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**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 27 2009

Adelgin, Exec. Off./Clerk

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

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

Plaintiffs,

vs.

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION, et al,

Defendants.

) Case No. RG 04-162075

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

) ~~[PROPOSED]~~ CONSENT JUDGMENT
AS TO PLANET BEAUTY, 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 Planet Beauty, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the operative 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 Planet Beauty,
10 Inc., regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

11 1.6 On November 8, 2007, the complaint in the *Nadri* Action was amended to name
12 additional defendants, including Defendant Planet Beauty, Inc. (the Fourth Amended Complaint in
13 the *Nadri* Action is herein referred to as the Complaint")

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

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

23 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement
24 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
25 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
26 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
27 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
28 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable

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

9 **2. DEFINITIONS**

10 2.1 The term "Covered Products" means (a) the following ornaments worn by a person:
11 an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, hair accessories, earring, necklace,
12 pin, ring, and Body Piercing Jewelry, or (b) any bead, chain, link, pendant, or other component of
13 such an ornament.

14 2.2 The term "Effective Date" means the date this Consent Judgment is entered by the
15 Court.

16 **3. INJUNCTIVE RELIEF**

17 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall
18 not manufacture, ship, or sell or offer for sale any Covered Product within the United States that
19 contains any component, or is made of any material, that contains more than 0.01 percent lead by
20 weight (100 ppm). Any determination of lead content of a Covered Product under this Consent
21 Judgment shall be conducted pursuant to the Test Protocols set forth in Exhibit A.

22 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
23 Defendant shall cease shipping (1) the Metal and CZ Owl Necklace, Item No. 435, which was
24 identified in the 60-Day Notice of Violation sent by CEH to Defendant, and (2) the Pave Hair
25 Clips, Manufacturer ID No. 7-81580-00671-1 (the "Recall Products"), to stores and/or customers
26 in California, and Defendant shall withdraw the Recall Products from the market in California,
27 and, at a minimum, send instructions to any of its stores and/or customers that offer the Recall
28 Products for sale in California to cease offering such Recall Products for sale in California and to

1 either return all the Recall Products to Defendant for destruction, or to directly destroy the Recall
2 Products. Any destruction of such Recall Products shall be in compliance with all applicable laws.
3 Defendant shall keep and make available to CEH for inspection and copying records and
4 correspondence regarding the market withdrawal and destruction of such Recall Products. If there
5 is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy
6 in court.

7 **4. ENFORCEMENT**

8 4.1 CEH may, by motion or application for an order to show cause before the Superior
9 Court of the County of Alameda, enforce the terms and conditions contained in this Consent
10 Judgment. Should CEH prevail on any motion or application under this section, CEH shall be
11 entitled to recover its reasonable attorneys' fees and costs associated with such motion or
12 application.

13 **5. PAYMENTS**

14 5.1 **Payments From Defendant.** Within five days of the entry of this Consent
15 Judgment, Defendant shall pay the total sum of \$35,000 as a settlement payment.

16 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
17 in three separate checks delivered to the offices of the Lexington Law Group, LLP (Attn: Eric
18 Somers), 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as
19 follows:

20 5.2.1 Defendant shall pay the sum of \$1,000 as a penalty pursuant to Health &
21 Safety Code §25249.7(b),

22 5.2.2 Defendant shall pay the sum of \$11,200 as payment to CEH in lieu of
23 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
24 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
25 exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such
26 funds to monitor and enforce compliance with the reformulation requirements of this and other
27 similar Consent Judgments. The payment in lieu of penalty check shall be made payable to the
28 Center For Environmental Health.

1 5.2.3 Defendant shall pay the sum of \$22,800 as reimbursement of reasonable
2 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
3 payable to the Lexington Law Group, LLP.

4 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

8 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
9 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
10 modify the Consent Judgment.

11 **7. CLAIMS COVERED AND RELEASE**

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

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

1 7.3 Compliance with the terms of this Consent Judgment by Defendant and its
2 Defendant Releasees shall constitute compliance with Proposition 65 by that Defendant, its
3 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
4 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant
5 after the Effective Date.

6 **8. PROVISION OF NOTICE**

7 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by certified mail and electronic mail as follows:

9 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
10 pursuant to this Consent Judgment shall be:

11 Houman Fakhimi
12 Fakhimi & Associates
13 3 Hutton Centre Drive, Suite 620
14 Santa Ana, California 92707
15 Tel: (714) 542-2188 / Fax: (714) 542-3119
16 hfakhimi@lawhf.com

17 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
18 this Consent Judgment shall be:

19 Eric S. Somers
20 Lexington Law Group, L.L.P.
21 1627 Irving Street
22 San Francisco, California 94122
23 Tel: (415) 759-4111 / Fax: (415) 759-4112
24 esomers@lexlawgroup.com

25 8.2 Any party may modify the person and address to whom the notice is to be sent by
26 sending each other party notice by certified mail and/or other verifiable form of written
27 communication.

28 **9. COURT APPROVAL**

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

1 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
2 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

3 **10. GOVERNING LAW AND CONSTRUCTION**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 10.2 The Parties, including their counsel, have participated in the preparation of this
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
8 Consent Judgment has been accepted and approved as to its final form by all Parties and their
9 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
10 interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.
11 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that
12 ambiguities are to be resolved against the drafting Party should not be employed in the
13 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
14 Civil Code §1654.

15 **11. ENTIRE AGREEMENT**

16 11.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
19 and therein. There are no warranties, representations, or other agreements between the Parties
20 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
21 other than those specifically referred to in this Consent Judgment have been made by any Party
22 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
23 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
24 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
25 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
26 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
27 nor shall such waiver constitute a continuing waiver.

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12. RETENTION OF JURISDICTION

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

13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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


14. NO EFFECT ON OTHER SETTLEMENTS

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

15. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

<p>Dated: November 10, 2008 December</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p>MICHAEL GORDON</p> <p>Printed Name</p> <hr/> <p>EXECUTIVE DIRECTOR</p> <p>Title</p>
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~~November 25~~
Dated: ~~November 25~~, 2008
December 9, 2008

PLANET BEAUTY, INC.



Bahman Fakhimi

Printed Name

pres.
Title

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

Dated: **FEB 27 2009**

Robert B. Freedman

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

1 **EXHIBIT A (TESTING PROTOCOLS)**

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

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

21 All jewelry components samples shall be prepared for testing in accordance with USEPA
22 Method 3050B or 3051, with the following additional notes and exceptions:

23

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

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	<p>necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.</p>
<p>Unplated metal and metal substrates not defined as Class 1 Components.</p>	<p>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.</p>
<p>Polyvinyl chloride (PVC)</p>	<p>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.</p>
<p>Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones).</p>	<p>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.</p>
<p>Coatings on Glass and Plastic Pearls.</p>	<p>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 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</p>

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	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 A (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.
Dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, crystal	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. 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.
Glass and crystal used in Children's Products (for weight)	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.

EXHIBIT B

**(LIST OF ENTITIES NOT SUBJECT
TO DOWNSTREAM DEFENDANT RELEASE)**

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1. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
2. A-List, Inc. dba Kitson
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. Busch Entertainment Corporation
9. Conair Corporation
10. Cousin Corporation of America
11. Creative Visions, Inc. dba Country Clutter
12. Elite Distributing Company dba Edco
13. Furla (U.S.A.) Incorporated
14. Georgiou Studio, Inc.
15. Goody Products, Inc.
16. Hand & Mind, Inc.
17. Hayun Fashion Investments Corporation dba Planet Funk
18. I Love Bracelets, Inc.
19. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
20. Jacadi USA, Inc.
21. La-Kontra
22. Legoland California LLC
23. Lisa Kline, Inc.
24. Long Rap, Inc.
25. Mango
26. Marin Beauty Company
27. Max Rave, LLC

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- 28. Peter David, Inc.
- 29. Planet Beauty, Inc.
- 30. Raley's
- 31. Rite Aid Corporation
- 32. Safeway Inc.
- 33. Scünci International, Inc.
- 34. Sea World, Inc.
- 35. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 36. Six Flags Theme Parks, Inc.
- 37. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 38. Venus Fashion Jewelry
- 39. Whole Foods Market California, Inc.; Whole Foods Market, Inc.