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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 15 2008

CLERK OF THE SUPERIOR COURT  
By HOLLIE M. ADAMIC  
Deputy

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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF ALAMEDA  
11

12 PEOPLE OF THE STATE OF CALIFORNIA, )  
13 ex rel. BILL LOCKYER, Attorney General, )

14 Plaintiffs, )

15 v. )

16 BURLINGTON COAT FACTORY )  
17 WAREHOUSE CORPORATION, *et al.*, )

18 Defendants. )

19 And Related and Consolidated Cases.  
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Lead Case No. RG 04-162075

(Consolidated with Case Nos. RG 04-  
162037, RG 04-169511 and RG 06-  
269531)

**STIPULATED CONSENT JUDGMENT  
AS TO COLDWATER CREEK INC.**

Complaint Filed: June 23, 2004  
Trial Date: None

1           **I. Introduction.**

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

7           **b.**       On May 12, 2006, CEH filed the original complaint in the *Nadri Action*.

8           **c.**       On July 12, 2006, the Court consolidated the *Nadri Action* with three  
9 previously filed cases that had already been consolidated under *People v. Burlington Coat*  
10 *Factory Warehouse Corp., et al.*, Alameda County Superior Court Case No. RG 04-162075 (the  
11 "*Lead Case*").

12           **d.**       On February 12, 2007, CEH provided a "Notice of Violation of  
13 Proposition 65" to the California Attorney General, the District Attorneys of every county in  
14 California, the City Attorneys of every California city with a population greater than 750,000,  
15 and to Coldwater regarding the presence of lead in jewelry manufactured, distributed or sold by  
16 Coldwater.

17           **e.**       On or about June 21, 2007, CEH named Coldwater as a defendant in the  
18 *Nadri Action*.

19           **f.**       On June 15, 2006, upon due notice, the Court entered an Amended  
20 Consent Judgment in the three original consolidated cases against a group of different  
21 defendants, a true and correct copy of which is attached hereto as Exhibit 1 (the "*Global Consent*  
22 *Judgment*")<sup>1</sup>.

23           **g.**       On July 20, 2007, CEH filed a motion for approval of a proposed Consent  
24 Judgment resolving CEH's claims against Coldwater. After filing the motion, Coldwater  
25 determined that it did not understand the nature of certain provisions of the proposed Consent  
26

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27           <sup>1</sup> In order to minimize the size of Exhibit 1, the attached Amended Consent  
28 Judgment does not include certain signature pages or Exhibit A (list of initial defendants),  
Exhibit E (brand names from initial defendants), Exhibit F (initial defendant notice list), Exhibit  
G (copies of Notices of Intent to Opt In) and Exhibit H (Roman Company signature page).

1 Judgment, and opposed the entry of the proposed Consent Judgment. Following a court-ordered  
2 meet and confer process, CEH and Coldwater (the "Parties") have agreed to the terms of a  
3 revised Consent Judgment as set forth herein. Coldwater represents and warrants that Coldwater  
4 has read this revised Consent Judgment, understands its contents, and can perform its obligations  
5 hereunder, and Coldwater agrees to not object to entry of this Consent Judgment and to use its  
6 best efforts to have the Court enter this Consent Judgment.

7           **h.** Coldwater is a corporation that employs 10 or more persons, and which  
8 manufactures, distributes and/or sells Covered Products in the State of California.

9           **i.** The Parties intend that the terms of this Consent Judgment are  
10 "substantially identical terms as provided in Sections 2, 3, and 4" of the Global Consent  
11 Judgment, as that phrase is used in Health & Safety Code §25214.3(d).

12           **2. Jurisdiction and Venue.** For purposes of this Consent Judgment only, the  
13 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the  
14 Complaint and personal jurisdiction over Coldwater as to the acts alleged in the Complaint, that  
15 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
16 Consent Judgment as a full and final resolution of all claims which were or could have been  
17 raised in the Complaint based on the facts alleged therein with respect to Covered Products  
18 manufactured, distributed, and/or sold by Coldwater.

19           **3. Judgment Terms.** Judgment shall be entered against Coldwater in this  
20 consolidated action pursuant to the terms of this Consent Judgment which adopts the provisions  
21 set forth in the attached Exhibit 1 as if Coldwater was a CEH Defendant and a Settling Defendant  
22 as such terms are defined in Exhibit 1, subject to the following modifications.

23           **a. Representation and Warranty.** Coldwater represents and warrants that  
24 Coldwater has read this revised Consent Judgment, understands its contents, and can perform its  
25 obligations hereunder. Coldwater further agrees to not object to entry of this Consent Judgment  
26 and to use its best efforts to have the Court enter this Consent Judgment.

27           **b. National Reformulation.** Coldwater agrees that the reformulation  
28 standards of this Consent Judgment shall not be limited to California but shall apply throughout

1 the United States.

2           **c. Market Withdrawal of Covered Products.** On or before June 1, 2007,  
3 Coldwater shall withdraw from the market in California, and return the Covered Products to the  
4 Supplier for destruction, the following Covered Products:

5  
6           Pave Burst NL Slv 28IN Necklace   SKU # 018085149-310-346  
7           Coin Prl Heart Drop Er           SKU # 018073248 343 701  
8           Swirls N Beads NL                 SKU # 018085319 070 345  
9           Swirl Flower Loop NL BRW       SKU # 018085318 110 347

10 Coldwater shall keep and make available to CEH for inspection and copying records and  
11 correspondence regarding the market withdrawal and destruction of Covered Products. If there is  
12 a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy  
13 in court.

14           **d. Supplier and Employee Training.** Coldwater shall retain a third party  
15 consulting firm to develop the following training programs: (1) a training seminar to be provided  
16 by such third party consulting firm for its management level-employees that are responsible for  
17 acquisition and testing of Covered Products on the requirements of this Consent Judgment, and  
18 (2) a training seminar to be provided either by such third party consulting firm or by Coldwater  
19 for its Suppliers of Covered Products, to train and educate the Suppliers on the requirements of  
20 this Consent Judgment. These seminars shall include training on compliance through  
21 reformulation with confirmatory testing. The training seminar for employees and the materials  
22 used for the Supplier training seminar must be approved in advance by Plaintiff. Such seminars  
23 shall take place no later than February 2008.

24           **e. Section 1.8.** Section 1.8 in Exhibit 1 to this Consent Judgment is  
25 modified as follows:

26           The term "Settling Defendant" means CEH Defendants and any Person  
27 that was a defendant party to the Global Consent Judgment or to a consent judgment that  
28 contained "identical or substantially identical terms as provided in Sections 2, 3, and 4 of the  
amended consent judgment," as those terms are used in Health & Safety Code §25214.3(d).

1           **f. Section 2.8.** Section 2.8 in Exhibit 1 to this Consent Judgment is  
2 modified as follows:

3           The term "Final Compliance Date" means (a) November 1, 2007 for all  
4 Covered Products other than Children's Products; and (b) September 1, 2007 for all Children's  
5 Products.

6           **g. Section 3.1.** The last sentence of Section 3.1 in Exhibit 1 to this Consent  
7 Judgment is modified as follows:

8           Each Settling Defendant shall provide the requirements of this Consent  
9 Judgment to its Suppliers of Covered Products no later than October 31, 2007, and shall request  
10 each Supplier to use best efforts to provide compliant Covered Products as soon as commercially  
11 practicable.

12           **h. Section 3.2.2.1.** Section 3.2.2.1 in Exhibit 1 to this Consent Judgment is  
13 modified as follows:

14           Metal alloys with less than 6 percent lead by weight ("92 metal") that are  
15 electroplated with suitable under and finish coats and that are plated utilizing the Best  
16 Management Practices described in Exhibit B.

17           **i. Section 3.2.2.3.** Plastic or rubber (e.g., acrylic, polystyrene, plastic  
18 beads/stones, and polyvinyl chloride (PVC)) containing less than 0.02 percent (200 parts per  
19 million) lead.

20           **j. Section 3.5.** Section 3.5 shall be added to Exhibit 1 to this Consent  
21 Judgment as follows:

22           3.5 Best Efforts to Achieve 600 ppm Lead in Metal Components.

23           3.5.1 After March 31, 2008, Coldwater shall use best commercial  
24 efforts to ensure that the metal components of all Covered Products it sells are made entirely of  
25 either Class 1 Components or materials that contain less than 0.06 percent (600 parts per million)  
26 lead. No later than May 1, 2009, and on the anniversary thereof, concluding on May 1, 2017,  
27 Coldwater shall report in writing to CEH on its efforts and the results of those efforts as required  
28 by this section.

1 3.5.2 CEH shall use best efforts to identify and introduce to  
2 Coldwater suppliers of Covered Products that are capable of supplying Covered Products that are  
3 made entirely of either Class 1 Components or materials that contain less than 0.06 percent (600  
4 parts per million) lead comparable to the Covered Products that are currently offered for sale by  
5 Coldwater in terms of design and price point.

6 k. Section 5. Section 5 in Exhibit 1 to this Consent Judgment is modified as  
7 follows:

8 5.1 Settlement Payments. Within seven days of the initial entry of this  
9 Consent Judgment, Coldwater shall pay a total of \$125,000 as a settlement payment. This total  
10 shall be paid in three separate checks delivered to the offices of the Lexington Law Group, LLP  
11 and made payable and allocated as follows:

12 5.1.1 Settling Defendant shall pay the sum of \$1,000 as a civil  
13 penalty pursuant to Health & Safety Code §25249.7(b), such money to be apportioned by CEH in  
14 accordance with Health & Safety Code §25249.12. The \$1,000 penalty check shall be made  
15 payable to the Center For Environmental Health.

16 5.1.2 Settling Defendant shall pay the sum of \$14,400 as  
17 payment to CEH in lieu of penalty pursuant to Health & Safety Code §25249.7(b), and California  
18 Code of Regulations, title 11, §3203(b). This payment in lieu of penalty check shall be made  
19 payable to the Center For Environmental Health. CEH will use such funds to continue its work  
20 educating and protecting people from exposures to toxic chemicals, including heavy metals. In  
21 addition, CEH may use a portion of such funds to monitor compliance with the reformulation  
22 requirements of this and other similar Consent Judgments, to purchase and test jewelry, and to  
23 prepare and compile the information and documentation necessary to support a Notice of  
24 Violation.

25 5.1.3 Settling Defendant shall pay the sum of \$109,600 as  
26 reimbursement of reasonable attorneys' fees and costs. The attorneys' fees and cost  
27 reimbursement check shall be made payable to the Lexington Law Group, LLP. This fees and  
28 costs reimbursement consists of the following: \$29,600 in attorneys' fees and costs incurred and

1 reimbursed pursuant to the original Coldwater Consent Judgment; \$60,000 representing a portion  
2 of the attorneys' fees and costs incurred as a result of opposition from Coldwater and the Vendor  
3 Group to CEH's Motion for Entry of the original Coldwater Consent Judgment as well as time  
4 spent negotiating the instant Consent Judgment; and \$20,000 representing estimated fees and  
5 costs for future monitoring of compliance with this Consent Judgment and the future penalty  
6 payments and offsets contemplated in Section 5.2 as well as time spent complying with CEH's  
7 obligations under Section 3.5.2 hereof.

8                                   5.2     Additional Payments In Lieu of Penalties.

9                                   5.2.1   If, despite best efforts, Settling Defendant offers for sale  
10 Covered Products containing Class 2 metal components containing 600 ppm or more lead,  
11 subject to any credit allowed under Section 5.2.2, Settling Defendant shall make the following  
12 additional payments in lieu of penalties to CEH pursuant to Health & Safety Code §25249.7(b),  
13 and California Code of Regulations, title 11, §3203(b):

14   5.2.1.1 For Covered Products sold commencing April 1,  
15 2008 through March 31, 2009, Settling Defendant shall pay CEH \$15,000;

16   5.2.1.2 For Covered Products sold commencing April 1,  
17 2009 through March 31, 2010, Settling Defendant shall pay CEH \$30,000;

18   5.2.1.3 For Covered Products sold commencing April 1,  
19 2010 through March 31, 2011, Settling Defendant shall pay CEH \$45,000;

20   5.2.1.4 For Covered Products sold commencing April 1,  
21 2011 through March 31, 2012, Settling Defendant shall shall pay CEH \$60,000;

22   5.2.1.5 For Covered Products sold commencing April 1,  
23 2012 through March 31, 2013, Settling Defendant shall pay CEH \$75,000;

24                                   5.2.2   For the purpose Section 5.2, "Subject Jewelry" is defined as  
25 all Covered Products other than Covered Products that contain only Class 1 metal components.  
26 Settling Defendant shall be entitled to a credit to be applied against any payments required by  
27 Sections 5.2.1.1 through 5.2.1.4 (but not for the payment in Section 5.2.1.5) in the form of a  
28 percentage reduction equivalent to the number of units of Subject Jewelry sold by Settling

1 Defendant in each such period that contain no metal materials with 600 ppm or more lead,  
2 divided by the total number of units of Subject Jewelry sold by Settling Defendant in each such  
3 time period. The formula for calculating the credit is:

4 (Penalty payment) X (# of units of Subject Jewelry that comply with 600 ppm  
5 metal material best efforts requirement) / (total # of units of Subject Jewelry)<sup>2</sup>

6 5.2.3 Payments required under Section 5.2.1 shall be made no  
7 later than the first day of May following the expiration of the relevant period. These payments  
8 shall be made by check payable to the Lexington Law Group, LLP Attorney Client Trust Account  
9 and these payments shall be allocated by CEH as follows:

10 5.2.3.1 Subject to the offset in Section 5.2.2, the first  
11 \$15,000 of payments required under Section 5.2.1 in each year shall be payable to CEH.

12 5.2.3.2 Any remaining payments required under Section  
13 5.2.1 in each year shall be allocated equally between CEH and the Proposition 65 Jewelry  
14 Testing Fund established pursuant to the global Amended Consent Judgment entered in this  
15 matter on June 16, 2006.

16 5.2.3.3 All payments allocated to CEH pursuant to this  
17 Section 5.2.3 as payments in lieu of penalties shall be used by CEH for the purposes set forth in  
18 Section 5.1.2.

19 5.2.4 Settling Defendant shall not be required to make the  
20 payments required under Sections 5.2.1.4 and 5.2.1.5 if it can demonstrate that the following  
21 conditions are satisfied:

22 5.2.4.1 Settling Defendant has made the best efforts  
23 obligation under Section 3.5.1 and has submitted each of the yearly reports through May 1, 2011;

24 5.2.4.2 CEH does not identify and introduce to Settling  
25 Defendant Suppliers that are capable of supplying at least 50% of Settling Defendant's Subject  
26

27 <sup>2</sup> By way of example, if in the period April 1, 2008 through March 31, 2009, Settling  
28 Defendant sells 5000 units of Subject Jewelry, and 2000 of those units contain Class 2 metal  
components with less than 600 ppm, Settling Defendant would pay \$12,000 (\$20,000 x  
(2000/5000)).



1 Jewelry that is comparable to the Covered Products that are currently offered for sale by  
2 Coldwater and that contain no more than 600 ppm lead.

3                                   5.2.5 Should Coldwater assert that because of the application of  
4 Section 5.2.4, it does not owe the payments set forth in either Section 5.2.1.4 or 5.2.1.5, the  
5 Parties shall meet and confer in an attempt to resolve the dispute. If they are unable to resolve  
6 the dispute, CEH may file an order to show cause or other motion to enforce, and should CEH  
7 prevail on such order to show cause or other motion to enforce, Coldwater shall pay CEH's  
8 reasonable attorneys' fees and costs.

9                                   5.2.6 Coldwater shall not be required to make the payment set  
10 forth in Section 5.2.1.5 if it demonstrates that the credit calculated pursuant to Section 5.2.2 for  
11 the year covered by Section 5.2.1.4 was greater than fifty percent, that is if Coldwater  
12 demonstrates that over fifty percent of the units of Subject Jewelry it sold between April 1, 2011  
13 through March 31, 2012 met the 600 ppm lead requirement.

14                    **i. Section 7.** The references to the "People" and "Business and Professions  
15 Code Section 17200 *et seq.*" in Section 7 of Exhibit 1 to this Consent Judgment are modified  
16 such that they are of no force or effect.

17                    **m. Notices.** The person for Coldwater to receive Notices pursuant to Sections  
18 4.2.2.2, Section 8 and Exhibit F in Exhibit 1 to this Consent Judgment, until and unless modified  
19 pursuant to Section 8, shall be:

20                                   Cindy Elliott  
21                                   Elsaesser Jarzabek Anderson Marks Elliott & McHugh  
22                                   PO Box 1049  
23                                   123 South Third Avenue  
24                                   Sandpoint, ID 83864

25                    **n. References to the People and AYS.** All references to the People, AYS,  
26 and AYS Defendants in Exhibit 1 to this Consent Judgment are to have no force or effect.  
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1 **IT IS SO STIPULATED.**

2 CENTER FOR ENVIRONMENTAL HEALTH

3  
4 By: Michael Green

5  
6 Printed Name: MICHAEL GREEN

7  
8 Title: EXECUTIVE DIRECTOR

9  
10 COLDWATER CREEK INC.

11  
12 By: \_\_\_\_\_

13  
14 Printed Name: \_\_\_\_\_

15  
16 Title: \_\_\_\_\_

17 **JUDGMENT SO RENDERED.**

18 \_\_\_\_\_, 2007

19 \_\_\_\_\_  
20 JUDGE OF THE SUPERIOR COURT

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**IT IS SO STIPULATED.**

CENTER FOR ENVIRONMENTAL HEALTH

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

COLDWATER CREEK INC.

By:  \_\_\_\_\_

Printed Name: Timothy Martin

Title: Senior Vice President-CFO

**JUDGMENT SO RENDERED.**

FEB 15 2008, 2007

ROBERT FREEDMAN

JUDGE OF THE SUPERIOR COURT

# **EXHIBIT 1**

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2  
3 **ENDORSED**  
4 **FILED**  
5 **ALAMEDA COUNTY**

6 **JUN 15 2006**

7 CLERK OF THE SUPERIOR COURT  
8 By HOLLIE M. ADAMIC  
9 Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA  
12 UNLIMITED JURISDICTION

13 PEOPLE OF THE STATE OF CALIFORNIA, ex )  
14 rel. BILL LOCKYER, Attorney General, et al., )

15 Plaintiffs, )

16 vs. )

17 BURLINGTON COAT FACTORY )  
18 WAREHOUSE CORPORATION, et al, )

19 Defendants. )

Case No. RG 04-162075

(Consolidated with RG 04-162037, RG  
04-169511)

~~PROPOSED~~ AMENDED CONSENT  
JUDGMENT

20 AND RELATED CONSOLIDATED CASES.  
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This Amended Consent Judgment ("Consent Judgment") supercedes the Consent Judgment entered in these consolidated cases on February 21, 2006, and is entered by the Court pursuant to the Attorney General's Motion to Amend Consent Judgment, filed on May 19, 2006. The Amended Consent Judgment reflects the addition of seventeen parties as Add-On Defendants, the substitution of a party, two minor modifications to the standards for Children's Jewelry, and the clarification of testing protocols in Exhibit D. The amended provisions appear in Sections 2.1, 3.1, 3.3.4, 3.3.5, and 5.2, and Exhibits A, C, D, and F. Exhibits G and H are new.

1       **1. INTRODUCTION**

2           1.1     On June 23, 2004, plaintiffs the Attorney General of the State of California, on  
3     behalf of the People of the State of California (“People”), and the Center for Environmental Health  
4     (“CEH”), filed complaints for civil penalties and injunctive relief in this Court. On August 10,  
5     2004, plaintiff As You Sow (“AYS”) filed a similar complaint. The complaints allege that the  
6     defendants violated the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition  
7     65”) and the Unfair Competition Law by selling jewelry that contains lead, a chemical known to  
8     the State of California to cause cancer and birth defects or other reproductive harm, without  
9     providing a clear and reasonable warnings that use of the jewelry would result in exposure to lead.

10          1.2     On August 27, 2004, the People amended their complaint to substitute the true  
11     name of a “Doe” defendant and dismissed a defendant. The following defendants were named and  
12     appeared in the People’s amended complaint: Burlington Coat Factory Warehouse Corporation;  
13     CBI Distributing Corp; Claire’s Boutiques, Inc.; Express, LLC; Federated Department Stores,  
14     Inc.; J. C. Penney Corporation, Inc.; Kmart Corporation; Macy’s West, Inc.; Mervyn’s;  
15     Nordstrom, Inc; Ross Stores, Inc.; Sears, Roebuck and Company; Target Corporation; and Toys  
16     “R” Us, Inc. On January 25, 2006, the People amended their complaint to add the following  
17     defendants Adina Inc.; Arden Jewelry Manufacturing Company, Inc.; Ballet Jewels L.L.C.;  
18     Bernardo Manufacturing; Buy-Rite Costume Jewelry, Inc. and Buy-Rite Designs, Inc.; Carol  
19     Dauplaise Ltd.; Carol for Eva Graham, Inc.; Carole Inc.; Retail Brand Alliance, Inc. d/b/a Carolee;  
20     Catherine Stein Designs, Inc.; Crimzon Rose Accessories, Inc.; Danecraft, Inc.; Erica Lyons;  
21     FAD Treasures; F.A.F, Inc.; Fashion Accents, Inc.; Fiesta Jewelry, Inc.; Finesse Novelty Corp.,  
22     d/b/a Accessory Solutions, Ambiance Accessory, and Jewelry Sales; Gigi Accessories; Habitat,  
23     Inc.; JJamz, Inc.; K&M Associates, L.P.; Kenilworth Creations; Kerissa Creations; Key Item  
24     Sales, Inc.; Liz Claiborne, Inc.; Haskell Jewels, LTD; MJM Jewelry Corp., d/b/a Berry Jewelry  
25     Company; Orion Fashions, Inc.; Rainbow Sales Incorporated; Jewelry Fashions, Inc.; Scorpio  
26     Accessories, LLC; Shalom International Corp.; Stephan & Co.; Tanya Creations, Inc.; TSI  
27     Holding Company (but see *infra*, Section 1.2.2); Vetta Jewelry, Inc.; and Victoria + Co. LTD  
28     (“Initial Settling Vendors”). In addition, on January 25, 2006, the People amended their complaint

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1 to add as named defendants the entities listed on Exhibit A as "Affiliate Settling Defendants."  
2 Wal-Mart Stores, Inc. ("Wal-Mart") also was named in the People's complaint, but it is not a party  
3 to this Consent Judgment. (But see *infra*, Section 1.2.4.)

4 1.2.1 Pursuant to the Stipulation for Entry of Judgment and Order entered on  
5 February 21, 2006, the following companies have opted to become Add-On Defendants: Allison  
6 Reed Group, d/b/a P&B Manufacturing/J. Roth Enterprises; Barry-Owens, Inc.; Cathedral Art  
7 Metal Company, Inc.; Cookie Lee, Inc.; Fada International Corporation; Greenbrier International,  
8 Inc., a wholly-owned subsidiary of Dollar Tree Stores, Inc.; Jonnette Jewelry Company; Lee Mode  
9 International Inc.; Linda & Jay Keane, d/b/a L&J Accessories, Inc.; QVC, Inc.; Reebok  
10 International LTD; Rogers Sports Management; Saks, Incorporated; Sequin, LLC; The Gap, Inc.;  
11 Uncas Manufacturing Company; Vine Products Manufacturing Company ("Add-On Defendants").  
12 An executed Notice of Intent to Opt In for each Add-On Defendant is attached hereto as Exhibit  
13 G. The People's complaint is hereby deemed amended to include the Add-On Defendants as  
14 defendants.

15 1.2.2 TSI Holding Company was an Initial Settling Vendor under the Consent  
16 Judgment that the Court approved on February 21, 2006. However, the People subsequently  
17 learned that the entity that should have been named in the complaint and the Consent Judgment is  
18 Roman Company, a wholly-owned subsidiary of TSI Holding Company. Therefore, the People's  
19 complaint is hereby deemed amended to name Roman Company; TSI Holding Company is hereby  
20 dismissed from *People v. Burlington Coat Factory Warehouse Corp. et al* (Case No.  
21 RG04162075) without prejudice; and the Consent Judgment and exhibits are hereby amended to  
22 replace TSI Holding Company with Roman Company as an Initial Settling Vendor. An executed  
23 signature page by Roman Company is attached as Exhibit H.

24 1.2.3 With the exception of Wal-Mart, the defendants named in the People's  
25 complaint as amended, which were not dismissed, are referred to herein as "Attorney General  
26 Defendants."

27 1.2.4 On April 20, 2006, pursuant to a stipulation between the People, CEH, and  
28 Wal-Mart, the Court entered a separate judgment against Wal-Mart. The Wal-Mart judgment

1 incorporates the terms of the Consent Judgment entered on February 21, 2006 and provides that  
2 Wal-Mart shall be treated as an Initial Settling Defendant, as that term is used therein.

3 1.3 On October 15, 2004, CEH filed its First Amended Complaint. Since that date,  
4 CEH has further amended its First Amended Complaint to substitute the true name of several  
5 "Doe" defendants and dismissed several other defendants. The following defendants were named  
6 and appeared in CEH's amended complaint: AIJJ Enterprises, Inc.; American Eagle Outfitters,  
7 Inc.; Aeropostale, Inc.; Burlington Coat Factory Warehouse Corporation; CBI Distributing Corp.;  
8 Claire's Boutiques, Inc.; Cost Plus, Inc.; Federated Department Stores, Inc.; Forever 21, Inc.;  
9 Forever 21 Retail, Inc.; Hot Topic, Inc.; Hub Distributing, Inc.; J.C. Penney Corporation, Inc.; Joe  
10 Boxer Company, LLC; Kmart Corporation; Kohl's Department Stores, Inc.; Kohl's Corporation;  
11 Lane Bryant, Inc.; Lerner New York, Inc.; Limited Too Store Planning, Inc.; Longs Drug Stores  
12 California, Inc.; Macy's West, Inc.; Mervyn's, LLC; Monogram International, Inc.; Nordstrom,  
13 Inc.; Rainbow Apparel of America, Inc.; Rainbow Apparel Distribution Center Corp.; Sears  
14 Roebuck and Co.; Styles For Less, Inc.; Target Corporation; The Buckle, Inc.; The May  
15 Department Stores, Inc.; The New 5-7-9 And Beyond, Inc.; Walt Disney World Co. (erroneously  
16 sued and served herein as Disney Consumer Products International, Inc. Disneyland International,  
17 and Walt Disney Company); Walgreen Co.; The Wet Seal, Inc.; The Wet Seal Retail, Inc.; Too,  
18 Inc.; and Zumiez, Inc. The following defendants that also were named in CEH's amended  
19 complaint are not parties to this Consent Judgment: Cornerstone Apparel, Inc.; Jordache  
20 Enterprises, Inc.; Royal Items, Inc.; The Gerson Company; Wal-Mart Stores, Inc. and Windsong  
21 Allegiance Group, LLC ("Non-Settling Defendants"). With the exception of the Non-Settling  
22 Defendants, the defendants named in CEH's complaint or any amendment thereto, that have not  
23 been dismissed, are referred to herein as "CEH Defendants."

24 1.4 The cause of action against the following CEH Defendants was limited to alleged  
25 violations of the Unfair Competition Law: Burlington Coat Factory Warehouse Corporation; CBI  
26 Distributing Corp; Claire's Boutiques, Inc.; Federated Department Stores, Inc.; J. C. Penney  
27 Company, Inc.; Kmart Corporation; Macy's West, Inc.; Mervyn's, LLC; Nordstrom, Inc; Sears,  
28 Roebuck and Company; and Target Corporation..



1           1.5     The following defendants were named and appeared in the complaint by AYS:  
2     Gottschalks, Inc.; Group USA Apparel, Inc.; and Charlotte Russe, Inc. The defendants named in  
3     AYS's complaint or any amendment thereto, that have not been dismissed, are referred to herein  
4     as "AYS Defendants."

5           1.6     The amended complaints filed by the Attorney General and CEH and the complaint  
6     filed by AYS are collectively called the "Complaints."

7           1.7     On November 8, 2004, the Court ordered that the cases be consolidated for pre-trial  
8     purposes. The parties hereby stipulate that the cases now shall be consolidated for purposes of  
9     entry of this Consent Judgment.

10          1.8     The People, CEH, and AYS ("Plaintiffs") and the Attorney General Defendants,  
11     CEH Defendants, and AYS Defendants, and any Add-On Defendants as defined in Section 2.9  
12     added to the People's Complaint pursuant to the Stipulation for Entry of Judgment (collectively  
13     "Settling Defendants") are Parties, and each is a Party to this Consent Judgment.

14          1.9     Each Settling Defendant is a corporation or other business entity that employs 10 or  
15     more persons, or employed 10 or more persons at some time relevant to the allegations of the  
16     complaint, and which manufactures, distributes and/or sells Covered Products in the State of  
17     California or has done so in the past.

18          1.10    For purposes of this Consent Judgment only, the parties stipulate that this Court has  
19     jurisdiction over the allegations of violations contained in the Complaints and personal jurisdiction  
20     over each Settling Defendant as to the acts alleged in the Complaints, venue is proper in the  
21     County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full  
22     and final resolution of all claims which were or could have been raised in the Complaints based on  
23     the facts alleged therein.

24          1.11    The People, CEH, AYS, and Settling Defendants enter into this Consent Judgment  
25     as a full and final settlement of all claims that were raised in the Complaints, or which could have  
26     been raised in the Complaints, arising out of the facts or conduct alleged therein. By execution of  
27     this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or  
28     conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or

1 demonstrating any violations of Proposition 65, the Unfair Competition Act or any other statutory,  
2 common law or equitable requirements relating to chromium, lead and/or nickel in jewelry.  
3 Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,  
4 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
5 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
6 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or  
7 impair any right, remedy, argument or defense the Parties may have in this or any other or future  
8 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is  
9 accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
10 this action.

11 **2. DEFINITIONS**

12 2.1 The term "Person" shall have the same meaning as that term is defined in  
13 California Health & Safety Code section 25249.11, subdivision (a).

14 2.2 The term "Covered Products" means (a) the following ornaments worn by a person:  
15 an anklet, arm-cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring,  
16 necklace, pin, ring, and Body Piercing Jewelry, or (b) any bead, chain, link, pendant, or other  
17 component of such an ornament.

18 2.3 The term "Body Piercing Jewelry" means any part of a Covered Product that is  
19 manufactured or sold for placement in new piercings and/or mucous membranes, and does not  
20 include those parts of Covered Products not placed within new piercings and/or mucous  
21 membranes.

22 2.4 The term "Children's Products" means Covered Products that are made for,  
23 marketed for use by, or marketed to, Children.

24 2.4.1 For purposes of this Consent Judgment, the term "Children" means  
25 children aged 6 and younger.

26 2.4.2 A Covered Product is made for, marketed for use by, or marketed to  
27 Children if it is either:  
28



1 “Initial Retailer Settling Defendants” means those Initial Settling Defendants who are not Initial  
2 Settling Vendors. The term “Add-On Settling Defendants” means those Settling Defendants that  
3 join in the Consent Judgment pursuant to the process set forth in the Stipulation for Entry of  
4 Judgment. Exhibit A to this Consent Judgment identifies each of the Initial Retailer Settling  
5 Defendants, Initial Settling Vendors, and Add-On Settling Defendants that are parties to this  
6 Consent Judgment.

7 **3. INJUNCTIVE RELIEF**

8 3.1 Reformulation of Covered Products. After the Shipping Compliance Date, a  
9 Settling Defendant that is a Supplier shall not ship Covered Products to a third party for retail sale  
10 in California unless the Covered Product complies with Section 3.2 or, for Children’s Products,  
11 Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of this Consent Judgment. After the Final  
12 Compliance Date, no Settling Defendant shall: (1) manufacture; (ii) ship; or (iii) sell or offer for  
13 sale, Covered Products for retail sale in California unless the Covered Product complies with  
14 Section 3.2 or, for Children’s Products, Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of  
15 this Consent Judgment. Each Settling Defendant shall provide the requirements of this Consent  
16 Judgment to its Suppliers of Covered Products no later than June 30, 2006, and shall request each  
17 Supplier to use best efforts to provide compliant product as soon as commercially practicable.

18 3.2 General Reformulation Requirements. Covered Products that are not Children’s  
19 Products or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3  
20 Components, or any combination thereof, as these terms are defined below and in Exhibit B.

21 3.2.1 A “Class 1 Component” is the portion of a Covered Product that contains  
22 one or more of the following materials:

23 3.2.1.1 Stainless and surgical steels.

24 3.2.1.2 Karat gold.

25 3.2.1.3 Sterling silver.

26 3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium  
27 (“platinum group metals”).

28 3.2.1.5 Natural and cultured pearls.

1                   3.2.1.6     Glass, ceramic, and crystal decorative components (e.g., cat's eye,  
2 cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

3                   3.2.1.7     Any gemstone that is cut and polished for ornamental purposes  
4 except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,  
5 phosgenite, samarskite, vanadinite, and wulfenite.

6                   3.2.1.8     Elastic, fabric, ribbon, rope, and string with no intentionally-added  
7 lead and not otherwise listed as a Class 2 component.

8                   3.2.1.9     Natural decorative materials (e.g., amber, bone, coral, feathers, fur,  
9 horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add  
10 lead.

11                  3.2.1.10    Adhesives.

12                  3.2.2     A "Class 2 Component" is the portion of a Covered Product that contains  
13 one or more of the following materials:

14                  3.2.2.1    Metal alloys with less than 10 percent lead by weight ("88 metal")  
15 that are electroplated with suitable under and finish coats and that are plated utilizing the Best  
16 Management Practices described in Exhibit C. For Covered Products shipped by a Settling  
17 Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in California,  
18 and for products sold or offered for retail sale in California by a Settling Defendant after August  
19 31, 2009, this standard shall be metal alloys with less than 6 percent lead by weight ("92 metal")  
20 that are electroplated with suitable under and finish coats and that are plated utilizing the Best  
21 Management Practices described in Exhibit C.

22                  3.2.2.2    Unplated metal containing less than 1.5 percent lead that is not  
23 defined as a Class 1 Component.

24                  3.2.2.3    Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and  
25 polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For  
26 Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a  
27 third party for retail sale in California, and for products sold or offered for retail sale in California  
28

1 by a Settling Defendant after August 31, 2009, this standard shall be no more than 0.02 percent  
2 (200 ppm) lead by weight

3 3.2.2.4 Dyes and Surface Coatings containing less than 0.06 percent (600  
4 parts per million) lead. For purposes of this Consent Judgment, "Surface Coating" shall carry the  
5 same meaning as "Paint or other similar surface coating" under 16 CFR § 1303.2(b)(1) ("Paint and  
6 other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without  
7 a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is  
8 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not  
9 include printing inks or those materials which actually become a part of the substrate, such as the  
10 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as  
11 by electroplating or ceramic glazing.").

12 3.2.3 A "Class 3 Component" is any part of a Covered Product that is not a  
13 Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600  
14 parts per million) lead.

15 3.3 **Children's Products.** Children's Products shall be made entirely from:

16 3.3.1 Non-metallic materials that are Class 1 Components;

17 3.3.2 Non-metallic materials that are Class 2 Components;

18 3.3.3 Metallic materials that are either Class 1 Components or contain less than  
19 0.06 percent (600 parts per million) lead;

20 3.3.4 Glass or crystal decorative components that weigh in total no more than  
21 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02  
22 percent (200 parts per million) lead and have no intentionally added lead.

23 3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600  
24 parts per million) lead;

25 3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per  
26 million) lead; or

27 3.3.7 Any combination thereof.

28

1           3.4    **Body Piercing Jewelry.** Body Piercing Jewelry shall be made of one of the  
2 following materials:

3                   3.4.1    Surgical Implant Stainless Steel

4                   3.4.2    Surgical Implant grades of Titanium

5                   3.4.3    Niobium (Nb)

6                   3.4.4    Solid 14 karat or higher white or yellow nickel-free gold

7                   3.4.5    Solid platinum

8                   3.4.6    A dense low porosity plastic such as Tygon or PTFE with no intentionally  
9 added lead.

10    **4.    ENFORCEMENT**

11           4.1    **General Enforcement Provisions.** The Attorney General, CEH, or AYS may, by  
12 motion or application for an order to show cause before this Court, enforce the terms and  
13 conditions contained in this Consent Judgment, subject to the following:

14                   4.1.1    Any action to enforce the terms of Section 3 of this Consent Judgment  
15 shall be brought exclusively pursuant to this Section 4.

16                   4.1.2    The Attorney General may enforce the provisions of this Consent  
17 Judgment as to any Settling Defendant.

18                   4.1.3    Subject to Section 4.1.4, CEH and AYS may each enforce the provisions  
19 of this Consent Judgment as to the CEH Defendants and AYS Defendants, respectively.

20                   4.1.4    No action to enforce this Consent Judgment may be brought by CEH or  
21 AYS unless the Attorney General either joins in such action or provides written non-objection to  
22 the proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of  
23 Section 4.2.3. The Attorney General agrees to provide either a written objection or written non-  
24 objection to a proposed enforcement proceeding within 15 days of receipt of a written request for  
25 such a response from CEH or AYS, provided that the Attorney General may extend such 15 day  
26 response time by a single extension of an additional 15 days by writing to the requesting party.  
27 The fact that the Attorney General provides a written non-objection shall not be construed as  
28 endorsement of or concurrence in an enforcement action. Any written non-objection shall be

1 admissible in court only if a Settling Defendant challenges the right of CEH or AYS to enforce  
2 this Consent Judgment for failure to obtain the written non-objection.

3 4.2 Enforcement of Materials Violation.

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

9 4.2.2 Service of Notice of Violation and Supporting Documentation.

10 4.2.2.1 The Notice of Violation shall be served on any Settling Defendant(s)  
11 that the Notifying Person knows offered the Covered Product for retail sale in California. The  
12 Notice of Violation shall also be served on any Settling Defendant that is a Supplier of the  
13 Covered Products identified by Brand Names listed on Exhibit E for the Covered Product(s) in  
14 question.

15 4.2.2.2 The Notice of Violation shall be sent to the person(s) identified in  
16 Exhibit F to receive notices for such Settling Defendant(s), and must be served within 45 days of  
17 the date the alleged violation(s) was or were observed.

18 4.2.2.3 The Notice of Violation shall, at a minimum, set forth for each  
19 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which  
20 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to  
21 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered  
22 Product and supporting documentation sufficient for validation of the test results, including all  
23 laboratory reports, quality assurance reports and quality control reports associated with testing of  
24 the Covered Products. Such Notice of Violation shall be based upon test data that meets the  
25 criteria of Exhibit D. Wipe, swiipe, and swab testing are not sufficient to support a Notice of  
26 Violation.

27 4.2.2.4 The Notifying Person shall promptly make available for inspection  
28 and/or copying upon request all supporting documentation related to the testing of the Covered



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

8           4.2.3   **Notice of Election of Response.** No more than 30 days after receiving a  
9 Notice of Violation, the Settling Defendant shall provide written notice to the Notifying Person  
10 whether it elects to contest the allegations contained in a Notice of Violation ("Notice of  
11 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 a Settling Defendant or 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 D.

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

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

1 the violation. If no informal resolution of a Notice of Violation results, the Notifying Person may  
2 by motion or order to show cause before the Superior Court of Alameda, seek to enforce the terms  
3 and conditions contained in this Consent Judgment. In any such proceeding, the Attorney  
4 General, CEH, and AYS may seek whatever fines, costs, penalties, or remedies are provided by  
5 law for failure to comply with the Consent Judgment.

6 4.2.5 **Non-Contested Matters.** If the Settling Defendant elects not to contest  
7 the allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section  
8 4.2.6 and shall make any contributions required by Section 4.2.7.

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

19 4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in**  
20 **Non-Contested Matters.** The Settling Defendant shall be required to make a contribution to the  
21 Proposition 65 Jewelry Testing Fund as specified below:

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

25 4.2.7.2 If the Settling Defendant serves a Notice of Election not to contest  
26 the allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the  
27 Notice of Violation, the Settling Defendant shall make a required contribution in the amount of  
28 \$2,500.00 for each Supplier from whom it purchased the Covered Product(s) identified in any

1 Notices of Violation served within a 30-day period. A Settling Defendant retailer is not required  
2 to make any payment pursuant to this Section for a Notice of Violation that is served less than six  
3 months after the Final Compliance Date.

4 4.2.7.3 If the Settling Defendant withdraws a Notice of Election contesting  
5 the violation and serves a new Notice of Election not to contest the allegations in a Notice of  
6 Violation within 60 days after receipt of the Notice of Violation, and before any enforcement  
7 action concerning the violations alleged in the Notice of Violation is filed, the Settling Defendant  
8 shall make a required contribution in the amount of \$7,500.00 for each Supplier from whom it  
9 purchased the Covered Product(s) identified in any Notices of Violation served within a 30-day  
10 period.

11 4.2.7.4 The contributions shall be paid within 15 days of service of a Notice  
12 of Election.

13 4.2.7.5 A Settling Defendant's liability for required contributions shall be  
14 limited as follows:

15 4.2.7.5.1 A Settling Defendant  
16 that is a Supplier to one or more retailers shall be liable for one  
17 required contribution within any 30-day period, regardless of the  
18 number of retailers to whom the Covered Product is distributed.

19 4.2.7.5.2 If more than one  
20 Settling Defendant has manufactured, sold, or distributed a Covered  
21 Product identified in a Notice of Violation, only one required  
22 contribution may be assessed against all Settling Defendants  
23 potentially liable therefor in any 30-day period, in the following  
24 order of priority: (1) Manufacturers; (2) Importers; (3) Distributors,  
25 and (4) Retailers.

26 4.2.7.5.3 A Settling Defendant's  
27 monetary liability to make required contributions under Section  
28 4.2.7.2 shall be limited to \$5,000 for each 30-day period. A Settling

1 Defendant's monetary liability to make required contributions under  
2 Section 4.2.7.3 shall be limited to \$15,000 for each 30-day period.

3 4.2.7.6 If a Settling Defendant has paid either of the payments set forth in  
4 Sections 4.2.7.2 and 4.2.7.3 more than six times in any 18-month period, or more than three times  
5 in any 12-month period for Covered Products sold to the Settling Defendant from the same  
6 Supplier then, at the Notifying Person's option, the Notifying Person may seek whatever fines,  
7 costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

8 4.2.8 Limitation on Liability. The liability of a Settling Defendant that elects  
9 not to contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

10 **5. PAYMENTS**

11 5.1 **Payments by Initial Settling Defendants.** Within fifteen days of the Effective  
12 Date: (i) each Initial Settling Defendant or group of Initial Settling Defendants identified by a  
13 separate number on Exhibit A shall pay the sum of \$25,000; and (ii) each Affiliate Settling  
14 Defendant listed on Exhibit A shall pay the sum of \$10,000, for an aggregate payment of  
15 \$1,875,000. The settlement payment shall be by check made payable to the Lexington Law  
16 Group, LLP Attorney Client Trust Account. The funds paid by the Initial Settling Defendants  
17 shall be aggregated and distributed as follows:

18 5.1.1 The sum of \$250,000 shall be paid to the Proposition 65 Jewelry Testing  
19 Fund, to be used for the purpose of obtaining and testing of Covered Products, and for the purpose  
20 of preparing and compiling the information and documentation to support a Notice of Violation,  
21 pursuant to sections 4.2.2.3 and 4.2.2.4.

22 5.1.2 The sum of \$246,853 as payment to private Plaintiffs in lieu of penalty  
23 pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title  
24 11, section 3202(b), to be distributed as follows:

25 5.1.2.1 The sum of \$186,511 to CEH. CEH shall use such funds to continue  
26 its work educating and protecting people from exposures to toxic chemicals, including heavy  
27 metals. CEH shall submit a proposal to the Attorney General for use of the funds, approval of  
28 which shall not be unreasonably withheld.

1                   5.1.2.2     The sum of \$60,342 to AYS. AYS shall use such funds to continue  
2 its work educating and protecting people from exposures to toxic chemicals, including heavy  
3 metals. AYS shall submit a proposal to the Attorney General for use of the funds, approval of  
4 which shall not be unreasonably withheld.

5                   5.1.3     As reimbursement of Plaintiffs' attorney's fees and investigation costs, as  
6 follows:

7                   5.1.3.1     The sum of \$383,993 to the Office of California Attorney General.

8                   5.1.3.2     The sum of \$811,870 to CEH.

9                   5.1.3.3     The sum of \$ 82,284 to AYS.

10                  5.1.4     The amount of \$100,000 as a civil penalty pursuant to Health and Safety  
11 Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b). The civil  
12 penalty shall be distributed entirely from settlement proceeds paid for by the Initial Settling  
13 Vendors, however this allocation shall not change the amount paid by each Settling Defendant  
14 under Section 5.1. The \$25,000 portion of the \$100,000 penalty allocated pursuant to Health and  
15 Safety Code Section 25192(a)(2) shall be divided as follows: \$13,250 to CEH; \$9,500 to the  
16 Office of the California Attorney General; and \$2,250 to AYS.

17                  5.1.5             All funds paid to the Attorney General pursuant to Sections 5.1.3.1,  
18 5.2.1.3.3, and 5.2.1.4 shall be placed in an interest-bearing special Deposit Fund established by the  
19 Attorney General. Those funds, including any interest derived therefrom, shall be used by the  
20 Attorney General, until all funds are exhausted, for the costs and expenses associated with the  
21 enforcement and implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986  
22 ("Proposition 65"), including investigations, enforcement actions, other litigation or activities as  
23 determined by the Attorney General to be reasonably necessary to carry out his duties and  
24 authority under Proposition 65. Such funding may be used for the costs of the Attorney General's  
25 investigation, filing fees, and other court costs, payment to expert witnesses and technical  
26 consultants, purchase of equipment, travel, purchase of written materials, laboratory testing,  
27 sample collection, or any other cost associated with the Attorney General's duties or authority  
28 under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this Section, and

1 any interest derived therefrom, shall solely and exclusively augment the budget of the Attorney  
2 General's Office and in no manner shall supplant or cause any reduction of any portion of the  
3 Attorney General's budget.

4       **5.2 Payments by Add-On Defendants.** Within 45 days of the Effective Date, each  
5 Add-On Settling Defendant shall pay the sum of \$40,000. The settlement payment shall be made  
6 by two checks consisting of one check in the amount of \$17,500 to Defendants' Liaison Counsel,  
7 payable to the Fulbright & Jaworski L.L.P. Client Trust Account, and one check in the amount of  
8 \$22,500 payable to the Lexington Law Group, LLP Attorney Client Trust Account. If the Add-On  
9 Settling Defendant is identified in Section 1.3 as a "Non-Settling Defendant," then it shall pay an  
10 additional \$5,000, by adding \$2,500 to the payment to Defendants' Liaison Counsel and \$2,500 to  
11 the payment to the Lexington Law Group, LLP Attorney Client Trust Account.

12       **5.2.1** The funds paid by the Add-On Settling Defendants to Lexington Law  
13 Group, LLP Attorney Client Trust Account, and any excess funds remitted by Defendants Liaison  
14 Counsel pursuant to Section 5.2.2.4, shall be aggregated and distributed as follows:

15       **5.2.1.1** The amount of \$5,000 shall be paid by each Add-On Settling  
16 Defendant as a civil penalty pursuant to Health and Safety Code section 25249.7(b), and  
17 California Code of Regulations, title 11, section 3202(b). The \$1,250 portion of each \$5,000  
18 penalty payment allocated pursuant to Health and Safety Code Section 25192(a)(2) shall be  
19 divided as follows: \$662 to CEH; \$475 to the Office of the California Attorney General; and \$113  
20 to AYS.

21       **5.2.1.2** The amount of \$1,500 shall be paid by each Add-On Settling  
22 Defendant to the Proposition 65 Jewelry Testing Fund, to be used for the purpose of obtaining and  
23 testing of Covered Products, and for the purpose of preparing and compiling the information and  
24 documentation to support a Notice of Violation, pursuant to sections 4.2.2.3 and 4.2.2.4.

25       **5.2.1.3** As payment to private Plaintiffs in lieu of penalty pursuant to Health  
26 and Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b),  
27 to be distributed as follows:

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5.2.1.3.1 The sum of \$95,200 to CEH. CEH shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.2.1.3.2 The sum of \$13,600 to AYS. AYS shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. AYS shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.2.1.3.3 The sum of \$27,200 to the Office of the California Attorney General. The California Attorney General shall use such funds for the purpose of obtaining experts and consultants, and for other costs associated with the investigation and prosecution of other actions under Proposition 65.

5.2.1.4 As reimbursement of Plaintiffs' attorney's fees and investigation costs, as follows:

5.2.1.4.1 The sum of \$74,256 to the Office of California Attorney General.

5.2.1.4.2 The sum of \$54,672 to CEH.

5.2.1.4.3 The sum of \$7,072 to AYS.

5.2.2 The funds paid by the Add-On Settling Defendants to Defendants' Liaison Counsel shall be aggregated and distributed to the Initial Settling Defendants for reimbursement of Settlement-Related Costs that have inured to the benefit of all Settling Defendants. The funds received by Initial Settling Defendants pursuant to this Section comprise a small percentage of the Initial Settling Defendants' actual Settlement Related Costs. The Attorney General has reviewed these Settlement Related Costs and applied the guidelines contained in 22 California Code of Regulations section 3201, subdivisions (d) and (e), and determined that they are reasonable.

1 Distribution of funds for reimbursement of Settlement Related Costs shall be made pursuant to the  
2 following:

3 5.2.2.1 Distribution of funds under this Section shall be apportioned  
4 \$137,683 to the Initial Settling Vendors and \$159,817 to the Initial Retailer Settling Defendants.

5 5.2.2.2 The Settlement Related Costs that qualify for reimbursement  
6 pursuant to this section include the following:

7 5.2.2.2.1 No more than \$93,492  
8 for sums paid to the mediator who presided over negotiations  
9 leading to this Consent Judgment;

10 5.2.2.2.2 No more than \$479,737  
11 for sums paid for experts in toxicology, metallurgy and testing  
12 necessary for the development of compliance standards;

13 5.2.2.2.3 No more than \$492,500  
14 for sums paid for legal counsel who participated in the mediation  
15 leading to this Consent Judgment. These sums shall be subject to  
16 the following limitations:

17 (a) \$7,500 to each Initial Settling Vendor

18 (b) \$10,000 to each Initial Retailer Settling

19 Defendant whose counsel participated in the Retailers' Mediation Committee, as identified on  
20 Exhibit A.

21 (c) \$2,500 to each other Initial Retailer Settling

22 Defendant.

23 5.2.2.3 The funds identified Sections 5.2.2.2.1 and 5.2.2.2.2 shall be  
24 distributed to each Initial Settling Vendor and each Initial Retailer Settling Defendant per capita,  
25 or in such other manner as the Initial Settling Vendors and/or Initial Retailer Settling Defendants  
26 shall agree among themselves, provided that no Initial Settling Defendant may recover payments  
27 in excess of its actual Settlement Related Costs.



1                   5.2.2.4    Within 15 days after receiving the last add-on payments, and no  
2 later than 45 days after notice of entry of the Consent Judgment, Defendants' Liaison Counsel  
3 shall remit to Lexington Law Group, LLP Attorney Client Trust Account any funds collected  
4 pursuant to Section 5.2.2 that exceed the cap of \$1,065,729. Such excess funds shall be  
5 apportioned among the plaintiffs pursuant to Section 5.2.1.

6       **6.       MODIFICATION AND DISPUTE RESOLUTION**

7           6.1    **Modification.** This Consent Judgment may be modified from time to time by  
8 express written agreement of the Parties, with the approval of the Court, or by an order of this  
9 Court upon motion and in accordance with law.

10          6.2    **Modification to Reflect Add-On Defendants.** The Attorney General and  
11 Defendants' Liaison Counsel may jointly file with the Court an amended Consent Judgment that  
12 incorporates any modifications to Sections 1.2 and 5.2 and Exhibits A, E, and F reflecting the  
13 incorporation of Add-On Defendants to this Consent Judgment pursuant to the Stipulation for  
14 Entry of Judgment. The amended Consent Judgment shall be filed and served on all Parties. If no  
15 Party objects within 15 days of service thereof, the Court will enter the Amended Consent  
16 Judgment and this Consent Judgment will be deemed so amended.

17          6.3    **Subsequent Legislation.** If, subsequent to the Effective Date, legislation is  
18 adopted that addresses the lead content of Covered Products sold in California, any Party shall be  
19 entitled to request that the court modify this Consent Judgment for good cause shown.

20          6.4    **Reopeners.** The Parties may seek to reopen the requirements of Section 3 as to  
21 Covered Products other than Children's Products as follows:

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

1 Attorney General, AYS, or CEH obtain information that demonstrates that such material contains  
2 lead and that the use of the material in any Covered Product exposes users of the Covered Product  
3 to lead in an amount greater than 0.5 micrograms per day.

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

7           **6.4.3 Required Showing to Obtain Reopeners.** A reopener pursuant to  
8 Sections 6.4.1 or 6.4.2 shall be granted if the court finds the following:

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

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

18           **6.5 Extension of Shipping Compliance Date.** A Settling Defendant that is a Supplier  
19 may request an extension of any Shipping Compliance Date applicable to a Covered Product  
20 under Section 3 if the Supplier can demonstrate to the Attorney General that it cannot comply with  
21 the Shipping Compliance Date despite all commercially reasonable efforts to comply. Any  
22 extension provided pursuant to this Section shall be conditioned upon a showing that any retailers  
23 to whom the Supplier will sell the Covered Product will be able to comply with the applicable  
24 Final Compliance Date(s), and all such retailers shall be considered affected Parties under  
25 Section 6.6.

26           **6.6 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
27 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
28 modify the Consent Judgment.

1     **7.     CLAIMS COVERED AND RELEASE**

2             7.1     This Consent Judgment is a full, final, and binding resolution between the People,  
3     CEH, AYS, and Settling Defendants, their parents, shareholders, divisions, subdivisions,  
4     subsidiaries, partners, sister companies and their successors and assigns (“Defendant Releasees”),  
5     and all entities to whom they distribute or sell Covered Products, including but not limited to  
6     distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
7     (“Downstream Defendant Releasees”), of any violation of Proposition 65, Business & Professions  
8     Code sections 17200 et seq., or any other statutory or common law claims that have been or could  
9     have been asserted in the public interest or on behalf of the general public against Settling  
10    Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to  
11    warn about exposure to chromium, lead, and nickel arising in connection with Covered Products  
12    manufactured, distributed, or sold by Settling Defendants prior to the Effective Date, or any claim  
13    based on the facts or conduct alleged in the Complaint, or facts similar to those alleged, whether  
14    based on actions committed by Settling Defendants, Defendant Releasees, or Downstream  
15    Defendant Releasees. Compliance with the terms of this Consent Judgment by Settling  
16    Defendants and Defendant Releasees, resolves any issue from the Effective Date into the future  
17    concerning compliance by Settling Defendants, Defendant Releasees and Downstream Defendant  
18    Releasees regarding failure to warn about exposure to chromium, lead, and nickel arising in  
19    connection with Covered Products manufactured, distributed or sold by Settling Defendants after  
20    the Effective Date. This Section shall not apply to any Supplier that is not a Settling Defendant  
21    unless such Supplier is a parent, subsidiary, or sister company of a Settling Defendant.

22             7.2     The People, CEH, and AYS, for themselves and acting on behalf of the public  
23    interest pursuant to Health and Safety Code § 25249.7(d) and the general public pursuant to  
24    Business and Professions Code § 17204, release, waive, and forever discharge any and all claims  
25    against each Settling Defendant, Defendant Releasee, and Downstream Defendant Releasee  
26    arising from any violation of Proposition 65, Business & Professions Code sections 17200 et seq.,  
27    or any other statutory or common law claims that have been or could have been asserted in the  
28    public interest or on behalf of the general public regarding the failure to warn about exposure to

1 chromium, lead, and nickel arising in connection with Covered Products manufactured, distributed  
2 or sold by Settling Defendants prior to or after the Effective Date, or any claim based on the facts  
3 or conduct alleged in the Complaint, or facts similar to those alleged. This Section shall not apply  
4 to any Supplier that is not a Settling Defendant unless such Supplier is a parent, subsidiary, or  
5 sister company of a Settling Defendant.

6 7.3 A Covered Product sold by a Related Company identified on Exhibit A that  
7 complies with the standards set forth in Section 3.2 shall be deemed to be sold in compliance with  
8 the warning requirement of Proposition 65 for chromium, lead, and nickel.

9 7.4 Nothing in this Section 7 shall release, or in any way affect any rights that any  
10 Settling Defendant might have against any other party, whether or not that party is a Settling  
11 Defendant.

## 12 8. PROVISION OF NOTICE

13 8.1 When any party is entitled to receive any notice under this Consent Judgment, the  
14 notice shall be sent by certified mail and electronic mail to the Party(ies) identified in Exhibit F.  
15 Any party may modify the person and address to whom the notice is to be sent by sending each  
16 other party notice by certified mail and/or other verifiable form of written communication.

## 17 9. COURT APPROVAL

18 9.1 This Consent Judgment shall become effective upon entry by the Court (the  
19 "Effective Date").

20 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
21 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

## 22 10. GOVERNING LAW AND CONSTRUCTION

23 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California.

25 10.2 The Parties, including their counsel, have participated in the preparation of this  
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
28 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
2 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
3 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
4 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
5 this regard, the Parties hereby waive California Civil Code section 1654.

6 **11. ATTORNEY'S FEES**

7 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
9 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent  
10 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
11 Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

12 11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement  
13 action brought pursuant to Section 4 may seek an award of attorney's fees pursuant to Code of  
14 Civil Procedure § 1021.5 against a party that acted with substantial justification. The party  
15 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this  
16 provision shall not be construed as altering any procedural or substantive requirements for  
17 obtaining such an award.

18 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of  
19 sanctions pursuant to law.

20 **12. ENTIRE AGREEMENT**

21 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
24 and therein. There are no warranties, representations, or other agreements between the Parties  
25 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
26 other than those specifically referred to in this Consent Judgment have been made by any Party  
27 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
28 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,

1 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the  
2 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be  
3 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,  
4 nor shall such waiver constitute a continuing waiver.

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
7 Consent Judgment.

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

9 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
10 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
11 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

12 **15. EXECUTION IN COUNTERPARTS**

13 15.1 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 IT IS SO STIPULATED:

16 Dated: _____, 2006 17 18 19	<b>BILL LOCKYER</b> <b>ATTORNEY GENERAL</b>  By _____ <b>EDWARD G. WEIL</b> <b>SUPERVISING DEPUTY ATTORNEY</b> <b>GENERAL</b>
20 21 Dated: _____, 2006 22 23 24	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  By _____

1 In accordance with the terms of the Consent Judgment entered on February 21, 2006, as  
2 amended on this date pursuant to the People's Motion to Modify Consent Judgment,

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

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6 Dated: JUN 15 2006

ROBERT FREEDMAN

7 Hon.  
8 Judge of the Superior Court of the State of California  
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1 **EXHIBIT B (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**

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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 C. For Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in

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1		California, and for products sold or offered for
2		retail sale in California by a Settling Defendant
3		after August 31, 2009, this standard shall be
4		metal alloys with less than 6 percent lead by
5		weight ("92 metal") that are electroplated with
6		suitable under and finish coats and that are
7		plated utilizing the Best Management Practices
8		described in Exhibit C.
9	Unplated metal not defined as Class 1	1.5%
10	Components.	
11	Metal (plated and unplated) used in	0.06% (600 ppm)
12	Children's Products	
13	Plastic/Rubber (e.g., acrylic,	0.06%, (600 ppm). For Covered
14	polystyrene, plastic beads/stones, polyvinyl	Products shipped by a Settling Defendant that
15	chloride (PVC))	is a Supplier after December 31, 2008 to a third
16		party for retail sale in California, and for
17		products sold or offered for retail sale in
18		California by a Settling Defendant after August
19		31, 2009, this standard shall be no more than
20		0.02 percent (200 ppm) lead by weight
21	Dyes and Surface Coatings	0.06% (600 ppm)
22	Printing inks or ceramic glazes used in	0.06% (600 ppm)
23	Children's Products	
24	Glass or crystal decorative components	Total weight no more than 1.0 gram,
25	used in Children's Products	excluding glass or crystal decorative
26		components that contain less than 0.02 percent
27		(200 parts per million) lead and have no
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intentionally added lead.

**CLASS 3 COMPONENTS**

Class 3 Components shall contain no more than 0.06% lead.

Class 3 Components used in Children's Products shall contain no more than 0.02% lead.

**BODY PIERCING JEWELRY**

Body Piercing Jewelry shall be made of one of the following materials:

- Surgical Implant Stainless Steel
- Surgical Implant grades of Titanium
- Niobium (Nb)
- Solid 14 karat or higher white or yellow nickel-free gold
- Solid platinum
- A dense low porosity plastic such as Tygon or PTFE with no intentionally added lead



1 **PLATING PROCEDURES**

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

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

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1 **EXHIBIT D (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

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	<p>samples. Weigh the scrapings. A minimum of 50 mg of scraped coating should be used for analysis. If less than 50 mg of scraped coating is obtained from an individual pearl, then multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount. The number of pearls used to make the composite must be noted. Avoid inclusion of the substrate pearl material in the scrapings. Digest the scrapings according to USEPA Method 3050B or 3051 or equivalent procedure for hot acid digestion in preparation for trace lead analysis. Dilute the digestate in the minimum volume practical for analysis. Analyze the digested sample according to specification of Exhibit D (approved, validated methodology for inductively-coupled plasma mass spectrometry). A reporting limit of 0.001% (10 ppm) in the coating must be obtained for the analysis. The sample result must be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, then the sample must be diluted and re-analyzed within the calibrated range of the instrument.</p>
<p>Dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, crystal</p>	<p>Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.050 g, and should be chopped or comminuted prior to digestion.</p> <p>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.</p>
<p>Glass and crystal used in Children's Products (for weight)</p>	<p>The components should be free of any extraneous material such as adhesive before they are weighed. The scale used to weigh these components should be calibrated using NIST certified (S-class) weights of 1 and 2 grams immediately before the components are weighed. The calibration should be accurate to within 0.01 gram.</p>