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**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 22 2009

, Exec. Off./Clerk

A. Yiu

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 O.D.Y. ACCESSORIES, 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 O.D.Y. Accessories, 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 5, 2008, 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 October 22, 2008, 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
14 manufactures, distributes and/or sells Covered Products that are sold 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 **2. DEFINITIONS**

9 2.1 The term "Covered Product" means (a) the following ornaments worn by a person:
10 an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring,
11 necklace, pin and ring; or (b) any bead, chain, link, pendant, or other component of such an
12 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.** The reformulation requirements of this
16 Consent Judgment are as follows:

17 3.1.1 After the Effective Date but before January 1, 2010, Defendant shall not
18 manufacture, ship, sell, offer to sell or cause to be manufactured, shipped, sold or offered for sale:

19 3.1.1.1 Any Covered Product that is a Children's Product as such term in
20 defined in 15 USCA §2052 that is made with any component or material that contains more than
21 0.02 percent lead by weight (200 parts per million ("ppm")).

22 3.1.1.2 Any other Covered Product that is made with any component or
23 material that contains more than 0.03 percent lead by weight (300 parts per million ("ppm")).

24 3.1.2 On or after January 1, 2010, Defendant shall not manufacture, ship, sell,
25 offer to sell or cause to be manufactured, shipped, sold or offered for sale, any Covered Product
26 that is made with any component or material that contains more than 0.01 percent lead by weight
27 (100 ppm).

28

1 3.1.3 After August 13, 2009, Defendant shall not manufacture, ship, sell, offer
2 to sell or cause to be manufactured, shipped, sold or offered for sale, any Covered Product that
3 contains or is made with any Surface Coating that contains more than 0.009 percent lead by
4 weight (90 ppm). For purposes of this Consent Judgment, "Surface Coating" shall carry the same
5 meaning as "Paint or other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other
6 similar surface-coating materials means a fluid, semi-fluid, or other material, with or without a
7 suspension of finely divided coloring matter, which changes to a solid film when a thin layer is
8 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not
9 include printing inks or those materials which actually become a part of the substrate, such as the
10 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as
11 by electroplating or ceramic glazing.").

12 3.1.4 The reformulation requirements of Sections 3.1.1 through 3.1.3 of this
13 Consent Judgment shall not apply to glass or and crystal decorative components (e.g., cat's eye,
14 cubic zirconia (sometimes called cubic zirconium, CZ), rhinestones, cloisonné), provided that in
15 any Children's Product as such term in defined in 15 USCA §2052, such glass or crystal
16 decorative components weigh in total no more than 1.0 gram, excluding any such glass or crystal
17 decorative components that contain less than 0.01 percent (100 ppm) lead and have no
18 intentionally added lead.

19 3.2 **Additional Injunctive Relief.** Defendant shall comply with the following
20 additional injunctive relief requirements:

21 3.2.1 **National Application of Reformulation Requirements.** All Covered
22 Products manufactured, distributed, shipped or sold by Defendant within the United States shall
23 comply with the lead reformulation requirements of Section 3.1 of this Consent Judgment.

24 3.2.2 **Market Withdrawal of Covered Products.** To the extent it has not
25 already done so in response to this litigation, on or before the Effective Date, Defendant shall
26 cease shipping the Ivory Cross Necklace (Retail ID # 13246434 0252 20561) (the "Recall
27 Products") to stores and/or customers in California, and Defendant shall withdraw the Recall
28 Products from the market in California, and, at a minimum, send instructions to any of its

1 customers that offer the Recall Products for sale in California to cease offering such Recall
2 Products for sale in California and to return all the Recall Products to Defendant for destruction.
3 Defendant shall destroy any returned Recall Products and shall ensure that any destruction of such
4 Recall Products is in compliance with all applicable laws. Defendant shall keep and make
5 available to CEH for inspection and copying records and correspondence regarding the market
6 withdrawal and destruction of such Recall Products. If there is a dispute over the corrective
7 action, the Parties shall meet and confer before seeking any remedy in court.

8 **4. ENFORCEMENT**

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

12 **4.2** Any action to enforce the reformulation requirements of Section 3.1 of this Consent
13 Judgment shall be brought exclusively pursuant to Section 4.3.

14 **4.2.1** For purposes of this Section 4 only, the term "Defendant" includes a
15 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
16 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
17 amended consent judgment," as those terms are used in Health & Safety Code §25214.3(d).

18 **4.3 Enforcement of Reformulation Requirements.**

19 **4.3.1 Notice of Violation.** In the event that, at any time following the Effective
20 Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products
21 that the Notifying Person believes in good faith do not comply with the reformulation
22 requirements of this Consent Judgment, the Notifying Person may issue a Notice of Violation
23 pursuant to this Section 4.

24 **4.3.2 Service of Notice of Violation and Supporting Documentation.**

25 **4.3.2.1** The Notice of Violation shall be sent to the person(s) identified in
26 Section 8.1 to receive notices for Defendant, and must be served within sixty days of the date the
27 alleged violation(s) was or were observed.

28 **4.3.2.2** The Notice of Violation shall, at a minimum, set forth for each

1 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
2 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to
3 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
4 Product and supporting documentation sufficient for validation of the test results, including all
5 laboratory reports, quality assurance reports and quality control reports associated with testing of
6 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
7 criteria of Exhibit A. Wipe, swipe, and swab testing are not alone sufficient to support a Notice of
8 Violation.

9 4.3.2.3 The Notifying Person shall promptly make available for inspection
10 and/or copying upon request all supporting documentation related to the testing of the Covered
11 Products and associated quality control samples, including chain of custody records, all laboratory
12 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
13 printouts from all analytical instruments relating to the testing of Covered Product samples and
14 any and all calibration, quality assurance, and quality control tests performed or relied upon in
15 conjunction with the testing of the Covered Products, obtained by or available to the Notifying
16 Person that pertains to the Covered Product's alleged noncompliance with Section 3 and, if
17 available, any exemplars of Covered Products tested.

18 4.3.3 **Notice of Election of Response.** No more than 30 days after receiving a
19 Notice of Violation by e-mail, Defendant shall provide written notice to the Notifying Person
20 whether it elects to contest the allegations contained in a Notice of Violation ("Notice of
21 Election").

22 4.3.3.1 If a Notice of Violation is contested the Notice of Election shall
23 include all then-available documentary evidence regarding the alleged violation, including all test
24 data, if any. If Defendant or the Notifying Person later acquires additional test or other data
25 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
26 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria
27 of Exhibit A.
28

1 4.3.3.2 If a Notice of Violation is not contested, the Notice of Election shall
2 include a description of Defendant's corrective action pursuant to Section 4.2.6. The Notice of
3 Election shall include the name, address, telephone number, and other contact information, of
4 Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation, and of any
5 party to the Amended Master Consent Judgment or to a consent judgment that contained "identical
6 or substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent
7 judgment," as those terms are used in Health & Safety Code §25214.3(d), to whom Defendant
8 sold any Covered Product(s) identified in the Notice of Violation.

9 4.3.4 **Meet and Confer.** If a Notice of Violation is contested, the Notifying
10 Person and Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of
11 serving a Notice of Election contesting a Notice of Violation, and if no enforcement action has
12 been filed, Defendant may withdraw the original Notice of Election contesting the violation and
13 serve a new Notice of Election conceding the violation. If no informal resolution of a Notice of
14 Violation results, the Notifying Person may by motion or order to show cause before the Superior
15 Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.
16 In any such proceeding, the Attorney General and CEH may seek whatever fines, costs, penalties,
17 or remedies are provided by law for failure to comply with the Consent Judgment.

18 4.3.5 **Non-Contested Matters.** If Defendant elects not to contest the
19 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
20 and shall make any contributions required by Section 4.2.7.

21 4.3.6 **Corrective Action in Non-Contested Matters.** If Defendant elects not to
22 contest the allegation, it shall include in its Notice of Election a detailed description of corrective
23 action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified
24 in the Notice of Violation for sale in California. Corrective action must include instructions to
25 Defendant's customer and/or stores to cease offering the Covered Product(s) identified in the
26 Notice of Violation for sale in California as soon as practicable. The Defendant shall keep and
27 make available to the Notifying Person for inspection and/or copying records and correspondence
28 regarding the corrective action. If there is a dispute over the corrective action, the Parties shall

1 meet and confer pursuant to Section 4.2.4 before seeking any remedy in court.

2 **4.3.7 Required Contributions to Proposition 65 Jewelry Testing Fund in**
3 **Non-Contested Matters.** The Defendant shall be required to make a contribution to the
4 Proposition 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as
5 specified below:

6 4.3.7.1 If Defendant serves a Notice of Election not to contest the
7 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not
8 be required to make any contributions pursuant to this Section.

9 4.3.7.2 If Defendant serves a Notice of Election not to contest the
10 allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the
11 Notice of Violation, Defendant shall make a required contribution in the amount of \$2,500 for
12 each Supplier from whom it purchased the Covered Product(s) identified in any Notices of
13 Violation served within a 30-day period.

14 4.3.7.3 If Defendant withdraws a Notice of Election contesting the violation
15 and serves a new Notice of Election not to contest the allegations in a Notice of Violation within
16 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the
17 violations alleged in the Notice of Violation is filed, Defendant shall make a required contribution
18 in the amount of \$7,500 for each Supplier from whom it purchased the Covered Product(s)
19 identified in any Notices of Violation served within a 30-day period.

20 4.3.7.4 The contributions shall be paid within 15 days of e-mail service of a
21 Notice of Election.

22 4.3.7.5 The Defendant's liability for required contributions shall be limited
23 as follows:

24 4.3.7.5.1 The Defendant as a Supplier to one or more retailers
25 shall be liable for one required contribution within any 30-day
26 period, regardless of the number of retailers to whom the Covered
27 Product is distributed.

28 4.3.7.5.2 If Defendant has manufactured, sold, or distributed a

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

6 4.3.7.5.3 The Defendant's monetary liability to make required
7 contributions under Section 4.2.7.2 shall be limited to \$5,000 for
8 each 30-day period. The Defendant's monetary liability to make
9 required contributions under Section 4.2.7.3 shall be limited to
10 \$15,000 for each 30-day period.

11 4.3.7.6 If Defendant has paid either of the payments set forth in Sections
12 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
13 12-month period for Covered Products sold to Defendant from the same Supplier then, at the
14 Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or
15 remedies are provided by law for failure to comply with the Consent Judgment.

16 4.3.8 **Limitation on Liability.** The Defendant's liability when it elects not to
17 contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

18 4.4 **Enforcement of Terms Other Than Reformulation Requirements.** CEH may,
19 by motion or application for an order to show cause before the Superior Court of the County of
20 Alameda, enforce the terms and conditions other than the reformulation requirements of this
21 Consent Judgment. Should CEH prevail on any motion or application under this section, CEH
22 shall be entitled to recover its reasonable attorneys' fees and costs associated with such motion or
23 application.

24 5. PAYMENTS

25 5.1 **Payments From Defendant.** Defendant shall pay the total sum of \$40,000 as a
26 settlement payment pursuant to this Section.

27 5.1.1 Defendant shall pay the sum of \$1,000 as a penalty pursuant to Health &
28 Safety Code §25249.7(b).

1 5.1.2 Defendant shall pay the sum of \$12,800 as payment to CEH in lieu of
2 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
3 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
4 exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such
5 funds to monitor compliance with the reformulation requirements of this and other similar Consent
6 Judgments, to purchase and test jewelry, and to prepare and compile the information and
7 documentation necessary to support a Notice of Violation.

8 5.1.3 Defendant shall pay the sum of \$26,200 as reimbursement of reasonable
9 attorneys' fees and costs.

10 5.2 **Timing and Delivery of Payments.** All payments shall be delivered to the offices
11 of the Lexington Law Group, LLP (Attn: Eric Somers), 1627 Irving Street, San Francisco,
12 California 94122.

13 5.2.1 On or before March 2, 2009, Defendant shall deliver three separate checks
14 as follows: (1) a check in the amount of \$500 made payable to the Center For Environmental
15 Health as a civil penalty; (2) a check in the amount of \$6,400 made payable to the Center For
16 Environmental Health as a payment in lieu of additional civil penalty; and (3) a check in the
17 amount of \$13,100 made payable to the Lexington Law Group as reimbursement of attorneys' fees
18 and costs.

19 5.2.2 On or before May 4, 2009, Defendant shall deliver three separate checks
20 as follows: (1) a check in the amount of \$500 made payable to the Center For Environmental
21 Health as a civil penalty; (2) a check in the amount of \$6,400 made payable to the Center For
22 Environmental Health as a payment in lieu of additional civil penalty; and (3) a check in the
23 amount of \$13,100 made payable to the Lexington Law Group as reimbursement of attorneys' fees
24 and costs.

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 their parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
7 companies and their successors and assigns (“Defendant Releasees”), and all entities other than
8 those listed on Exhibit B 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 and
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 a Defendant and its
23 Defendant Releasees shall constitute compliance with Proposition 65 by that Defendant, its
24 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
25 failure to warn about Lead in Covered Products manufactured, distributed or sold by that
26 Defendant after the Effective Date.

27 7.4 Nothing in this Section 7 shall apply to any Supplier that is not a Defendant unless
28 such Supplier is a parent, subsidiary, or sister company of a Defendant.

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 and electronic mail as follows:

4 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
5 pursuant to this Consent Judgment shall be:

6 Soledad Jacques
7 O.D.Y. Accessories, Inc.
8 29 West 36th Street
9 New York, NY 10018
10 odyacc@odyacc.com

11 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
12 this Consent Judgment shall be:

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

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

21 **9. COURT APPROVAL**

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

25 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
26 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

27 **10. GOVERNING LAW AND CONSTRUCTION**

28 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
California.

10.2 The Parties, including their counsel, have participated in the preparation of this
Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This

1 Consent Judgment has been accepted and approved as to its final form by all Parties and their
2 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
3 interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.
4 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that
5 ambiguities are to be resolved against the drafting Party should not be employed in the
6 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
7 Civil Code §1654.

8 **11. ATTORNEYS' FEES**

9 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs
11 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent
12 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
13 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

14 11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement
15 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
16 Civil Procedure §1021.5 against a party that acted with substantial justification. The party seeking
17 such an award shall bear the burden of meeting all of the elements of §1021.5, and this provision
18 shall not be construed as altering any procedural or substantive requirements for obtaining such an
19 award.

20 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
21 sanctions pursuant to law.

22 **12. ENTIRE AGREEMENT**

23 12.1 This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
26 and therein. There are no warranties, representations, or other agreements between the Parties
27 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
28 other than those specifically referred to in this Consent Judgment have been made by any Party

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

7 **13. RETENTION OF JURISDICTION**

8 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

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

11 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
13 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

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

15 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
16 against an entity that is not a Defendant on terms that are different than those contained in this
17 Consent Judgment.

18 **16. EXECUTION IN COUNTERPARTS**

19 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
20 means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

Dated: February 16, 2009

CENTER FOR ENVIRONMENTAL HEALTH



CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: February __, 2009

O.D.Y. ACCESSORIES, INC.

Printed Name

Title

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

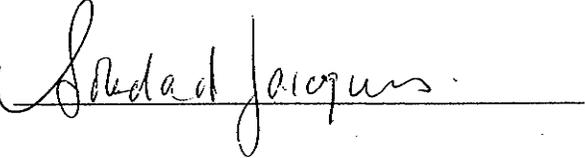
Dated:

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

1 IT IS SO STIPULATED:

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Dated: February __, 2009	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p>
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<p>Dated: February <u>23</u>, 2009</p> <p>TERRY NIDITCH Notary Public State of New York No: 01Ni6137402 Qualified in Kings County Commission Expires: Nov. 21, <u>2009</u></p> 	<p>O.D.Y. ACCESSORIES, INC.</p>  <p>SOLEDAD JACQUES</p> <p>Printed Name</p> <p>Director of Production</p> <p>Title</p>
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IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: MAY 22 2009

Robert B. Freedman

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

1 2 3 4 5 6	COMPONENT	NOTES AND EXCEPTIONS
7 8 9 10	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.
11 12 13 14 15 16 17	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.
18 19 20 21 22 23 24	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.
25 26 27 28	Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones).	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion and should be chopped or comminuted prior to digestion. Plastic beads or stones should be crushed prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
	Coatings on Glass and Plastic Pearls.	The coating of glass or plastic beads should be scraped onto a surface free of dust, such as a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The razor blade or sharp instrument should be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples. Weigh the scrapings. A minimum of 50 mg of scraped

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	<p>coating should be used for analysis. If less than 50 mg of scraped coating is obtained from an individual pearl, then multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount. The number of pearls used to make the composite must be noted. Avoid inclusion of the substrate pearl material in the scrapings. Digest the scrapings according to USEPA Method 3050B or 3051 or equivalent procedure for hot acid digestion in preparation for trace lead analysis. Dilute the digestate in the minimum volume practical for analysis. Analyze the digested sample according to specification of Exhibit 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.</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>

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. Banana Republic, LLC
6. Barnes & Noble, Inc.
7. BCBG Max Azria Group, Inc.
8. Beena Beauty Holding, Inc.
9. Big A Drug Stores, Inc.
10. Busch Entertainment Corporation
11. Conair Corporation
12. Cousin Corporation of America
13. Elite Distributing Company dba Edco
14. Forum Novelties, Inc.
15. Furla (U.S.A.) Incorporated
16. Georgiou Studio, Inc.
17. Goody Products, Inc.
18. Hayun Fashion Investments Corporation dba Planet Funk
19. H.E.R. Accessories, LLC
20. High IntenCity Corp.
21. ICU Eyewear
22. I Love Bracelets, Inc.
23. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
24. Jacadi USA, Inc.
25. JOIA Accessories, Inc.
26. Legoland California LLC
27. Lisa Kline, Inc.

- 1 28. Long Rap, Inc..
- 2 29. Mango
- 3 30. Marin Beauty Company
- 4 31. Max Rave, LLC
- 5 32. Peninsula Beauty Supply, Inc.
- 6 33. Quest Beads & Cast, Inc.
- 7 34. Raley's
- 8 35. Rite Aid Corporation
- 9 36. Ruby's Costume Company, Inc.
- 10 37. Safeway, Inc.
- 11 38. Scunci International, Inc.
- 12 39. Sea World, Inc.
- 13 40. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 14 41. Six Flags Theme Parks, Inc.
- 15 42. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 16 43. Volume Distributors, Inc.
- 17 44. Whole Foods Market California, Inc.
- 18 45. Zoom Eyeworks, Inc.