



8107105

FILED
ALAMEDA COUNTY

JAN 26 2011

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

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

Plaintiffs,)

vs.)

BURLINGTON COAT FACTORY)
WAREHOUSE CORPORATION, et al,)

Defendant.)

Case No. RG 04-162075

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

~~PROPOSED~~ CONSENT JUDGMENT
AS TO LISA KLINE, INC.

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 Lisa Kline, 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 June 28, 2007, CEH provided a "Notice of Violation of Proposition 65" to the
8 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 Defendant
10 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

11 1.6 On November 8, 2007, the Complaint in the *Nadri* Action was amended to name
12 Defendant as a party.

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

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

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

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

8 1.10 CEH and Defendant intend, and the Court finds, that the injunctive terms contained
9 in Sections 2, 3.1 through 3.4, and 4 of this Consent Judgment are “substantially identical terms as
10 provided in Sections 2, 3 and 4 of the amended consent judgment,” as those terms are used in
11 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: (i) 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 6 percent lead by weight ("92 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.
- 28 3.2.2.2 Unplated metal containing less than 1.5 percent lead that is not

1 defined as a Class 1 Component.

2 3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and
3 polyvinyl chloride (PVC)) containing less than 0.02 percent (200 parts per million) lead.

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

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

16 3.3 **Children's Products.** Children's Products shall be made entirely from:

17 3.3.1 Non-metallic materials that are Class 1 Components other than glass or
18 crystal decorative components;

19 3.3.2 Non-metallic materials that are Class 2 Components;

20 3.3.3 Metallic materials that are either Class 1 Components or contain less than
21 0.06 percent (600 parts per million) lead;

22 3.3.4 Glass or crystal decorative components that weigh in total no more than
23 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02
24 percent (200 parts per million) lead and have no intentionally added lead.

25 3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600
26 parts per million) lead;

27 3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per
28 million) lead; or

1 3.3.7 Any combination thereof.

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

4 3.4.1 Surgical Implant Stainless Steel

5 3.4.2 Surgical Implant grades of Titanium

6 3.4.3 Niobium (Nb)

7 3.4.4 Solid 14 karat or higher white or yellow nickel-free gold

8 3.4.5 Solid platinum

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

11 3.5 **Additional Injunctive Relief.** Defendant has agreed to comply with the following
12 additional injunctive relief requirements:

13 3.5.1 **National Application of Reformulation Standards.** All Covered
14 Products manufactured, distributed, shipped or sold by Defendant within the United States shall
15 comply with the lead content requirements as set forth in Sections 3.2, 3.3 and 3.4 of this Consent
16 Judgment.

17 3.5.2 **Market Withdrawal of Covered Product.** On or before the Effective
18 Date, Defendant shall cease shipping the following Covered Products: (1) Funky Junque
19 Ponytailer, Retail ID. CHR-25-ACE Kid Assessorie, SKU No. 4-09701-54302-9, which was
20 identified in the 60-Day Notice of Violation sent by CEH to Defendant; and (2) Pink Suede Charm
21 Bracelet, Item No. J45 ASST, Retail ID. JLCON-SUEDE/CHAIN WITH CHARMS (the "Recall
22 Products"), to stores and/or customers in California, and Defendant shall withdraw the Recall
23 Products from the market in California, and, at a minimum, send instructions to any of its stores
24 and/or customers that offer the Recall Products for sale in California to cease offering such Recall
25 Products for sale in California and to either return all Recall Products to Defendant for destruction,
26 or to directly destroy the Recall Products. Any destruction of the Recall Products shall be in
27 compliance with all applicable laws. Defendant shall keep and make available to CEH for
28 inspection and copying records and correspondence regarding the market withdrawal and

1 destruction of the Recall Products. If there is a dispute over the corrective action, the Parties shall
2 meet and confer before seeking any remedy in court.

3 **4. ENFORCEMENT**

4 **4.1 General Enforcement Provisions.** The Attorney General or CEH may, by motion
5 or application for an order to show cause before this Court, enforce the terms and conditions
6 contained in this Consent Judgment, subject to the following:

7 4.1.1 Any action to enforce the terms of Sections 3.1 through 3.4 of this
8 Consent Judgment shall be brought exclusively pursuant to Section 4.2.

9 4.1.2 For purposes of this Section 4 only, the term "Defendant" includes a
10 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
11 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
12 amended consent judgment," as those terms are used in California Health & Safety Code
13 §25214.3(d).

14 **4.2 Enforcement of Materials Violation.**

15 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
16 Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products
17 that the Notifying Person believes in good faith do not comply with Section 3.1 through 3.4 of this
18 Consent Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section
19 4.

20 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

21 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
22 Section 6.2 to receive notices for Defendant, and must be served within 45 days of the date the
23 alleged violation(s) was or were observed. The Notice of Violation shall also be served on
24 Defendant as a Supplier of the Covered Products identified by Brand Names listed on Exhibit C to
25 the Amended Master Consent Judgment for the Covered Product(s) in question.

26 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
27 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
28 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to

1 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
2 Product and supporting documentation sufficient for validation of the test results, including all
3 laboratory reports, quality assurance reports and quality control reports associated with testing of
4 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
5 criteria of Exhibit B. Wipe, swipe, and swab testing are not sufficient to support a Notice of
6 Violation.

7 4.2.2.3 The Notifying Person shall promptly make available for inspection
8 and/or copying upon request all supporting documentation related to the testing of the Covered
9 Products and associated quality control samples, including chain of custody records, all laboratory
10 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
11 printouts from all analytical instruments relating to the testing of Covered Product samples and
12 any and all calibration, quality assurance, and quality control tests performed or relied upon in
13 conjunction with the testing of the Covered Products, obtained by or available to the Notifying
14 Person that pertains to the Covered Product's alleged noncompliance with Section 3.1 through 3.4
15 and, if available, any exemplars of Covered Products tested.

16 4.2.3 **Notice of Election of Response.** No more than 30 days after receiving a
17 Notice of Violation, Defendant shall provide written notice to the Notifying Person whether it
18 elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

19 4.2.3.1 If a Notice of Violation is contested the Notice of Election shall
20 include all then-available documentary evidence regarding the alleged violation, including all test
21 data, if any. If Defendant or the Notifying Person later acquires additional test or other data
22 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
23 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria
24 of Exhibit B.

25 4.2.3.2 If a Notice of Violation is not contested, the Notice of Election shall
26 include a description of Defendant's corrective action pursuant to Section 4.2.6. The Notice of
27 Election shall include the name, address, telephone number, and other contact information, of
28 Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation.

1 4.2.4 **Meet and Confer.** If a Notice of Violation is contested, the Notifying
2 Person, the Attorney General, and the Defendant shall meet and confer to attempt to resolve their
3 dispute. Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no
4 enforcement action has been filed, Defendant may withdraw the original Notice of Election
5 contesting the violation and serve a new Notice of Election conceding the violation. If no
6 informal resolution of a Notice of Violation results, the Notifying Person may by motion or order
7 to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions
8 contained in this Consent Judgment. In any such proceeding, the Attorney General and CEH may
9 seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with
10 the Consent Judgment.

11 4.2.5 **Non-Contested Matters.** If Defendant elects not to contest the
12 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
13 and shall make any contributions required by Section 4.2.7.

14 4.2.6 **Corrective Action in Non-Contested Matters.** If Defendant elects not to
15 contest the allegation, it shall include in its Notice of Election a detailed description of corrective
16 action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified
17 in the Notice of Violation for sale in California. Corrective action must include instructions to
18 Defendant's stores to cease offering the Covered Product(s) identified in the Notice of Violation
19 for sale in California as soon as practicable. Defendant shall make available to the Notifying
20 Person for inspection and/or copying records and correspondence regarding the corrective action.
21 If there is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section
22 4.2.4 before seeking any remedy in court.

23 4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in**
24 **Non-Contested Matters.** Defendant shall be required to make a contribution to the Proposition
25 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as specified
26 below:

27 4.2.7.1 If Defendant serves a Notice of Election not to contest the
28 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not

1 be required to make any contributions pursuant to this Section.

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

7 4.2.7.3 If Defendant withdraws a Notice of Election contesting the violation
8 and serves a new Notice of Election not to contest the allegations in a Notice of Violation within
9 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the
10 violations alleged in the Notice of Violation is filed, Defendant shall make a required contribution
11 in the amount of \$7,500 for each Supplier from whom it purchased the Covered Product(s)
12 identified in any Notices of Violation served within a 30-day period.

13 4.2.7.4 The contributions shall be paid within 15 days of service of a Notice
14 of Election.

15 4.2.7.5 Defendant's liability for required contributions shall be limited as
16 follows:

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

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

27 4.2.7.5.3 Defendant's monetary liability to make required
28 contributions under Section 4.2.7.2 shall be limited to \$5,000 for

1 each 30-day period. Defendant's monetary liability to make
2 required contributions under Section 4.2.7.3 shall be limited to
3 \$15,000 for each 30-day period.

4 4.2.7.6 If Defendant has paid either of the payments set forth in Sections
5 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
6 12-month period for Covered Products sold to Defendant from the same Supplier then, at the
7 Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or
8 remedies are provided by law for failure to comply with the Consent Judgment.

9 4.2.8 **Limitation on Liability.** Defendant's liability when electing not to
10 contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

11 **5. PAYMENTS**

12 5.1 **Payments From Defendant.** Defendant shall pay the total sum of \$50,000 as
13 reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The total settlement
14 amount for Defendant shall be paid in four separate checks made payable to the Lexington Law
15 Group and delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 1627 Irving
16 Street, San Francisco, California 94122 according to the following schedule:

17 5.1.1 On or before November 15, 2010: \$5,000

18 5.1.2 On or before February 15, 2011: \$15,000

19 5.1.3 On or before May 15, 2011: \$15,000

20 5.1.4 On or before August 15, 2011: \$15,000

21 Any failure by Defendant to comply with the payment terms herein shall be subject to a stipulated
22 late fee in the amount of \$100 for each day after the due date the payment is received. The late
23 fees required under this section shall be recoverable together with reasonable attorneys' fees and
24 costs in any action or proceeding arising out of this Consent Judgment.

25 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

1 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
3 modify the Consent Judgment.

4 6.2.1 **Notice to Defendant.** The person for Defendant to receive Notices
5 pursuant to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

6 Robyn C. Crowther
7 Caldwell Leslie & Proctor, PC
8 1000 Wilshire Blvd., Suite 600
9 Los Angeles, California 90017-2463
10 crowther@caldwell-leslie.com

11 6.2.2 **Notice to Plaintiff.** The person for CEH to receive Notices pursuant to
12 this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

13 Eric S. Somers
14 Lexington Law Group
15 1627 Irving Street
16 San Francisco, California 94122
17 esomers@lexlawgroup.com

18 7. **CLAIMS COVERED AND RELEASE**

19 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
20 Defendant and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
21 companies and their successors and assigns (“Defendant Releasees”), and all entities to whom they
22 distribute or sell Covered Products, including but not limited to distributors, wholesalers,
23 customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant
24 Releasees”), of any violation of Proposition 65 or any other statutory or common law claims that
25 have been or could have been asserted in the public interest against Defendant, Defendant
26 Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure to
27 lead arising in connection with Covered Products manufactured, distributed, or sold by Defendant
28 prior to the Effective Date.

29 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
30 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
31 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation

1 of Proposition 65 or any other statutory or common law claims that have been or could have been
2 asserted in the public interest regarding the failure to warn about exposure to lead arising in
3 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
4 Effective Date.

5 7.3 Compliance with the terms of this Consent Judgment by Defendant and its
6 Defendant Releasees shall constitute compliance with Proposition 65 by that Defendant, its
7 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
8 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant
9 after the Effective Date.

10 **8. PROVISION OF NOTICE**

11 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by certified mail and electronic mail to the Party(ies) identified in Section 6.2.
13 Any party may modify the person and address to whom the notice is to be sent by sending each
14 other party notice by certified mail and/or other verifiable form of written communication.

15 **9. COURT APPROVAL**

16 9.1 This Consent Judgment shall become effective on the Effective Date, provided
17 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
18 Defendant shall support approval of such Motion.

19 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
20 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

21 **10. GOVERNING LAW AND CONSTRUCTION**

22 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California.

24 10.2 The Parties, including their counsel, have participated in the preparation of this
25 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
26 Consent Judgment has been accepted and approved as to its final form by all Parties and their
27 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
28 interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.

1 Each party to this Consent Judgment agrees that any statute or rule of construction providing that
2 ambiguities are to be resolved against the drafting Party should not be employed in the
3 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
4 Civil Code §1654.

5 **11. ATTORNEYS' FEES**

6 11.1 A party who prevails in any action or proceeding arising out of this Consent
7 Judgment, including but not limited to any action necessary to execute on this Consent Judgment,
8 shall be entitled to reasonable attorneys' fees and costs incurred in connection with such action or
9 proceeding.

10 11.2 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 **IT IS SO STIPULATED:**

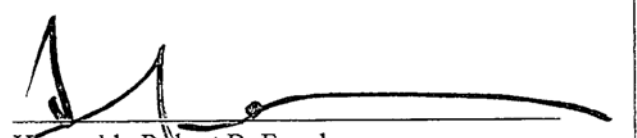
13 Dated: October 14, 2010	14 CENTER FOR ENVIRONMENTAL HEALTH 15 By <u></u> 16 17 Printed Name <u>MICHAEL GREEN</u> 18 19 Title <u>EXECUTIVE DIRECTOR</u> 20 21 22 23 24 25 26 27 28
----------------------------	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: October 14, 2010	<p>LISA KLINE, INC.</p> <p>By <u><i>Lisa Kline</i></u></p> <p>Printed Name <u>Lisa Kline</u></p> <p>Title <u>president</u></p>
-------------------------	--

IT IS SO ORDERED, ADJUDGED,
AND DECREED

Dated: JAN 14, 2011
AM 12:54 PM 26, 2011


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<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>
<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>