24 laboratory reports, quality assurance reports and quality control reports associated with testing of
25 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
26 criteria of Exhibit C. Wipe, swipe, and swab testing are not sufficient to support a Notice of
27 Violation.

28 4.2.2.3 The Notifying Person shall promptly make available for inspection

1 and/or copying upon request all supporting documentation related to the testing of the Covered
2 Products and associated quality control samples, including chain of custody records, all laboratory
3 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
4 printouts from all analytical instruments relating to the testing of Covered Product samples and
5 any and all calibration, quality assurance, and quality control tests performed or relied upon in
6 conjunction with the testing of the Covered Products, obtained by or available to the Notifying
7 Person that pertains to the Covered Product's alleged noncompliance with Section 3 and, if
8 available, any exemplars of Covered Products tested.

9 4.2.3 **Notice of Election of Response.** No more than 30 days after receiving a
10 Notice of Violation, Defendant shall provide written notice to the Notifying Person whether it
11 elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

12 4.2.3.1 If a Notice of Violation is contested the Notice of Election shall
13 include all then-available documentary evidence regarding the alleged violation, including all test
14 data, if any. If Defendant or the Notifying Person later acquires additional test or other data
15 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
16 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria
17 of Exhibit C.

18 4.2.3.2 If a Notice of Violation is not contested, the Notice of Election shall
19 include a description of Defendant's corrective action pursuant to Section 4.2.6. The Notice of
20 Election shall include the name, address, telephone number, and other contact information, of
21 Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation, and any
22 other Defendant to whom it sold any Covered Product(s) identified in the Notice of Violation.

23 4.2.4 **Meet and Confer.** If a Notice of Violation is contested, the Notifying
24 Person, the Attorney General, and the Defendant shall meet and confer to attempt to resolve their
25 dispute. Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no
26 enforcement action has been filed, Defendant may withdraw the original Notice of Election
27 contesting the violation and serve a new Notice of Election conceding the violation. If no
28 informal resolution of a Notice of Violation results, the Notifying Person may by motion or order

1 to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions
2 contained in this Consent Judgment. In any such proceeding, the Attorney General and CEH may
3 seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with
4 the Consent Judgment.

5 4.2.5 **Non-Contested Matters.** If Defendant elects not to contest the
6 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
7 and shall make any contributions required by Section 4.2.7.

8 4.2.6 **Corrective Action in Non-Contested Matters.** If Defendant elects not to
9 contest the allegation, it shall include in its Notice of Election a detailed description of corrective
10 action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified
11 in the Notice of Violation for sale in California. Corrective action must include instructions to
12 Defendant's stores to cease offering the Covered Product(s) identified in the Notice of Violation
13 for sale in California as soon as practicable. Defendant shall make available to the Notifying
14 Person for inspection and/or copying records and correspondence regarding the corrective action.
15 If there is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section
16 4.2.4 before seeking any remedy in court.

17 4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in**
18 **Non-Contested Matters.** Defendant shall be required to make a contribution to the Proposition
19 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as specified
20 below:

21 4.2.7.1 If Defendant serves a Notice of Election not to contest the
22 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not
23 be required to make any contributions pursuant to this Section.

24 4.2.7.2 If Defendant serves a Notice of Election not to contest the
25 allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the
26 Notice of Violation, Defendant shall make a required contribution in the amount of \$2,500 for
27 each Supplier from whom it purchased the Covered Product(s) identified in any Notices of
28 Violation served within a 30-day period.

1 4.2.7.3 If Defendant withdraws a Notice of Election contesting the violation
2 and serves a new Notice of Election not to contest the allegations in a Notice of Violation within
3 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the
4 violations alleged in the Notice of Violation is filed, Defendant shall make a required contribution
5 in the amount of \$7,500 for each Supplier from whom it purchased the Covered Product(s)
6 identified in any Notices of Violation served within a 30-day period.

7 4.2.7.4 The contributions shall be paid within 15 days of service of a Notice
8 of Election.

9 4.2.7.5 Defendant's liability for required contributions shall be limited as
10 follows:

11 4.2.7.5.1 Defendant as a Supplier to one or more retailers shall
12 be liable for one required contribution within any 30-day period,
13 regardless of the number of retailers to whom the Covered Product
14 is distributed.

15 4.2.7.5.2 If Defendant has manufactured, sold, or distributed a
16 Covered Product identified in a Notice of Violation, only one
17 required contribution may be assessed against the Defendant
18 potentially liable therefore in any 30-day period, in the following
19 order of priority: (1) Manufacturers; (2) Importers; (3) Distributors,
20 and (4) Retailers.

21 4.2.7.5.3 Defendant's monetary liability to make required
22 contributions under Section 4.2.7.2 shall be limited to \$5,000 for
23 each 30-day period. Defendant's monetary liability to make
24 required contributions under Section 4.2.7.3 shall be limited to
25 \$15,000 for each 30-day period.

26 4.2.7.6 If Defendant has paid either of the payments set forth in Sections
27 4.2.7.2 and 4.2.7.3 more than six times in any 18-month period, or more than three times in any
28 12-month period for Covered Products sold to Defendant from the same Supplier then, at the

1 Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or
2 remedies are provided by law for failure to comply with the Consent Judgment.

3 4.2.8 **Limitation on Liability.** Defendant's liability when it elects not to
4 contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

5 **5. PAYMENTS**

6 5.1 **Payments From Defendant.** Within five days of the entry of this Consent
7 Judgment, Defendant shall pay the total sum of \$100,000 as a settlement payment. Any failure by
8 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee in the
9 amount of \$100 for each day after the delivery date the payment is received. The late fees
10 required under this section shall be recoverable, together with reasonable attorneys' fees, by way
11 of motion to enforce this Consent Judgment.

12 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
13 in three separate checks delivered to the offices of the Lexington Law Group, LLP (Attn: Eric
14 Somers), 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as
15 follows:

16 5.2.1 Defendant shall pay the sum of \$1,000 as a civil penalty pursuant to
17 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with
18 Health & Safety Code §25249.12. The \$1,000 penalty check shall be made payable to the Center
19 For Environmental Health.

20 5.2.2 Defendant shall pay the sum of \$32,300 as payment to CEH in lieu of
21 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
22 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
23 exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such
24 funds to monitor compliance with the reformulation requirements of this and other similar Consent
25 Judgments, to purchase and test jewelry, and to prepare and compile the information and
26 documentation necessary to support a Notice of Violation. The payment in lieu of penalty check
27 shall be made payable to the Center For Environmental Health.

28 5.2.3 Defendant shall pay the sum of \$66,700 as reimbursement of reasonable

1 attorneys fees and costs. The attorneys fees and cost reimbursement check shall be made payable
2 to the Lexington Law Group, LLP.

3 **6. MODIFICATION AND DISPUTE RESOLUTION**

4 6.1 **Modification.** This Consent Judgment may be modified from time to time by
5 express written agreement of the Parties, with the approval of the Court, or by an order of this
6 Court upon motion and in accordance with law.

7 6.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation is
8 adopted that addresses the lead content of Covered Products sold in California, any Party shall be
9 entitled to request that the Court modify this Consent Judgment for good cause shown.

10 6.3 **Modification of Amended Master Consent Judgment.** Upon the entry of any
11 order amending Sections 2, 3 or 4 of the Amended Master Consent Judgment, the corresponding
12 terms of Sections 2, 3.1 through 3.4, or 4 of this Consent Judgment shall be deemed amended, so
13 that the injunctive terms contained in Sections 2, 3.1 through 3.4, or 4 of this Consent Judgment
14 remain "substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent
15 judgment," as those terms are used in Health & Safety Code §25214.3(d). Defendant's obligation
16 to undertake additional injunctive relief under Section 3.5 shall not be subject to amendment under
17 this section, and may not be modified absent stipulation of the parties or court order.

18 6.4 **Reopeners.** The Parties may seek to reopen the requirements of Section 3 as to
19 Covered Products other than Children's Products as follows:

20 6.4.1 **Limited Reopener of Component Designation for Certain**
21 **Components.** The parties acknowledge that the materials described in Sections 3.2.1.8 and
22 3.2.1.9 are not generally known to contain or expose users to lead and, as such, have been
23 designated as Class 1 Components. CEH, with the written non-opposition of the Attorney
24 General, may seek to modify this Consent Judgment by seeking the re-designation of any material
25 described in Sections 3.2.1.8 and 3.2.1.9 from Class 1 Component to a Class 2 Component with a
26 lead standard for such material, if, subsequent to the Effective Date, CEH obtains information that
27 demonstrates that such material contains lead and that the use of the material in any Covered
28 Product exposes users of the Covered Product to lead in an amount greater than 0.5 micrograms

1 per day.

2 **6.4.2 Reopener for Class 3 Components.** Any Party may seek to modify this
3 Consent Judgment by seeking to designate a Class 3 Component as a Class 1 Component or as a
4 Class 2 Component with a lead specification standard.

5 **6.4.3 Required Showing to Obtain Reopeners.** A reopener pursuant to
6 Sections 6.4.1 or 6.4.2 shall be granted if the court finds the following:

7 6.4.3.1 A Class 3 Component shall be redesignated as a Class 1 Component
8 if the moving party demonstrates that such material does not contain lead, or that the use of the
9 material in any Covered Product does not expose users of the Covered Product to lead in an
10 amount greater than 0.5 micrograms per day.

11 6.4.3.2 A Class 3 Component, and the materials described in Sections
12 3.2.1.8 and 3.2.1.9, shall be redesignated as a Class 2 Component with a lead specification
13 standard if the moving party demonstrates that use of such material at or below the standard does
14 not expose average users of the Covered Product to lead in an amount greater than 0.5 micrograms
15 per day.

16 **6.5 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
17 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Consent Judgment.

19 **6.5.1 Notices to Defendant.** The person for Defendant to receive Notices
20 pursuant to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

21 Peter Callahan
22 Callahan McCune & Willis
23 111 Fashion Lane
24 Tustin, California 92780
25 Tel: (714) 730-5700 / Fax: (714) 730-1642
26 peter_callahan@cmwlaw.net

27 **6.5.2 Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
28 this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

1 Eric S. Somers
2 Lexington Law Group, L.L.P.
3 1627 Irving Street
4 San Francisco, California 94122
Tel: (415) 759-4111 / Fax: (415) 759-4112
esomers@lexlawgroup.com

5 **7. CLAIMS COVERED AND RELEASE**

6 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
7 Defendant and their parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
8 companies and their successors and assigns ("Defendant Releasees"), and all entities other than
9 those listed on Exhibit D to this Consent Judgment to whom they distribute or sell Covered
10 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
11 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of
12 Proposition 65 or any other statutory or common law claims that have been or could have been
13 asserted in the public interest against Defendant, Defendant Releasees, and Downstream
14 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection
15 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

16 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
17 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
18 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation
19 of Proposition 65 or any other statutory or common law claims that have been or could have been
20 asserted in the public interest regarding the failure to warn about exposure to lead arising in
21 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
22 Effective Date.

23 7.3 Compliance with the terms of this Consent Judgment by Defendant and its
24 Defendant Releasees shall constitute compliance with Proposition 65 by that Defendant, its
25 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
26 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant
27 after the Effective Date.

28 7.4 Nothing in this Section 7 shall apply to any Supplier that is not Defendant unless

1 such Supplier is a parent, subsidiary, or sister company of Defendant.

2 **8. PROVISION OF NOTICE**

3 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
4 notice shall be sent by certified mail and electronic mail to the Party(ies) identified in Section 6.5.
5 Any party may modify the person and address to whom the notice is to be sent by sending each
6 other party notice by certified mail and/or other verifiable form of written communication.

7 **9. COURT APPROVAL**

8 9.1 This Consent Judgment shall become effective on the Effective Date, provided
9 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
10 Defendant shall support approval of such Motion.

11 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
12 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

13 **10. GOVERNING LAW AND CONSTRUCTION**

14 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California.

16 10.2 The Parties, including their counsel, have participated in the preparation of this
17 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
18 Consent Judgment has been accepted and approved as to its final form by all Parties and their
19 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
20 interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.
21 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that
22 ambiguities are to be resolved against the drafting Party should not be employed in the
23 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
24 Civil Code §1654.

25 **11. ATTORNEY'S FEES**

26 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
28 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent

1 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
2 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

3 11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement
4 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
5 Civil Procedure §1021.5 against a party that acted with substantial justification. The party seeking
6 such an award shall bear the burden of meeting all of the elements of §1021.5, and this provision
7 shall not be construed as altering any procedural or substantive requirements for obtaining such an
8 award.

9 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

11 **12. ENTIRE AGREEMENT**

12 12.1 This Consent Judgment contains the sole and entire agreement and understanding
13 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
15 and therein. There are no warranties, representations, or other agreements between the Parties
16 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
17 other than those specifically referred to in this Consent Judgment have been made by any Party
18 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
19 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
20 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
21 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
22 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
23 nor shall such waiver constitute a continuing waiver.

24 **13. RETENTION OF JURISDICTION**

25 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment.

27 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

28 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
2 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

3 **15. NO EFFECT ON OTHER SETTLEMENTS**

4 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
5 against an entity that is not Defendant on terms that are different than those contained in this
6 Consent Judgment.

7 **16. EXECUTION IN COUNTERPARTS**

8 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
9 means of facsimile, which taken together shall be deemed to constitute one document.

10
11 IT IS SO STIPULATED:

12
13 Dated: July 9, 2008

CENTER FOR ENVIRONMENTAL HEALTH

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16
17 MICHAEL GREEN

18 Printed Name

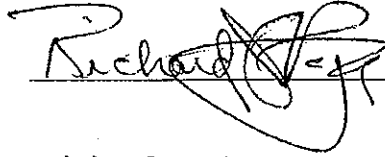
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20 EXECUTIVE DIRECTOR

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28 Title

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Dated: July 9, 2008

WINCRAFT, INC.



Richard J. Pope
Printed Name

Chairman and CEO
Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____, 2008

Honorable Robert J. Freedman
Judge of the Superior Court of the State of California

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Dated: July __, 2008

WINCRAFT, INC.

Printed Name

Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Robert B. Freedman

Dated: SEP 22 2008 2008

Honorable Robert J. Freedman
Judge of the Superior Court of the State of California

1 **EXHIBIT A (CLASS 1, 2, AND 3 COMPONENTS AND BODY PIERCING JEWELRY)**

2 **CLASS 1 COMPONENTS**

3 Stainless and surgical steels

4 Karat gold

5 Sterling silver

6 Platinum, palladium, iridium, ruthenium, rhodium, or osmium ("platinum group metals")

7 Natural and cultured pearls.

8 Glass, ceramic, and crystal decorative components (e.g., cat's eye, cubic zirconia
9 (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonne).

10 Any gemstone that is cut and polished for ornamental purposes except the following:
11 aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite,
12 samarskite, vanadinite, and wulfenite.

13 Elastic, fabric, ribbon, rope, and string with no intentional lead and not otherwise listed as
14 a Class 2 component.

15 Natural decorative materials (e.g., amber, bone, coral, feathers, fur, horn, leather, shell,
16 wood) that are in their natural state or are treated in a way that does not add lead.

17 Adhesives

18 **CLASS 2 COMPONENTS**

19

| COMPONENT | LEAD CONTENT LIMITS |
|---|--|
| Metal substrates that are electroplated | Metal alloys with less than 10 percent lead by weight ("88 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit B. For Covered Products shipped by Defendant as a Supplier after December 31, 2008 to a third party for retail sale in California, and for |

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| | <p>products sold or offered for retail sale in California by Defendant after August 31, 2009, this standard shall be metal alloys with less than 6 percent lead by weight ("92 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit B.</p> |
| <p>Unplated metal not defined as Class 1 Components.</p> | <p>1.5%</p> |
| <p>Metal (plated and unplated) used in Children's Products</p> | <p>0.06% (600 ppm)</p> |
| <p>Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones, polyvinyl chloride (PVC))</p> | <p>0.06%, (600 ppm). For Covered Products shipped by Defendant as a Supplier after December 31, 2008 to a third party for retail sale in California, and for products sold or offered for retail sale in California by Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead by weight</p> |
| <p>Dyes and Surface Coatings</p> | <p>0.06% (600 ppm)</p> |
| <p>Printing inks or ceramic glazes used in Children's Products</p> | <p>0.06% (600 ppm)</p> |
| <p>Glass or crystal decorative components used in Children's Products</p> | <p>Total weight no more than 1.0 gram, excluding glass or crystal decorative components that contain less than 0.02 percent (200 parts per million) lead and have no intentionally added lead.</p> |

1 **EXHIBIT B (BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)**

2 **PRE-PLATING PROCEDURE**

3 The pieces must be cleaned. Any polishing compound must be removed before plating by
4 cleaning with aqueous cleaning solution or solvent and rinsed with water.

5 The pieces must be activated.

6 The pieces must be rinsed in clean water before plating.

7 **PLATING BATH MAINTENANCE**

8 The temperature of each plating bath must be controlled to the appropriate temperature in
9 accordance with the recommendations of the equipment and plating chemical suppliers.

10 The nickel and nickel-substitute tanks must be agitated or aerated in accordance with the
11 chemical suppliers' recommendations.

12 All baths must be filtered continuously during plating and filters changed at least than
13 monthly.

14 pH must be measured each day of plating and adjusted within the chemical supplier's
15 recommendations.

16 All plating employees must be trained on the use of the equipment in accordance with
17 recommendation of equipment manufacturer and plating chemical suppliers.

18 The plating baths must be maintained in accordance with the plating chemical suppliers
19 recommendations.

20 Plating tanks must be swept at least weekly.

21 Anodes must be inspected monthly in accordance with the anode supplier's
22 recommendations.

23 Racks must be stripped at least annually.

24 The electrical equipment must be sized appropriately for each tank in accordance with
25 equipment manufacturer's recommendations and calibrated annually.

26 **PLATING PROCEDURES**

27 Substantial pieces such as pendants, drops, and rings without prongs or other such feature
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shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite, imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces can be treated to produce other finishes such as matt, oxidized, or smut black finishes.

Mechanical, functional (e.g., lobster claws, spacers, mechanical closures, connectors), or fine pieces such as prongs and fine chains may be plated to cover the exposed surface consistent with good manufacturing practices for appearance and function. Components that articulate closely together such as snake chain and tight hinges or that need to be manipulated into position will be plated to prevent binding, stiffness, and cracking of plating.

1 **EXHIBIT C (TESTING PROTOCOLS)**

2 The following test methods must be used to determine compliance with the lead standards
3 set forth in this Consent Judgment. A material shall not meet the applicable lead standard if the
4 mean lead level of: (1) one or two samples exceeds 300% of the component specification limit;
5 (2) three samples exceeds 200% of the component specification limit; or (3) four or more samples
6 exceeds the component specification limit.

7 Laboratory sample preparation protocols specific for testing the lead content of jewelry
8 components are not readily available. The sample preparation method used in USEPA Method
9 3050B or Method 3051 shall be followed, as modified in the following table for use with jewelry
10 samples. The laboratory should make every effort to assure that samples removed from jewelry
11 pieces are representative of the component to be tested, and are free of contamination from
12 extraneous dirt and material not related to the jewelry component to be tested. All jewelry
13 component samples shall be washed prior to testing using standard laboratory detergent, rinsed
14 with laboratory reagent grade deionized water, and dried in a clean ambient environment. If
15 components must be cut or scraped to obtain a sample, then metal snips, scissors, or other cutting
16 tools used must be made of stainless steel and washed and rinsed before each use and between
17 samples.

18 Samples should be digested in containers that are known to be free of lead using acids that
19 are not contaminated by lead. Analytical Reagent grade digestion acids and reagent grade
20 deionized water are required. Method Blanks, consisting of all reagents used in sample
21 preparation handled, digested and made to volume in the same exact manner and in the same
22 container type as samples, shall be tested with each group of 20 or fewer samples tested. The
23 results for the Method Blank shall be reported with each group of sample results, and shall be
24 below the stated reporting limit for sample results to be considered valid.

25 All jewelry components samples shall be prepared for testing in accordance with USEPA
26 Method 3050B or 3051, with the following additional notes and exceptions:
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| COMPONENT | NOTES AND EXCEPTIONS |
|--|---|
| Metals plated with suitable undercoats and finish coats | Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.1% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument. |
| Unplated metal and metal substrates not defined as Class 1 Components. | Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.01% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument. |
| Polyvinyl chloride (PVC) | Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion, and should be chopped or comminuted prior to digestion. Digested samples may require dilution prior to analysis. 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. |
| Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones). | Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion and should be chopped or comminuted prior to digestion. Plastic beads or stones should be crushed prior to digestion. Digested samples may require dilution prior to analysis. 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. |
| Coatings on Glass and Plastic Pearls. | The coating of glass or plastic beads should be scraped onto a surface free of dust, such as a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The razor blade or sharp instrument should be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples. Weigh the scrapings. A minimum of 50 mg of scraped |