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ALAMEDA COUNTY**

APR 10 2009

A. Yiu, Exec. Off./Clerk

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

PEOPLE OF THE STATE OF CALIFORNIA, ex)	Case No. RG 04-162075
rel. BILL LOCKYER, Attorney General, et al.,)	
Plaintiffs,)	(Consolidated with RG 04-162037, RG
vs.)	04-169511)
BURLINGTON COAT FACTORY)	[PROPOSED] CONSENT JUDGMENT
WAREHOUSE CORPORATION, et al,)	AS TO FURLA (USA) INC.
Defendant.)	
_____)	
AND RELATED CONSOLIDATED CASES.)	
_____)	

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and Furla (USA) 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 February 12, 2007, 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 Furla (USA) Inc.
10 regarding the presence of lead in jewelry manufactured, distributed or sold by Furla.

11 1.6 On July 19, 2007, the Complaint in the *Nadri* Action was amended to name
12 additional defendants, including Furla (USA) Inc.

13 1.7 Defendant is a corporation that employs ten 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 Furla (USA) Inc. (the
16 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in
17 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
18 that 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 California 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 **General Reformulation Requirements.** Covered Products that are not Children's
2 Products or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3
3 Components, 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 A. For Covered Products sold or offered for retail sale
28 in California by Defendant after August 31, 2009, this standard shall be metal alloys with less than

1 6 percent lead by weight (“92 metal”) that are electroplated with suitable under and finish coats
2 and that are plated utilizing the Best Management Practices described in Exhibit A.

3 3.2.2.2 Unplated metal containing less than 1.5 percent lead that is not
4 defined as a Class 1 Component.

5 3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and
6 polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For
7 Covered Products sold or offered for retail sale in California by Defendant after August 31, 2009,
8 this standard shall be no more than 0.02 percent (200 ppm) lead by weight.

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

18 3.2.3 A “Class 3 Component” is any part of a Covered Product that is not a
19 Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600
20 parts per million) lead.

21 3.3 **Children’s Products.** Children’s Products shall be made entirely from:

22 3.3.1 Non-metallic materials that are Class 1 Components other than glass or
23 crystal decorative components;

24 3.3.2 Non-metallic materials that are Class 2 Components;

25 3.3.3 Metallic materials that are either Class 1 Components or contain less than
26 0.06 percent (600 parts per million) lead;

27

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1 3.3.4 Glass or crystal decorative components that weigh in total no more than
2 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02
3 percent (200 parts per million) lead and have no intentionally added lead.

4 3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600
5 parts per million) lead;

6 3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per
7 million) lead; or

8 3.3.7 Any combination thereof.

9 3.4 **Body Piercing Jewelry.** Body Piercing Jewelry shall be made of one of the
10 following materials:

11 3.4.1 Surgical Implant Stainless Steel

12 3.4.2 Surgical Implant grades of Titanium

13 3.4.3 Niobium (Nb)

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

15 3.4.5 Solid platinum

16 3.4.6 A dense low porosity plastic such as Tygon or PTFE with no intentionally
17 added lead.

18 3.5 **Additional Injunctive Relief.** Defendant has agreed to comply with the following
19 additional injunctive relief requirements:

20 3.5.1 **Market Withdrawal of Covered Product.** The "Recall Products" are the
21 "Brooch Pin Pommegranite," Manuf. ID No. 106340-J4-S0682 AH Brooch, Retail ID No. 8-
22 023576-824520, which were identified in the 60-Day Notice of Violation sent by CEH to
23 Defendant. On or before the Effective Date, Defendant shall cease shipping to stores and/or
24 customers in California, and shall withdraw the Recall Products from the market in California,
25 and, at a minimum, send instructions to any of its stores and/or customers that offer the Recall
26 Products for sale in California to cease offering such Recall Products for sale in California and to
27 either return all the Recall Products to Defendant for destruction, or to directly destroy the Recall
28 Products. Any destruction of such Recall Products shall be in compliance with all applicable laws.

1 Defendant shall keep all records and correspondence regarding the market withdrawal and
2 destruction of such Recall Products. Upon written request by CEH, Defendant shall make
3 available to CEH for inspection and copying all records and correspondence regarding the market
4 withdrawal and destruction of such Recall Products. If there is a dispute over the corrective
5 action, the Parties shall meet and confer before seeking any remedy in court.

6 **4. ENFORCEMENT**

7 4.1 **General Enforcement Provisions.** The Attorney General or CEH may, by motion
8 or application for an order to show cause before this Court, enforce the terms and conditions
9 contained in this Consent Judgment, subject to the following:

10 4.1.1 Any action to enforce the terms of Sections 3.1 to 3.4 of this Consent
11 Judgment shall be brought exclusively pursuant to Section 4.2.

12 4.1.2 No action to enforce this Consent Judgment may be brought by CEH
13 unless the Attorney General either joins in such action or provides written non-objection to the
14 proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of
15 Section 4.2.4. The Attorney General agrees to provide either a written objection or written non-
16 objection to a proposed enforcement proceeding within 15 days of receipt of a written request for
17 such a response from CEH, provided that the Attorney General may extend such 15 day response
18 time by a single extension of an additional 15 days by writing to the requesting party. The fact
19 that the Attorney General provides a written non-objection shall not be construed as endorsement
20 of or concurrence in an enforcement action. Any written non-objection shall be admissible in
21 court only if Defendant challenges the right of CEH to enforce this Consent Judgment for failure
22 to obtain the written non-objection.

23 4.1.3 For purposes of this Section 4 only, the term "Defendant" includes a
24 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
25 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
26 amended consent judgment," as those terms are used in California Health & Safety Code
27 §25214.3(d).

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1 **4.2 Enforcement of Materials Violation.**

2 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
3 Date, the Attorney General or CEH (“Notifying Person”) identifies one or more Covered Products
4 that the Notifying Person believes in good faith do not comply with Section 3.1 through 3.4 of this
5 Consent Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section
6 4.

7 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

8 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
9 Section 6.5 to receive notices for Defendant, and must be served within 45 days of the date the
10 alleged violation(s) was or were observed. The Notice of Violation shall also be served on
11 Defendant as a Supplier of the Covered Products identified by Brand Names listed on Exhibit C to
12 the Amended Master Consent Judgment for the Covered Product(s) in question.

13 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
14 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
15 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to
16 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
17 Product and supporting documentation sufficient for validation of the test results, including all
18 laboratory reports, quality assurance reports and quality control reports associated with testing of
19 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
20 criteria of Exhibit B. Wipe, swipe, and swab testing are not sufficient to support a Notice of
21 Violation.

22 4.2.2.3 The Notifying Person shall promptly make available for inspection
23 and/or copying upon request all supporting documentation related to the testing of the Covered
24 Products and associated quality control samples, including chain of custody records, all laboratory
25 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
26 printouts from all analytical instruments relating to the testing of Covered Product samples and
27 any and all calibration, quality assurance, and quality control tests performed or relied upon in
28 conjunction with the testing of the Covered Products, obtained by or available to the Notifying

1 Person that pertains to the Covered Product's alleged noncompliance with Section 3.1 through 3.4
2 and, if available, any exemplars of Covered Products tested.

3 **4.2.3 Notice of Election of Response.** No more than 30 days after receiving a
4 Notice of Violation, Defendant shall provide written notice to the Notifying Person whether it
5 elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

6 **4.2.3.1** If a Notice of Violation is contested the Notice of Election shall
7 include all then-available documentary evidence regarding the alleged violation, including all test
8 data, if any. If Defendant or the Notifying Person later acquires additional test or other data
9 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
10 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria
11 of Exhibit B.

12 **4.2.3.2** If a Notice of Violation is not contested, the Notice of Election shall
13 include a description of Defendant's corrective action pursuant to Section 4.2.6. The Notice of
14 Election shall include the name, address, telephone number, and other contact information, of
15 Defendant' Supplier(s) of each Covered Product identified in the Notice of Violation.

16 **4.2.4 Meet and Confer.** If a Notice of Violation is contested, the Notifying
17 Person, the Attorney General, and the Defendant shall meet and confer to attempt to resolve their
18 dispute. Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no
19 enforcement action has been filed, Defendant may withdraw the original Notice of Election
20 contesting the violation and serve a new Notice of Election conceding the violation. If no
21 informal resolution of a Notice of Violation results, the Notifying Person may by motion or order
22 to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions
23 contained in this Consent Judgment. In any such proceeding, the Attorney General and CEH may
24 seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with
25 the Consent Judgment.

26 **4.2.5 Non-Contested Matters.** If Defendant elects not to contest the
27 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
28 and shall make any contributions required by Section 4.2.7.

1 4.2.6 **Corrective Action in Non-Contested Matters.** If Defendant elects not to
2 contest the allegation, it shall include in its Notice of Election a detailed description of corrective
3 action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified
4 in the Notice of Violation for sale in California. Corrective action must include instructions to
5 Defendant' stores to cease offering the Covered Product(s) identified in the Notice of Violation for
6 sale in California as soon as practicable. Defendant shall make available to the Notifying Person
7 for inspection and/or copying records and correspondence regarding the corrective action. If there
8 is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section 4.2.4
9 before seeking any remedy in court.

10 4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in**
11 **Non-Contested Matters.** Defendant shall be required to make a contribution to the Proposition
12 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as specified
13 below:

14 4.2.7.1 If Defendant serves a Notice of Election not to contest the
15 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not
16 be required to make any contributions pursuant to this Section.

17 4.2.7.2 If Defendant serves a Notice of Election not to contest the
18 allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the
19 Notice of Violation, Defendant shall make a required contribution in the amount of \$2,500 for
20 each Supplier from whom it purchased the Covered Product(s) identified in any Notices of
21 Violation served within a 30-day period.

22 4.2.7.3 If Defendant withdraws a Notice of Election contesting the violation
23 and serves a new Notice of Election not to contest the allegations in a Notice of Violation within
24 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the
25 violations alleged in the Notice of Violation is filed, Defendant shall make a required contribution
26 in the amount of \$7,500 for each Supplier from whom it purchased the Covered Product(s)
27 identified in any Notices of Violation served within a 30-day period.

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

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

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

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

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

4.2.7.6 If Defendant has paid either of the payments set forth in Sections 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 12-month period for Covered Products sold to Defendant from the same Supplier then, at the Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

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

1 **5. PAYMENTS**

2 **5.1 Payments From Defendant.** Within five days of the entry of this Consent
3 Judgment, Defendant shall pay the total sum of \$50,000 as a settlement payment.

4 **5.2 Allocation of Payments.** The total settlement amount for Defendant shall be paid
5 in three separate checks delivered to the offices of the Lexington Law Group, LLP (Attn: Eric
6 Somers), 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as
7 follows:

8 **5.2.1** Defendant shall pay the sum of \$1,000 as a civil penalty pursuant to
9 California Health & Safety Code §25249.7(b), such money to be apportioned by CEH in
10 accordance with California Health & Safety Code §25249.12. The \$1,000 penalty check shall be
11 made payable to the Center For Environmental Health.

12 **5.2.2** Defendant shall pay the sum of \$16,200 as payment to CEH in lieu of
13 penalty pursuant to California Health & Safety Code section 25249.7(b), and California Code of
14 Regulations, title 11, §3202(b). CEH will use such funds to continue its work educating and
15 protecting people from exposures to toxic chemicals, including heavy metals. In addition, CEH
16 may use a portion of such funds to monitor compliance with the reformulation requirements of this
17 and other similar Consent Judgments, to purchase and test jewelry, and to prepare and compile the
18 information and documentation necessary to support a Notice of Violation. The payment in lieu
19 of penalty check shall be made payable to the Center For Environmental Health.

20 **5.2.3** Defendant shall pay the sum of \$32,800 as reimbursement of reasonable
21 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
22 payable to the Lexington Law Group, LLP.

23 **6. MODIFICATION AND DISPUTE RESOLUTION**

24 **6.1 Modification.** This Consent Judgment may be modified from time to time by
25 express written agreement of the Parties, with the approval of the Court, or by an order of this
26 Court upon motion and in accordance with law.

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1 **6.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation is
2 adopted that addresses the lead content of Covered Products sold in California, any party shall be
3 entitled to request that the Court modify this Consent Judgment for good cause shown.

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

13 **6.4 Reopeners.** The Parties may seek to reopen the requirements of Section 3.1
14 through 3.4 as to Covered Products other than Children’s Products as follows:

15 **6.4.1 Limited Reopener of Component Designation for Certain**
16 **Components.** The Parties acknowledge that the materials described in Sections 3.2.1.8 and
17 3.2.1.9 are not generally known to contain or expose users to lead and, as such, have been
18 designated as Class 1 Components. CEH, with the written non-opposition of the Attorney
19 General, may seek to modify this Consent Judgment by seeking the re-designation of any material
20 described in Sections 3.2.1.8 and 3.2.1.9 from Class 1 Component to a Class 2 Component with a
21 lead standard for such material, if, subsequent to the Effective Date, CEH obtains information that
22 demonstrates that such material contains lead and that the use of the material in any Covered
23 Product exposes users of the Covered Product to lead in an amount greater than 0.5 micrograms
24 per day.

25 **6.4.2 Reopener for Class 3 Components.** Any party may seek to modify this
26 Consent Judgment by seeking to designate a Class 3 Component as a Class 1 Component or as a
27 Class 2 Component with a lead specification standard.

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1 6.4.3 **Required Showing to Obtain Reopeners.** A reopener pursuant to
2 Sections 6.4.1 or 6.4.2 shall be granted if the court finds the following:

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

7 6.4.3.2 A Class 3 Component, and the materials described in Sections
8 3.2.1.8 and 3.2.1.9, shall be redesignated as a Class 2 Component with a lead specification
9 standard if the moving party demonstrates that use of such material at or below the standard does
10 not expose average users of the Covered Product to lead in an amount greater than 0.5 micrograms
11 per day.

12 6.5 **Notice; Meet and Confer.** Any party seeking to modify this Consent Judgment
13 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
14 modify the Consent Judgment.

15 6.5.1 **Notice to Defendant.** The person for Defendant to receive Notices
16 pursuant to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

17
18 Todd Gordon, Esq.
19 Gordon & Juengst, P.C.
20 3279 Veterans Memorial Highway
21 Ronkonkoma, New York 11779
22 (631) 738-0505
23 toddg@gordonjuengstlaw.com

24 With a copy to:

25 Jeffrey B. Margulies
26 Fulbright & Jaworski LLP
27 555 South Flower Street, 41st Floor
28 Los Angeles, California 90071
 Tel: (213) 892-9286 / Fax: (310) 995-6218
 jmargulies@fulbright.com

 6.5.2 **Notice to Plaintiff.** The person for CEH to receive Notices pursuant to

1 this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

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

8 **7. CLAIMS COVERED AND RELEASE**

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

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

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

1 7.4 Nothing in this Section 7 shall apply to any Supplier that is not Defendant unless
2 such Supplier is a parent, subsidiary, or sister company of Defendant.

3 **8. PROVISION OF NOTICE**

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

8 **9. COURT APPROVAL**

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

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

14 **10. GOVERNING LAW AND CONSTRUCTION**

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

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

26 **11. ATTORNEYS' FEES**

27 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent
28 Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs

1 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent
2 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
3 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

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

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

12 **12. ENTIRE AGREEMENT**

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

25 **13. RETENTION OF JURISDICTION**

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

28

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

2 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

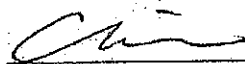
5 **15. NO EFFECT ON OTHER SETTLEMENTS**

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

9 **16. EXECUTION IN COUNTERPARTS**

10 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
11 means of facsimile, which taken together shall be deemed to constitute one document.
12

13 **IT IS SO STIPULATED:**

14 Dated: January <u>13</u> , 2009 15 <u>February</u> 16 17 18 19 20	CENTER FOR ENVIRONMENTAL HEALTH By <u></u> Printed Name <u>CHARLENE PIZARRO</u> Title <u>ASSOCIATE DIRECTOR</u>
--	---

21 Dated: January __, 2009 22 23 24 25 26 27 28	FURLA (USA) INC. By _____ Printed Name _____ Title _____
--	--

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10 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
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12
13 **IT IS SO STIPULATED:**

14 Dated: January __, 2009 15 16 17 18 19 20	CENTER FOR ENVIRONMENTAL HEALTH By _____ Printed Name _____ Title _____
--	---

21 Dated: January <u>31</u> 2009 22 23 24 25 26 27	FURLA (USA) INC. By <u>Nanda Kalipershad</u> Printed Name <u>Nanda Kalipershad</u> Title <u>Vice President of Finance</u>
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: **APR 10 2009**

Robert B. Freedman

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

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EXHIBIT A
(BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)

PRE-PLATING PROCEDURE

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

The pieces must be activated.

The pieces must be rinsed in clean water before plating.

PLATING BATH MAINTENANCE

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

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

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

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

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

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

Plating tanks must be swept at least weekly.

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

Racks must be stripped at least annually.

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

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PLATING PROCEDURES

Substantial pieces such as pendants, drops, and rings without prongs or other such feature 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.

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EXHIBIT B
(TESTING PROTOCOLS)

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

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

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

All jewelry components samples shall be prepared for testing in accordance with USEPA 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

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	<p>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 C (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>
Dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, crystal	<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>
Glass and crystal used in Children's Products (for weight)	<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>

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EXHIBIT C
(LIST OF ENTITIES NOT SUBJECT
TO DOWNSTREAM DEFENDANT RELEASE)

1. A-List, Inc. dba Kitson
2. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
3. Amiee Lynn, Inc.
4. AZ3, Inc.
5. BCBG Max Azria Group, Inc.
6. Beena Beauty Holding, Inc.
7. Big A Drug Stores, Inc.
8. Conair Corporation
9. Cousin Corporation of America
10. Elite Distributing Company dba Edco
11. Georgiou Studio, Inc.
12. Goody Products, Inc.
13. Hayun Fashion Investments Corporation dba Planet Funk
14. I Love Bracelets, Inc.
15. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
16. Jacadi USA, Inc.
17. La-Kontra
18. Legoland California LLC
19. Lisa Kline, Inc.
20. Long Rap, Inc.
21. Mango
22. Marin Beauty Company
23. Max Rave, LLC
24. Peninsula Beauty Supply, Inc.

- 1 25. Peter David, Inc.
- 2 26. Planet Beauty, Inc.
- 3 27. Raley's
- 4 28. Rite Aid Corporation
- 5 29. Safeway Inc.
- 6 30. Scünci International, Inc.
- 7 31. Sea World, Inc.
- 8 32. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 9 33. Six Flags Theme Parks, Inc.
- 10 34. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 11 35. Venus Fashion Jewelry
- 12 36. Whole Foods Market California, Inc.; Whole Foods Market, Inc.

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