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ALAMEDA COUNTY

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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.,)

Case No. RG 04-162075

Plaintiffs,

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

vs.

PROPOSED CONSENT JUDGMENT
AS TO SKAFFLES LLC

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION, et al,

Defendants.

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 Skaffles LLC ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the complaint in the matter entitled *Center for Environmental Health v. Nadri, Inc., et al.*, Alameda County Superior Court Case No. RG 06-269531 (the "*Nadri* Action").

1.2 On May 12, 2006, CEH filed the original complaint in the *Nadri* Action, which was later consolidated with three other actions including the lead case entitled *People v. Burlington Coat Factory, et al.* (Alameda Superior Court Case No. RG 04-162075).

1 1.3 On February 21, 2006, upon noticed motion, the Court entered a Consent Judgment
2 against a group of other defendants in the consolidated actions (the "Master Consent Judgment").

3 1.4 On June 15, 2006, upon noticed motion, the Court amended the Master Consent
4 Judgment by entering an Amended Consent Judgment in the consolidated actions (the "Amended
5 Master Consent Judgment").

6 1.5 The Master Consent Judgment permitted Settling Defendants to add as named
7 defendants affiliated companies designated in the Master Consent Judgment as "Affiliate Settling
8 Defendants" that agreed to be bound by the reformulation requirements of the Master Consent
9 Judgment and agreed to pay \$10,000 as settlement proceeds. IMT Accessories Group, Inc. was a
10 Settling Defendant party to the Master Consent Judgment. Defendant is an affiliate of IMT
11 Accessories Group, Inc. that was unable to join the Master Consent Judgment as an Affiliate
12 Settling Defendant but that desires to be bound by the reformulation requirements of the Master
13 Consent Judgment. Defendant it is a corporation that employs 10 or more persons, and Defendant
14 has manufactured, distributed and/or sold Covered Products containing Lead in the State of
15 California.

16 1.6 On June 5, 2008, CEH provided a "Notice of Violation of Proposition 65" to the
17 California Attorney General, the District Attorneys of every county in California, the City
18 Attorneys of every California city with a population greater than 750,000, and to Skaffles LLC
19 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

20 1.7 On October 23, 2008, the Complaint in the *Nadri* Action was amended to name
21 additional defendants, including Defendant Skaffles LLC.

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

1 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement
2 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
3 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
4 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
5 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
6 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
7 requirements relating to lead in jewelry. Nothing in this Consent Judgment shall be construed as
8 an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor
9 shall compliance with the Consent Judgment constitute or be construed as an admission by the
10 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
11 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
12 have in this or any other or future legal proceedings. This Consent Judgment is the product of
13 negotiation and compromise and is accepted by the Parties for purposes of settling, compromising,
14 and resolving issues disputed in this action.

15 1.10 CEH and Defendant intend, and the Court finds, that the injunctive terms contained
16 in Sections 2, 3, and 4 of this Consent Judgment are "substantially identical terms as provided in
17 Sections 2, 3 and 4 of the amended consent judgment," as those terms are used in Health & Safety
18 Code §25214.3(d).

19 **2. DEFINITIONS**

20 2.1 The term "Person" shall have the same meaning as that term is defined in
21 California Health & Safety Code §25249.11(a).

22 2.2 The term "Covered Products" means (a) the following ornaments worn by a person:
23 an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring,
24 necklace, pin, ring, and Body Piercing Jewelry, or (b) any bead, chain, link, pendant, or other
25 component of such an ornament.

26 2.3 The term "Body Piercing Jewelry" means any part of a Covered Product that is
27 manufactured or sold for placement in new piercings and/or mucous membranes, and does not
28 include those parts of Covered Products not placed within new piercings and/or mucous

1 membranes.

2 2.4 The term "Children's Products" means Covered Products that are made for,
3 marketed for use by, or marketed to, Children.

4 2.4.1 For purposes of this Consent Judgment, the term "Children" means
5 children aged 6 and younger.

6 2.4.2 A Covered Product is made for, marketed for use by, or marketed to
7 Children if it is either:

8 2.4.2.1 Represented in its packaging, display, or advertising, as appropriate
9 for use by Children; or

10 2.4.2.2 Sold in conjunction with, attached to, or packaged together with
11 other products that are packaged, displayed, or advertised as appropriate for use by Children; or

12 2.4.2.3 Sized for Children and not intended for use by adults.

13 2.4.2.4 Sold in

14 2.4.2.4.1 a vending machine; or

15 2.4.2.4.2 a retail store, catalogue, or online website, in which

16 Defendant exclusively offers for sale products that are packaged,

17 displayed, or advertised as appropriate for use by Children; or

18 2.4.2.4.3 those discrete portions of a retail store, catalogue, or

19 online website, in which Defendant offers for sale products that are

20 packaged, displayed, or advertised as appropriate for use by

21 Children.

22 2.5 The term "Supplier" means a Person that directly supplies Covered Products that
23 are or will be offered for retail sale in California to Defendant.

24 2.6 Any time a measurement of lead content is referred to in this Consent Judgment by
25 a percentage, it means percent lead by weight.

26 2.7 The term "Effective Date" means the date seven days after this Consent Judgment
27 is entered by the Court.

28 **3. INJUNCTIVE RELIEF**

1 **3.1 Reformulation of Covered Products.** After the Effective Date, Defendant shall
2 not: (1) manufacture; (ii) ship; or (iii) sell or offer for sale Covered Products for retail sale in
3 California unless the Covered Product complies with Section 3.2 or, for Children's Products,
4 Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of this Consent Judgment. Defendant shall
5 provide the requirements of this Consent Judgment to its Suppliers of Covered Products no later
6 than the Effective Date.

7 **3.2 Reformulation Requirements.** Covered Products that are not Children's Products
8 or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3 Components,
9 or any combination thereof, as these terms are defined below.

10 **3.2.1** A "Class 1 Component" is the portion of a Covered Product that contains
11 one or more of the following materials:

12 3.2.1.1 Stainless and surgical steels.

13 3.2.1.2 Karat gold.

14 3.2.1.3 Sterling silver.

15 3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium
16 ("platinum group metals").

17 3.2.1.5 Natural and cultured pearls.

18 3.2.1.6 Glass, ceramic, and crystal decorative components (e.g., cat's eye,
19 cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

20 3.2.1.7 Any gemstone that is cut and polished for ornamental purposes
21 except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
22 phosgenite, samarskite, vanadinite, and wulfenite.

23 3.2.1.8 Elastic, fabric, ribbon, rope, and string with no intentionally-added
24 lead and not otherwise listed as a Class 2 component.

25 3.2.1.9 Natural decorative materials (e.g., amber, bone, coral, feathers, fur,
26 horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add
27 lead.

28 3.2.1.10 Adhesives.

1 3.2.2 A "Class 2 Component" is the portion of a Covered Product that contains
2 one or more of the following materials:

3 3.2.2.1 Metal alloys with less than 10 percent lead by weight ("88 metal")
4 that are electroplated with suitable under and finish coats and that are plated utilizing the Best
5 Management Practices described in Exhibit B. For Covered Products shipped by Defendant as a
6 Supplier after December 31, 2008, to a third party for retail sale in California, and for Covered
7 Products sold or offered for retail sale in California by Defendant after August 31, 2009, this
8 standard shall be metal alloys with less than 6 percent lead by weight ("92 metal") that are
9 electroplated with suitable under and finish coats and that are plated utilizing the Best
10 Management Practices described in Exhibit B.

11 3.2.2.2 Unplated metal containing less than 1.5 percent lead that is not
12 defined as a Class 1 Component.

13 3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and
14 polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For
15 Covered Products shipped by Defendant as a Supplier after December 31, 2008, to a third party for
16 retail sale in California, and for Covered Products sold or offered for retail sale in California by
17 Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead
18 by weight

19 3.2.2.4 Dyes and Surface Coatings containing less than 0.06 percent (600
20 parts per million) lead. For purposes of this Consent Judgment, "Surface Coating" shall carry the
21 same meaning as "Paint or other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and
22 other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without
23 a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is
24 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not
25 include printing inks or those materials which actually become a part of the substrate, such as the
26 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as
27 by electroplating or ceramic glazing.").

28 3.2.3 A "Class 3 Component" is any part of a Covered Product that is not a

Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600 parts per million) lead.

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

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

3.3.2 Non-metallic materials that are Class 2 Components;

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

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

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

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

3.3.7 Any combination thereof.

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

3.4.1 Surgical Implant Stainless Steel

3.4.2 Surgical Implant grades of Titanium

3.4.3 Niobium (Nb)

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

3.4.5 Solid platinum

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

4. **ENFORCEMENT**

4.1 **General Enforcement Provisions.** The Attorney General or CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions

1 contained in this Consent Judgment, subject to the following:

2 4.1.1 Any action to enforce the terms of Section 3 of this Consent Judgment
3 shall be brought exclusively pursuant to this Section 4.

4 4.1.2 No action to enforce this Consent Judgment may be brought by CEH
5 unless the Attorney General either joins in such action or provides written non-objection to the
6 proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of
7 Section 4.2.4. The Attorney General agrees to provide either a written objection or written non-
8 objection to a proposed enforcement proceeding within 15 days of receipt of a written request for
9 such a response from CEH, provided that the Attorney General may extend such 15 day response
10 time by a single extension of an additional 15 days by writing to the requesting party. The fact
11 that the Attorney General provides a written non-objection shall not be construed as endorsement
12 of or concurrence in an enforcement action. Any written non-objection shall be admissible in
13 court only if Defendant challenges the right of CEH to enforce this Consent Judgment for failure
14 to obtain the written non-objection.

15 4.1.3 For purposes of this Section 4 only, the term "Defendant" includes a
16 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
17 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
18 amended consent judgment," as those terms are used in Health & Safety Code §25214.3(d).

19 **4.2 Enforcement of Materials Violation.**

20 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
21 Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products
22 that the Notifying Person believes in good faith do not comply with Section 3 of this Consent
23 Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section 4.

24 **4.2.2 Service of Notice of Violation and Supporting Documentation.**

25 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
26 Section 6.5 to receive notices for Defendant, and must be served within 45 days of the date the
27 alleged violation(s) was or were observed. The Notice of Violation shall also be served on
28 Defendant as a Supplier of the Covered Products identified by Brand Names listed on Exhibit D to

1 the Amended Master Consent Judgment for the Covered Product(s) in question.

2 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
3 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
4 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to
5 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
6 Product and supporting documentation sufficient for validation of the test results, including all
7 laboratory reports, quality assurance reports and quality control reports associated with testing of
8 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
9 criteria of Exhibit C. Wipe, swipe, and swab testing are not sufficient to support a Notice of
10 Violation.

11 4.2.2.3 The Notifying Person shall promptly make available for inspection
12 and/or copying upon request all supporting documentation related to the testing of the Covered
13 Products and associated quality control samples, including chain of custody records, all laboratory
14 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
15 printouts from all analytical instruments relating to the testing of Covered Product samples and
16 any and all calibration, quality assurance, and quality control tests performed or relied upon in
17 conjunction with the testing of the Covered Products, obtained by or available to the Notifying
18 Person that pertains to the Covered Product's alleged noncompliance with Section 3 and, if
19 available, any exemplars of Covered Products tested.

20 4.2.3 **Notice of Election of Response.** No more than 30 days after receiving a
21 Notice of Violation, Defendant shall provide written notice to the Notifying Person whether it
22 elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

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

1 4.2.3.2 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 any
5 other Defendant to whom it sold any Covered Product(s) identified in the Notice of Violation.

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

16 4.2.5 **Non-Contested Matters.** If Defendant elects not to contest the
17 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
18 and shall make any contributions required by Section 4.2.7.

19 4.2.6 **Corrective Action in Non-Contested Matters.** If Defendant elects not to
20 contest the allegation, it shall include in its Notice of Election a detailed description of corrective
21 action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified
22 in the Notice of Violation for sale in California. Corrective action must include instructions to
23 Defendant's stores to cease offering the Covered Product(s) identified in the Notice of Violation
24 for sale in California as soon as practicable. Defendant shall make available to the Notifying
25 Person for inspection and/or copying records and correspondence regarding the corrective action.
26 If there is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section
27 4.2.4 before seeking any remedy in court.

28 4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in**

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

4 4.2.7.1 If Defendant serves a Notice of Election not to contest the
5 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not
6 be required to make any contributions pursuant to this Section.

7 4.2.7.2 If Defendant serves a Notice of Election not to contest the
8 allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the
9 Notice of Violation, Defendant shall make a required contribution in the amount of \$2,500 for
10 each Supplier from whom it purchased the Covered Product(s) identified in any Notices of
11 Violation served within a 30-day period.

12 4.2.7.3 If Defendant withdraws a Notice of Election contesting the violation
13 and serves a new Notice of Election not to contest the allegations in a Notice of Violation within
14 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the
15 violations alleged in the Notice of Violation is filed, Defendant shall make a required contribution
16 in the amount of \$7,500 for each Supplier from whom it purchased the Covered Product(s)
17 identified in any Notices of Violation served within a 30-day period.

18 4.2.7.4 The contributions shall be paid within 15 days of service of a Notice
19 of Election.

20 4.2.7.5 Defendant's liability for required contributions shall be limited as
21 follows:

22 4.2.7.5.1 Defendant as a Supplier to one or more retailers shall
23 be liable for one required contribution within any 30-day period,
24 regardless of the number of retailers to whom the Covered Product
25 is distributed.

26 4.2.7.5.2 If Defendant has manufactured, sold, or distributed a
27 Covered Product identified in a Notice of Violation, only one
28 required contribution may be assessed against the Defendant

1 potentially liable therefore in any 30-day period, in the following
2 order of priority: (1) Manufacturers; (2) Importers; (3) Distributors,
3 and (4) Retailers.

4 4.2.7.5.3 Defendant's monetary liability to make required
5 contributions under Section 4.2.7.2 shall be limited to \$5,000 for
6 each 30-day period. Defendant's monetary liability to make
7 required contributions under Section 4.2.7.3 shall be limited to
8 \$15,000 for each 30-day period.

9 4.2.7.6 If Defendant has paid either of the payments set forth in Sections
10 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
11 12-month period for Covered Products sold to Defendant from the same Supplier then, at the
12 Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or
13 remedies are provided by law for failure to comply with the Consent Judgment.

14 4.2.8 **Limitation on Liability.** Defendant's liability when it elects not to
15 contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

16 5. PAYMENTS

17 5.1 **Payments From Defendant.** Within five days of the entry of this Consent
18 Judgment, Defendant shall pay the total sum of \$10,000 as a settlement payment. Any failure by
19 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee in the
20 amount of \$100 for each day after the delivery date the payment is received. The late fees
21 required under this section shall be recoverable, together with reasonable attorneys' fees, by way
22 of motion to enforce this Consent Judgment.

23 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
24 in three separate checks delivered to the offices of the Lexington Law Group, LLP (Attn: Eric
25 Somers), 1627 Irving Street, San Francisco, California 94122, and made payable and allocated as
26 follows:

27 5.2.1 Defendant shall pay the sum of \$400 as a civil penalty pursuant to Health
28 & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &

1 Safety Code §25249.12. The \$400 penalty check shall be made payable to the Center For
2 Environmental Health.

3 5.2.2 Defendant shall pay the sum of \$3,000 as payment to CEH in lieu of
4 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
5 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
6 exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such
7 funds to monitor compliance with the reformulation requirements of this and other similar Consent
8 Judgments, to purchase and test jewelry, and to prepare and compile the information and
9 documentation necessary to support a Notice of Violation. The payment in lieu of penalty check
10 shall be made payable to the Center For Environmental Health.

11 5.2.3 Defendant shall pay the sum of \$6,600 as reimbursement of reasonable
12 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable
13 to the Lexington Law Group, LLP.

14 **6. MODIFICATION AND DISPUTE RESOLUTION**

15 6.1 **Modification.** This Consent Judgment may be modified from time to time by
16 express written agreement of the Parties, with the approval of the Court, or by an order of this
17 Court upon motion and in accordance with law.

18 6.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation is
19 adopted that addresses the lead content of Covered Products sold in California, any Party shall be
20 entitled to request that the Court modify this Consent Judgment for good cause shown.

21 6.3 **Modification of Amended Master Consent Judgment.** Upon the entry of any
22 order amending Sections 2, 3 or 4 of the Amended Master Consent Judgment, the corresponding
23 terms of Sections 2, 3 or 4 of this Consent Judgment shall be deemed amended, so that the
24 injunctive terms contained in Sections 2, 3 or 4 of this Consent Judgment remain "substantially
25 identical terms as provided in Sections 2, 3 and 4 of the amended consent judgment," as those
26 terms are used in Health & Safety Code §25214.3(d).

27 6.4 **Reopeners.** The Parties may seek to reopen the requirements of Section 3 as to
28 Covered Products other than Children's Products as follows:

1 **6.4.1 Limited Reopener of Component Designation for Certain**
2 **Components.** The parties acknowledge that the materials described in Sections 3.2.1.8 and
3 3.2.1.9 are not generally known to contain or expose users to lead and, as such, have been
4 designated as Class 1 Components. CEH, with the written non-opposition of the Attorney
5 General, may seek to modify this Consent Judgment by seeking the re-designation of any material
6 described in Sections 3.2.1.8 and 3.2.1.9 from Class 1 Component to a Class 2 Component with a
7 lead standard for such material, if, subsequent to the Effective Date, CEH obtains information that
8 demonstrates that such material contains lead and that the use of the material in any Covered
9 Product exposes users of the Covered Product to lead in an amount greater than 0.5 micrograms
10 per day.

11 **6.4.2 Reopener for Class 3 Components.** Any Party may seek to modify this
12 Consent Judgment by seeking to designate a Class 3 Component as a Class 1 Component or as a
13 Class 2 Component with a lead specification standard.

14 **6.4.3 Required Showing to Obtain Reopeners.** A reopener pursuant to
15 Sections 6.4.1 or 6.4.2 shall be granted if the court finds the following:

16 6.4.3.1 A Class 3 Component shall be redesignated as a Class 1 Component
17 if the moving party demonstrates that such material does not contain lead, or that the use of the
18 material in any Covered Product does not expose users of the Covered Product to lead in an
19 amount greater than 0.5 micrograms per day.

20 6.4.3.2 A Class 3 Component, and the materials described in Sections
21 3.2.1.8 and 3.2.1.9, shall be redesignated as a Class 2 Component with a lead specification
22 standard if the moving party demonstrates that use of such material at or below the standard does
23 not expose average users of the Covered Product to lead in an amount greater than 0.5 micrograms
24 per day.

25 **6.5 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
26 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
27 modify the Consent Judgment.

28 **6.5.1 Notices to Defendant.** The person for Defendant to receive Notices

1 pursuant to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

2 David Shweky
3 President
4 Skaffles, LLC
10 West 33rd Street, Suite 802
New York, NY 10001

5 Robert V. Kuenzel
6 Kuenzel & Associates
7 98 Pine Street
Ashland, OR 97520
8 Tel: (541) 552-0142 / Fax: (541) 552-0145
Kuenzel@aol.com

9
10 6.5.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

11 Eric S. Somers
12 Lexington Law Group, L.L.P.
13 1627 Irving Street
San Francisco, California 94122
14 Tel: (415) 759-4111 / Fax: (415) 759-4112
esomers@lexlawgroup.com

15 **7. CLAIMS COVERED AND RELEASE**

16 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
17 Defendant and their parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
18 companies and their successors and assigns ("Defendant Releasees"), and all entities other than
19 those listed on Exhibit D to this Consent Judgment to whom they distribute or sell Covered
20 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
21 cooperative members, and licensees ("Downstream Defendant Releasees"), of 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 against Defendant, Defendant Releasees, and Downstream
24 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection
25 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

26 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
27 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
28

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

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

11 7.4 Nothing in this Section 7 shall apply to any Supplier that is not Defendant unless
12 such Supplier is a parent, subsidiary, or sister company of Defendant.

13 8. PROVISION OF NOTICE

14 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by certified mail and electronic mail to the Party(ies) identified in Section 6.5.
16 Any party may modify the person and address to whom the notice is to be sent by sending each
17 other party notice by certified mail and/or other verifiable form of written communication.

18 9. COURT APPROVAL

19 9.1 This Consent Judgment shall become effective on the Effective Date, provided
20 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
21 Defendant shall support approval of such Motion.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
23 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

24 10. GOVERNING LAW AND CONSTRUCTION

25 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California.

27 10.2 The Parties, including their counsel, have participated in the preparation of this
28 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 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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22 IT IS SO STIPULATED:
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1 Dated: October 21, 2008

CENTER FOR ENVIRONMENTAL HEALTH

2 

3 CHARLIE PIZARRO

4 Printed Name

5 ASSOCIATE DIRECTOR

6 Title

7 Dated: October __, 2008

8 SKAFFLES LLC

9 Printed Name

10 Title

11 **IT IS SO ORDERED, ADJUDGED,**

12 **AND DECREED**

13 Dated:

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

1 Dated: October __, 2008

CENTER FOR ENVIRONMENTAL HEALTH

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Printed Name

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Title

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Dated: October 24, 2008

SKAFFLES LLC

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David SHWEKY

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Printed Name

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President

Title

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IT IS SO ORDERED, ADJUDGED,
AND DECREED

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Robert B. Freedman

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Dated:

DEC 11 2008

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

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EXHIBIT A (CLASS 1, 2, AND 3 COMPONENTS AND BODY PIERCING JEWELRY)

CLASS 1 COMPONENTS

Stainless and surgical steels

Karat gold

Sterling silver

Platinum, palladium, iridium, ruthenium, rhodium, or osmium ("platinum group metals")

Natural and cultured pearls.

Glass, ceramic, and crystal decorative components (e.g., cat's eye, cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonne).

Any gemstone that is cut and polished for ornamental purposes except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

Elastic, fabric, ribbon, rope, and string with no intentional lead and not otherwise listed as a Class 2 component.

Natural decorative materials (e.g., amber, bone, coral, feathers, fur, horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add lead.

Adhesives

CLASS 2 COMPONENTS

COMPONENT	LEAD CONTENT LIMITS
Metal substrates that are electroplated	Metal alloys with less than 10 percent lead by weight ("88 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit B. For Covered Products shipped by Defendant as a Supplier after December 31, 2008 to a third party for retail sale in California, and for

	products sold or offered for retail sale in California by Defendant after August 31, 2009, this standard shall be metal alloys with less than 6 percent lead by weight ("92 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit B.
Unplated metal not defined as Class 1 Components.	1.5%
Metal (plated and unplated) used in Children's Products	0.06% (600 ppm)
Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones, polyvinyl chloride (PVC))	0.06%, (600 ppm). For Covered Products shipped by Defendant as a Supplier after December 31, 2008 to a third party for retail sale in California, and for products sold or offered for retail sale in California by Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead by weight
Dyes and Surface Coatings	0.06% (600 ppm)
Printing inks or ceramic glazes used in Children's Products	0.06% (600 ppm)
Glass or crystal decorative components used in Children's Products	Total weight no more than 1.0 gram, excluding glass or crystal decorative components that contain less than 0.02 percent (200 parts per million) lead and have no intentionally added lead.

1 **CLASS 3 COMPONENTS**

2 Class 3 Components shall contain no more than 0.06% lead.

3 Class 3 Components used in Children's Products shall contain no more than 0.02% lead.

4 **BODY PIERCING JEWELRY**

5 Body Piercing Jewelry shall be made of one of the following materials:

6 Surgical Implant Stainless Steel

7 Surgical Implant grades of Titanium

8 Niobium (Nb)

9 Solid 14 karat or higher white or yellow nickel-free gold

10 Solid platinum

11 A dense low porosity plastic such as Tygon or PTFE with no intentionally added lead

1 **EXHIBIT B (BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)**

2 **PRE-PLATING PROCEDURE**

3 The pieces must be cleaned. Any polishing compound must be removed before plating by
4 cleaning with aqueous cleaning solution or solvent and rinsed with water.

5 The pieces must be activated.

6 The pieces must be rinsed in clean water before plating.

7 **PLATING BATH MAINTENANCE**

8 The temperature of each plating bath must be controlled to the appropriate temperature in
9 accordance with the recommendations of the equipment and plating chemical suppliers.

10 The nickel and nickel-substitute tanks must be agitated or aerated in accordance with the
11 chemical suppliers' recommendations.

12 All baths must be filtered continuously during plating and filters changed at least than
13 monthly.

14 pH must be measured each day of plating and adjusted within the chemical supplier's
15 recommendations.

16 All plating employees must be trained on the use of the equipment in accordance with
17 recommendation of equipment manufacturer and plating chemical suppliers.

18 The plating baths must be maintained in accordance with the plating chemical suppliers
19 recommendations.

20 Plating tanks must be swept at least weekly.

21 Anodes must be inspected monthly in accordance with the anode supplier's
22 recommendations.

23 Racks must be stripped at least annually.

24 The electrical equipment must be sized appropriately for each tank in accordance with
25 equipment manufacturer's recommendations and calibrated annually.

26 **PLATING PROCEDURES**

27 Substantial pieces such as pendants, drops, and rings without prongs or other such feature
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1 shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid
2 copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between
3 plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite,
4 imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces
5 can be treated to produce other finishes such as matt, oxidized, or smut black finishes.

6 Mechanical, functional (e.g., lobster claws, spacers, mechanical closures, connectors), or
7 fine pieces such as prongs and fine chains may be plated to cover the exposed surface consistent
8 with good manufacturing practices for appearance and function. Components that articulate
9 closely together such as snake chain and tight hinges or that need to be manipulated into position
10 will be plated to prevent binding, stiffness, and cracking of plating.

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COMPONENT	NOTES AND EXCEPTIONS
Metals plated with suitable undercoats and finish coats	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.1% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Unplated metal and metal substrates not defined as Class I Components.	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.01% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Polyvinyl chloride (PVC)	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion, and should be chopped or comminuted prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones).	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion and should be chopped or comminuted prior to digestion. Plastic beads or stones should be crushed prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Coatings on Glass and Plastic Pearls.	The coating of glass or plastic beads should be scraped onto a surface free of dust, such as a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The razor blade or sharp instrument should be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples. Weigh the scrapings. A minimum of 50 mg of scraped

	coating should be used for analysis. If less than 50 mg of scraped coating is obtained from an individual pearl, then multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount. The number of pearls used to make the composite must be noted. Avoid inclusion of the substrate pearl material in the scrapings. Digest the scrapings according to USEPA Method 3050B or 3051 or equivalent procedure for hot acid digestion in preparation for trace lead analysis. Dilute the digestate in the minimum volume practical for analysis. Analyze the digested sample according to specification of Exhibit C (approved, validated methodology for inductively-coupled plasma mass spectrometry). A reporting limit of 0.001% (10 ppm) in the coating must be obtained for the analysis. The sample result must be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, then the sample must be diluted and re-analyzed within the calibrated range of the instrument.
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 D

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

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. Charles Gantt dba Country Clutter
10. Conair Corporation
11. Cousin Corporation of America
12. Creative Visions, Inc. dba Country Clutter
13. Elite Distributing Company dba Edco
14. Estée Lauder Inc.; The Estée Lauder Companies Inc.
15. Furla (U.S.A.) Incorporated
16. Georgiou Studio, Inc.
17. Goody Products, Inc.
18. Hand & Mind, Inc.
19. Hayun Fashion Investments Corporation dba Planet Funk
20. I Love Bracelets, Inc.
21. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
22. Jacadi USA, Inc.
23. La-Kontra
24. Learning Express, Inc.
25. Legoland California LLC
26. Lisa Kline, Inc.
27. Long Rap, Inc..

- 1 28. Mango
- 2 29. Marin Beauty Company
- 3 30. Max Rave, LLC
- 4 31. Maxfield, Inc.
- 5 32. Peninsula Beauty Supply, Inc.
- 6 33. Peter David, Inc.
- 7 34. Planet Beauty, Inc.
- 8 35. Raley's
- 9 36. Rite Aid Corporation
- 10 37. Safeway Inc.
- 11 38. Scünci 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. Venus Fashion Jewelry
- 17 44. Whole Foods Market California, Inc.; Whole Foods Market, Inc.
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