

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

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 30 2009

CLERK OF THE SUPERIOR COURT  
BY [Signature]  
DEPUTY

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 04-169511)  
vs. ) [PROPOSED] CONSENT JUDGMENT  
BURLINGTON COAT FACTORY ) AS TO HAYUN FASHION  
WAREHOUSE CORPORATION, et al, ) INVESTMENTS CORPORATION DBA  
Defendants. ) PLANET FUNK  
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 Hayun Fashion Investments Corporation dba Planet Funk (“Defendant”), to settle certain claims asserted by CEH against Defendant as set forth in the operative Complaint as amended herein 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 Coat*

1 *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 Attorneys  
9 of every California city with a population greater than 750,000, and to Defendant regarding the  
10 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 ten or more persons, and which manufactures,  
14 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 Complaint  
17 and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper  
18 in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full  
19 and final resolution of all claims which were or could have been raised in the Complaint based on the  
20 facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by  
21 Defendant.

22 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement of  
23 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 Consent  
25 Judgment and agreeing to comply with its terms, the Parties do not admit any facts or conclusions of  
26 law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any  
27 violations of Proposition 65 or any other statutory, common law or equitable requirements relating to  
28 lead in the Covered Products as defined in paragraph 2.1. Nothing in this Consent Judgment shall be

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

## 8 2. DEFINITIONS

9 2.1 The term "Covered Product" means (a) the following ornaments worn by a person: an  
10 anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories, earring,  
11 necklace, pin, ring and Body Piercing Jewelry; and (b) any bead, chain, link, pendant, or other  
12 component of such an ornament.

13 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

## 14 3. INJUNCTIVE RELIEF

15 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall not  
16 manufacture, ship, or sell or offer for sale in California or anywhere else any Covered Product that  
17 contains:

18 3.1.1 Any plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and  
19 polyvinyl chloride (PVC)) component, or is made any plastic or rubber material, that is more than  
20 0.02 percent lead by weight (200 ppm);

21 3.1.2 Any Surface Coating that is more than 0.009 percent lead by weight (90 ppm).  
22 For purposes of this Consent Judgment, "Surface Coating" shall carry the same meaning as "Paint or  
23 other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other similar surface-coating  
24 materials means a fluid, semi-fluid, or other material, with or without a suspension of finely divided  
25 coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone,  
26 paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those  
27 materials which actually become a part of the substrate, such as the pigment in a plastic article, or  
28

1 those materials which are actually bonded to the substrate, such as by electroplating or ceramic  
2 glazing.”); or

3 3.1.3 Any component or material not covered by Sections 3.11 or 3.12 (e.g. metal  
4 parts), that is more than 0.03 percent lead by weight (300 parts per million (“ppm”)).

5 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,  
6 Defendant shall cease selling and shipping the Covered Products identified in Section 3.2.1 (the  
7 “Recall Products”) to stores and/or customers in California, and Defendant shall withdraw the Recall  
8 Products from the market in California, and, at a minimum, send instructions to any of its stores  
9 and/or customers that offer the Recall Products for sale in California to cease offering such Recall  
10 Products for sale in California and to either return all the Recall Products to Defendant for  
11 destruction, or to directly destroy the Recall Products. Any destruction of such Recall Products shall  
12 be in compliance with all applicable laws. Defendant shall keep and make available to CEH for  
13 inspection and copying records and correspondence regarding the market withdrawal and destruction  
14 of such Recall Products. If there is a dispute over the corrective action, the Parties shall meet and  
15 confer before seeking any remedy in court.

16 3.2.1 **Recall Products.** Defendant shall withdraw the following Covered Products  
17 in accordance with Section 3.2:

- 18 • JN-0686 Gold Necklace, Retail Item No. 048613
- 19 • WNE509 Gold Earrings, Retail Item No. 032718

#### 20 **4. ENFORCEMENT**

21 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
22 enforce the terms of this Consent Judgment, CEH shall provide Defendant with thirty (30) days  
23 advanced written notice of the alleged violation and shall meet and confer with Defendant during  
24 such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the  
25 alleged violation. After such thirty (30) day period, CEH may, by new action, noticed motion or  
26 order to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions  
27 contained in this Consent Judgment. Should CEH prevail on any motion or application under this  
28

1 section, CEH shall be entitled to recover its reasonable attorneys' fees and costs associated with  
2 such new action, motion or order to show cause from Defendant.

3 **5. PAYMENTS**

4 5.1 **Payments From Defendant.** Defendant shall pay the total sum of \$40,000 as a  
5 settlement payment pursuant to this Section.

6 5.1.1 Defendant shall pay the sum of \$1,000 as a civil penalty pursuant to Health &  
7 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety  
8 Code §25249.12.

9 5.1.2 Defendant shall pay the sum of \$12,800 as payment to CEH in lieu of penalty  
10 pursuant to California Health & Safety Code §25249.7(b), and California Code of Regulations, Title  
11 11, §3203(b), which sets forth criteria for such payments. CEH will use such funds to continue its  
12 work educating and protecting people from exposures to toxic chemicals, including heavy metals.  
13 CEH may also use a portion of such funds to monitor compliance with the reformulation  
14 requirements of this and other similar Consent Judgments, to purchase and test jewelry, and to  
15 prepare and compile the information and documentation necessary to support a Notice of Violation.  
16 In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
17 percent of such funds to award grants to grassroots environmental justice groups working to educate  
18 and protect people from exposures to toxic chemicals. The method of selection of such groups can be  
19 found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

20 5.1.3 Defendant shall pay the sum of \$26,200 as reimbursement of CEH's  
21 reasonable attorneys' fees and costs.

22 **5.2 Timing and Delivery of Payments.** All payments shall be delivered to the offices of  
23 the Lexington Law Group (Attn: Eric Somers), 1627 Irving Street, San Francisco, California 94122.

24 5.2.1 On or before September 20, 2009, Defendant shall deliver three separate  
25 checks as follows: (1) a check in the amount of \$250 made payable to the Center For Environmental  
26 Health as a civil penalty; (2) a check in the amount of \$3,200 made payable to the Center For  
27 Environmental Health as a payment in lieu of additional civil penalty; and (3) a check in the amount  
28 of \$6,550 made payable to the Lexington Law Group as reimbursement of attorneys' fees and costs.

1           5.2.2 On or before November 20, 2009, Defendant shall deliver three separate  
2 checks as follows: (1) a check in the amount of \$250 made payable to the Center For Environmental  
3 Health as a civil penalty; (2) a check in the amount of \$3,200 made payable to the Center For  
4 Environmental Health as a payment in lieu of additional civil penalty; and (3) a check in the amount  
5 of \$6,550 made payable to the Lexington Law Group as reimbursement of attorneys' fees and costs.

6           5.2.3 On or before September 1, 2010, Defendant shall deliver three separate checks  
7 as follows: (1) a check in the amount of \$250 made payable to the Center For Environmental Health  
8 as a civil penalty; (2) a check in the amount of \$3,200 made payable to the Center For Environmental  
9 Health as a payment in lieu of additional civil penalty; and (3) a check in the amount of \$6,550 made  
10 payable to the Lexington Law Group as reimbursement of attorneys' fees and costs.

11           5.2.4 On or before September 1, 2011, Defendant shall deliver three separate checks  
12 as follows: (1) a check in the amount of \$250 made payable to the Center For Environmental Health  
13 as a civil penalty; (2) a check in the amount of \$3,200 made payable to the Center For Environmental  
14 Health as a payment in lieu of additional civil penalty; and (3) a check in the amount of \$6,550 made  
15 payable to the Lexington Law Group as reimbursement of attorneys' fees and costs.

## 16   **6.    MODIFICATION AND DISPUTE RESOLUTION**

17       6.1    **Modification.** This Consent Judgment may be modified from time to time by express  
18 written agreement of the Parties, with the approval of the Court, or by an order of this Court upon  
19 motion and in accordance with law.

20       6.2    **Notice; Meet and Confer.** Any party seeking to modify this Consent Judgment shall  
21 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify  
22 the Consent Judgment.

23       6.2.1 **Notices to Defendant.** The person for Defendant to receive Notices pursuant  
24 to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

25                           Kevin Salute  
26                           Attorney at Law  
27                           12925 Riverside Drive, 2nd Floor  
28                           Sherman Oaks, CA 91423

1           6.2.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to this  
2 Consent Judgment, until and unless modified pursuant to Section 8, shall be:

3                           Eric S. Somers  
4                           Lexington Law Group  
5                           1627 Irving Street  
6                           San Francisco, California 94122

7 **7. CLAIMS COVERED AND RELEASE**

8           7.1 This Consent Judgment is a full, final, and binding resolution between CEH and  
9 Defendant and Defendant's parent and sister companies, shareholders, officers, directors, employees,  
10 divisions, subdivisions, subsidiaries, partners, lenders, attorneys, and their successors and assigns  
11 ("Defendant Releasees"), and all entities other than those listed on Exhibit A of this Consent  
12 Judgment to whom they have ever distributed or sold Covered Products including, but not limited to,  
13 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
14 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or  
15 common law claims that have been or could have been asserted in the public interest against  
16 Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to  
17 warn about exposure to lead arising in connection with Covered Products manufactured, distributed,  
18 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 of  
22 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 any 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 Defendant  
27 Releasees shall constitute compliance with Proposition 65 by that Defendant, its Defendant Releasees  
28 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 **8. PROVISION OF NOTICE**

2 8.1 When any party is entitled to receive any notice under this Consent Judgment, the  
3 notice shall be sent by certified mail to the party identified in Section 6.2. Any party may modify the  
4 person and address to whom the notice is to be sent by sending each other party notice by certified  
5 mail and/or other verifiable form of written communication.

6 **9. COURT APPROVAL**

7 9.1 This Consent Judgment shall become effective on the Effective Date, provided  
8 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
9 Defendant shall support approval of such Motion.

10 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
11 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

12 **10. GOVERNING LAW AND CONSTRUCTION**

13 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California.

15 10.2 The Parties, including their counsel, have participated in the preparation of this  
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
17 Consent Judgment has been accepted and approved as to its final form by all Parties and their  
18 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be  
19 interpreted against any party as a result of the manner of the preparation of this Consent Judgment.  
20 Each party to this Consent Judgment agrees that any statute or rule of construction providing that  
21 ambiguities are to be resolved against the drafting party should not be employed in the interpretation  
22 of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code §1654.

23 **11. ENTIRE AGREEMENT**

24 11.1 This Consent Judgment contains the sole and entire agreement and understanding of  
25 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
27 therein. There are no warranties, representations, or other agreements between the Parties except as  
28 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those



1 specifically referred to in this Consent Judgment have been made by any party hereto. No other  
2 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist  
3 or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this  
4 Consent Judgment shall be binding unless executed in writing by the party to be bound thereby. No  
5 waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver  
6 of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a  
7 continuing waiver.

## 8 **12. RETENTION OF JURISDICTION**

9 12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
10 Judgment.

## 11 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by  
13 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
14 Consent Judgment on behalf of the party represented and legally to bind that party.

## 15 **14. NO EFFECT ON OTHER SETTLEMENTS**

16 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
17 against an entity that is not a Defendant, Defendant Releasees or Downstream Defendant Releasees  
18 on terms that are different than those contained in this Consent Judgment.

## 19 **15. EXECUTION IN COUNTERPARTS**

20 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
21 means of facsimile, which taken together shall be deemed to constitute one document.

22 IT IS SO STIPULATED:  
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: September 10, 2009

**CENTER FOR ENVIRONMENTAL HEALTH**

*Charlie Pizarro*

Charlie Pizarro  
Printed Name

Associate Director  
Title

Dated: September \_\_, 2009

**HAYUN FASHION INVESTMENTS CORPORATION DBA PLANET FUNK**

\_\_\_\_\_

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

\_\_\_\_\_  
Title

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

Dated:

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

1 Dated: September \_\_, 2009

CENTER FOR ENVIRONMENTAL HEALTH

\_\_\_\_\_

2  
3  
4  
5 Printed Name

6  
7 Title

8 Dated: September 11, 2009

HAYUN FASHION INVESTMENTS  
CORPORATION DBA PLANET FUNK

9  
10 

11  
12 NOY HAYUN  
13 Printed Name

14 CEO  
15 Title

16  
17 **IT IS SO ORDERED, ADJUDGED,  
18 AND DECREED**

19 Dated: **OCT 30 2009**

**Robert B. Freedman**

20 Honorable Robert B. Freedman  
21 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**

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

1. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
2. Amiee Lynn, Inc.
3. AZ3, Inc.
4. Banana Republic, LLC
5. BCBG Max Azria Group, Inc.
6. Big A Drug Stores, Inc.
7. Conair Corporation
8. Cousin Corporation of America
9. Forum Novelties, Inc.
10. Georgiou Studio, Inc.
11. I Love Bracelets, Inc.
12. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
13. Jacadi USA, Inc.
14. JOIA Accessories, Inc.
15. Legoland California LLC
16. Lisa Kline, Inc.
17. Long Rap, Inc.
18. Marin Beauty Company
19. Max Rave, LLC
20. Peninsula Beauty Supply, Inc.
21. Raley's
22. Rite Aid Corporation
23. Ruby's Costume Company, Inc.
24. Safeway, Inc.

- 1 25. Scunci International, Inc.
- 2 26. Sea World, Inc.
- 3 27. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 4 28. Six Flags Theme Parks, Inc.
- 5 29. Urban Outfitters West LLC; Urban Outfitters, Inc.

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