

SEP 15 2011

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

) JCCP ~~Case~~ No. 4666

1) [PROPOSED] CONSENT JUDGMENT  
2) AS TO AMIEE LYNN INC.

IN THE SUPERIOR COURT FOR THE  
COUNTY OF ALAMEDA *People of the State of  
California v. Burlington Coat Factory Warehouse  
Corporation, et al.*, Lead Case No. RG 04-  
162075

I.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Amiee Lynn 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*”).

11

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 August 14, 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 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 is or 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  
3 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies  
4 the material, factual and legal allegations in CEH's Complaint and expressly denies any wrong  
5 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
6 remedy, argument or defense the Parties may have in this or any other pending or future legal  
7 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
8 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
9 disputed in this action.

## 10 **2. DEFINITIONS**

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

15 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

## 16 **3. INJUNCTIVE RELIEF**

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

20 3.1.1 Any component not covered under Section 3.1.2, or that is made of any  
21 material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million  
22 ("ppm")) Lead by weight; or

23 3.1.2 Any Paint or Surface Coating that is more than 0.009 percent Lead by  
24 weight (90 ppm). For purposes of this Consent Judgment, "Paint or Surface Coating" shall carry  
25 the same meaning as "Paint or other similar surface coating" under 16 C.F.R. §1303.2(b)(1)  
26 ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,  
27 with or without a suspension of finely divided coloring matter, which changes to a solid film when  
28 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This

term does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.”).

**3.2 Market Withdrawal of Covered Products.** On or before the Effective Date, Defendant shall cease shipping the Eagle and Crystal Pendant, Manuf. ID No. 6-11566-63672-7, as identified in CEH’s pre-suit Notice of Violation to Defendant (the “Recall Covered Products”), to stores and/or customers in California, and Defendant shall withdraw the Recall Covered Products from the market in California, and, at a minimum, send instructions to any of its stores and/or customers that offer the Recall Covered Products for sale in California to cease offering such Recall Covered Products for sale and to either return all Recall Covered Products to Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance with all applicable laws. Defendant shall keep and make available to CEH for inspection and copying records and correspondence regarding the market withdrawal and destruction of the Recall Covered Products. If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in court

#### **4. ENFORCEMENT**

**4.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action, motion or order to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment. Should the Party seeking to enforce prevail on any motion or application under this section, such Party shall be entitled to recover its reasonable attorneys’ fees and costs associated with such motion, order to show cause or procedure from the other Party.

#### **5. PAYMENTS**

**5.1 Payments From Defendant.** Within five (5) days of the entry of this Consent

1 Judgment, Defendant shall pay the total sum of \$45,000 as a settlement payment.

2       **5.2 Allocation of Payments.** The total settlement amount for Defendant shall be paid  
3 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),  
4 503 Divisadero Street, San Francisco, California 94117-2212 and made payable and allocated as  
5 follows:

6               **5.2.1** Defendant shall pay the sum of \$4,500 as a penalty pursuant to Health &  
7 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &  
8 Safety Code §25249.12. The penalty check shall be made payable to the Center For  
9 Environmental Health.

10               **5.2.2** Defendant shall pay the sum of \$11,200 as payment to CEH in lieu of  
11 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title  
12 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from  
13 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
14 to monitor compliance with the reformulation requirements of this and other similar Consent  
15 Judgments and to purchase and test Covered Products to confirm compliance with such  
16 reformulation requirements. In addition, as part of its Community Environmental Action and  
17 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental  
18 justice groups working to educate and protect people from exposures to toxic chemicals. The  
19 method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).  
20 The payment in lieu of penalty check shall be made payable to the Center For Environmental  
21 Health.

22               **5.2.3** Defendant shall pay the sum of \$29,300 as reimbursement of reasonable  
23 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable  
24 to the Lexington Law Group.

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     **7.       CLAIMS COVERED AND RELEASE**

5           7.1     This Consent Judgment is a full, final, and binding resolution between CEH and  
6 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
7 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other  
8 than those listed on Exhibit A of this Consent Judgment to whom they distribute or sell Covered  
9 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
10 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of  
11 Proposition 65 or any other statutory or common law claims that have been or could have been  
12 asserted in the public interest against Defendant, Defendant Releasees, and Downstream  
13 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection  
14 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

15           7.2     CEH, for itself and acting on behalf of the public interest pursuant to Health &  
16 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against  
17 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
18 of Proposition 65 or any other statutory or common law claims that have been or could have been  
19 asserted in the public interest regarding the failure to warn about exposure to lead arising in  
20 connection with Covered Products manufactured, distributed or sold by Defendant prior to the  
21 Effective Date.

22           7.3     Compliance with the terms of this Consent Judgment by Defendant and the  
23 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant  
24 Releasees and their Downstream Defendant Releasees with respect to any alleged failure to warn  
25 about lead in Covered Products manufactured, distributed or sold by Defendant after the Effective  
26 Date.

27     **8.       PROVISION OF NOTICE**

28           8.1     When any Party is entitled to receive any notice under this Consent Judgment, the

1 notice shall be sent by certified mail and electronic mail as follows:

2                   8.1.1   **Notices to Defendant.** The person for Defendant to receive Notices  
3 pursuant to this Consent Judgment shall be:

4                               Melissa Jones  
5                               Greenberg Traurig, LLP  
6                               1201 K Street, Suite 1100  
7                               Sacramento, CA 95814-3938  
8                               jonesme@gtlaw.com

9                   8.1.2   **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
10 this Consent Judgment shall be:

11                               Eric S. Somers  
12                               Lexington Law Group  
13                               1627 Irving Street  
14                               San Francisco, CA 94122  
15                               esomers@lexlawgroup.com

16           8.2   Any Party may modify the person and address to whom the notice is to be sent by  
17 sending the other Party notice by certified mail and/or other verifiable form of written  
18 communication.

19 **9.   COURT APPROVAL**

20           9.1   This Consent Judgment shall become effective on the Effective Date, provided  
21 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
22 Defendant shall support approval of such Motion.

23           9.2   If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
24 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

25 **10.   GOVERNING LAW AND CONSTRUCTION**

26           10.1   The terms of this Consent Judgment shall be governed by the laws of the State of  
27 California.

28 **11.   ATTORNEYS' FEES**

          11.1   A Party who unsuccessfully brings or contests an action arising out of this Consent  
Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent

Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

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

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

## **12. ENTIRE AGREEMENT**

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

## **13. RETENTION OF JURISDICTION**

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



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

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

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

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

10 **16. EXECUTION IN COUNTERPARTS**

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

13  
14 IT IS SO STIPULATED:

15 Dated: June 27 2011

CENTER FOR ENVIRONMENTAL HEALTH

17  
18 

19  
20 CHARLIE PIZARRO

21 Printed Name

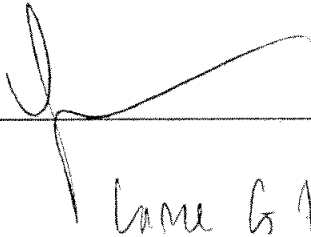
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Dated: June \_\_, 2011

AMIEE LYNN INC.




Printed Name

General Counsel + Director  
Title

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

Dated: 7-15-11



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

**STEVEN A. BRICK**

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

1. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
2. AZ3, Inc.
3. Banana Republic, LLC
4. Barnes & Noble, Inc.
5. BCBG Max Azria Group, Inc.
6. Big A Drug Stores, Inc.
7. Candela Sales Company, Inc.
8. Forum Novelties, Inc.
9. Georgiou Studio, Inc.
10. I Love Bracelets, Inc.
11. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
12. Jacadi USA, Inc.
13. Legoland California LLC
14. Long Rap, Inc.
15. Marin Beauty Company
16. Max Rave, LLC
17. Rite Aid Corporation
18. Rubie's Costume Company, Inc.
19. Safeway, Inc.
20. Scünci International, Inc.
21. Sea World, Inc.
22. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
23. Six Flags Theme Parks, Inc.