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ENDORSED
FILED
ALAMEDA COUNTY

JUN 19 2009

CLERK OF THE SUPERIOR COURT

By SHANIKA HATFIELD
Deputy

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] AMENDED CONSENT
) JUDGMENT AS TO HIGH
) INTENCITY CORP.

AND RELATED CONSOLIDATED CASES.

1. INTRODUCTION

1.1 This Amended Consent Judgment (the "Consent Judgment") amends and supersedes in its entirety the Consent Judgment previously executed by the Center For Environmental Health, a California non-profit corporation ("CEH"), on April 15, 2009, and by High IntenCity Corp. ("Defendant") on April 16, 2009. This Consent Judgment is entered into by CEH and 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 1.2 On May 12, 2006, CEH filed the original complaint in the *Nadri* Action, which was
2 later consolidated with three other actions including the lead case entitled *People v. Burlington*
3 *Coat Factory et al.* (Alameda Superior Court Case No. RG 04-162075).

4 1.3 On February 21, 2006, upon noticed motion, the Court entered a Consent Judgment
5 against a group of other defendants in the consolidated actions (the "Master Consent Judgment").

6 1.4 On June 15, 2006, upon noticed motion, the Court amended the Master Consent
7 Judgment by entering an Amended Consent Judgment in the consolidated actions (the "Amended
8 Master Consent Judgment").

9 1.5 On June 11, 2008, CEH provided a "Notice of Violation of Proposition 65" to the
10 California Attorney General, the District Attorneys of every county in California, the City
11 Attorneys of every California city with a population greater than 750,000, and to Defendant
12 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

13 1.6 On October 22, 2008, the Complaint in the *Nadri* Action was amended to name
14 Defendant as a party.

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

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

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

1 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
2 requirements relating to lead in jewelry. Nothing in this Consent Judgment shall be construed as
3 an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor
4 shall compliance with the Consent Judgment constitute or be construed as an admission by the
5 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
6 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
7 have in this or any other or future legal proceedings. This Consent Judgment is the product of
8 negotiation and compromise and is accepted by the Parties for purposes of settling, compromising,
9 and resolving issues 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, brooch, chain, crown, cuff link, decorated hair accessories, earring,
13 necklace, pin, ring and Body Piercing Jewelry; or (b) any bead, chain, link, pendant, or other
14 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.** The reformulation requirements of this
18 Consent Judgment are as follows:

19 3.1.1 After the Effective Date but before August 14, 2009, Defendant shall not
20 manufacture, ship, sell, offer to sell or cause to be manufactured, shipped, sold or offered for sale,
21 any Covered Product that is made with any component or material that contains more than 0.06
22 percent lead by weight (600 parts per million ("ppm")).

23 3.1.2 From August 14, 2009 through August 13, 2011, Defendant shall not
24 manufacture, ship, sell, offer to sell or cause to be manufactured, shipped, sold or offered for sale,
25 any Covered Product that is made with: (a) any metallic component or material that contains more
26 than 0.03 percent lead by weight (300 ppm); or (b) any non-metallic component or material that
27 contains more than 0.02 percent lead by weight (200 ppm).

28

1 3.1.3 On or after August 14, 2011, and provided that it is determined to be
2 technologically feasible by the U.S. Consumer Product Safety Commission, Defendant shall not
3 manufacture, ship, sell, offer to sell or cause to be manufactured, shipped, sold or offered for sale,
4 any Covered Product that is made with any component or material that contains more than 0.01
5 percent lead by weight (100 ppm).

6 3.1.4 After August 13, 2009, Defendant shall not manufacture, ship, sell, offer
7 to sell or cause to be manufactured, shipped, sold or offered for sale, any Covered Product that
8 contains or is made with any Surface Coating that contains more than 0.009 percent lead by
9 weight (90 ppm). For purposes of this Consent Judgment, "Surface Coating" shall carry the same
10 meaning as "Paint or other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other
11 similar surface-coating materials means a fluid, semi-fluid, or other material, with or without a
12 suspension of finely divided coloring matter, which changes to a solid film when a thin layer is
13 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not
14 include printing inks or those materials which actually become a part of the substrate, such as the
15 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as
16 by electroplating or ceramic glazing.").

17 3.1.5 The reformulation requirements of Sections 3.1.1 through 3.1.4 of this
18 Consent Judgment shall not apply to glass or and crystal decorative components (e.g., cat's eye,
19 cubic zirconia (sometimes called cubic zirconium, CZ), rhinestones, cloisonné), provided that in
20 any Children's Product as such term in defined in 15 USCA §2052, such glass or crystal
21 decorative components weigh in total no more than 1.0 gram, excluding any such glass or crystal
22 decorative components that contain less than 0.01 percent (100 ppm) lead and have no
23 intentionally added lead.

24 3.2 **Additional Injunctive Relief.** Defendant shall comply with the following
25 additional injunctive relief requirements:

26 3.2.1 **National Application of Reformulation Requirements.** All Covered
27 Products manufactured, distributed, shipped or sold by Defendant within the United States shall
28 comply with the lead reformulation requirements of Section 3.1 of this Consent Judgment.

1 3.2.2 **Market Withdrawal of Covered Products.** To the extent it has not
2 already done so in response to this litigation, on or before the Effective Date, Defendant shall
3 cease shipping the Covered Products identified in Section 3.2.2.1 (the "Recall Products") to stores
4 and/or customers in California, and Defendant shall withdraw the Recall Products from the market
5 in California, and, at a minimum, send instructions to any of its stores and/or customers that offer
6 the Recall Products for sale in California to cease offering such Recall Products for sale in
7 California and to either return all the Recall Products to Defendant for destruction, or to directly
8 destroy the Recall Products. Any destruction of such Recall Products shall be in compliance with
9 all applicable laws. Defendant shall keep and make available to CEH for inspection and copying
10 records and correspondence regarding the market withdrawal and destruction of such Recall
11 Products. If there is a dispute over the corrective action, the Parties shall meet and confer before
12 seeking any remedy in court.

13 3.2.2.1 **Recall Products.** Defendant shall withdraw the following Covered
14 Products in accordance with Section 3.2.2:

- 15 • Disney Fairies Charm Bracelet Collection; SKU #9780641763854
- 16 • Hannah Montana Charmable Bracelet Set; SKU #9780641810633
- 17 • High School Musical Charmable Bracelet Set; SKU#9780641760624
- 18 • Charm It! T- Shirt Charm
- 19 • Charm It! Shoe Charm
- 20 • Charm It! Purse Charm
- 21 • Charm It! Dress Charm

22 **4. ENFORCEMENT**

23 4.1 **General Enforcement Provisions.** The Attorney General or CEH may, by motion
24 or application for an order to show cause before this Court, enforce the terms and conditions
25 contained in this Consent Judgment, subject to the following:

26 4.1.1 Any action to enforce the reformulation requirements of Section 3 of this
27 Consent Judgment shall be brought exclusively pursuant to this Section 4.

28

1 4.1.2 For purposes of this Section 4 only, the term "Defendants" includes a
2 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
3 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
4 amended consent judgment," as those terms are used in Health & Safety Code §25214.3(d).

5 4.2 **Enforcement of Reformulation Requirements.**

6 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
7 Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products
8 that the Notifying Person believes in good faith do not comply with the reformulation
9 requirements of this Consent Judgment, the Notifying Person may issue a Notice of Violation
10 pursuant to this Section 4.

11 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

12 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
13 Section 6.5 to receive notices for the Defendant, and must be served within sixty days of the date
14 the alleged violation(s) was or were observed.

15 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
16 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
17 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to
18 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
19 Product and supporting documentation sufficient for validation of the test results, including all
20 laboratory reports, quality assurance reports and quality control reports associated with testing of
21 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
22 criteria of Exhibit A. Wipe, swipe, and swab testing are not alone sufficient to support a Notice of
23 Violation.

24 4.2.2.3 The Notifying Person shall promptly make available for inspection
25 and/or copying upon request all supporting documentation related to the testing of the Covered
26 Products and associated quality control samples, including chain of custody records, all laboratory
27 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
28 printouts from all analytical instruments relating to the testing of Covered Product samples and

1 any and all calibration, quality assurance, and quality control tests performed or relied upon in
2 conjunction with the testing of the Covered Products, obtained by or available to the Notifying
3 Person that pertains to the Covered Product's alleged noncompliance with Section 3 and, if
4 available, any exemplars of Covered Products tested.

5 **4.2.3 Notice of Election of Response.** No more than 30 days after receiving a
6 Notice of Violation by e-mail, the Defendant shall provide written notice to the Notifying Person
7 whether it elects to contest the allegations contained in a Notice of Violation ("Notice of
8 Election").

9 **4.2.3.1** If a Notice of Violation is contested the Notice of Election shall
10 include all then-available documentary evidence regarding the alleged violation, including all test
11 data, if any. If the Defendant or the Notifying Person later acquires additional test or other data
12 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
13 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria
14 of Exhibit A.

15 **4.2.3.2** If a Notice of Violation is not contested, the Notice of Election shall
16 include a description of the Defendant's corrective action pursuant to Section 4.2.6. The Notice of
17 Election shall include the name, address, telephone number, and other contact information, of the
18 Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation, and of any
19 party to the Amended Master Consent Judgment or to a consent judgment that contained "identical
20 or substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent
21 judgment," as those terms are used in Health & Safety Code §25214.3(d), to whom the Defendant
22 sold any Covered Product(s) identified in the Notice of Violation.

23 **4.2.4 Meet and Confer.** If a Notice of Violation is contested, the Notifying
24 Person and the Defendant shall meet and confer to attempt to resolve their dispute. Within 30
25 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement action
26 has been filed, the Defendant may withdraw the original Notice of Election contesting the
27 violation and serve a new Notice of Election conceding the violation. If no informal resolution of
28 a Notice of Violation results, the Notifying Person may by motion or order to show cause before

1 the Superior Court of Alameda, seek to enforce the terms and conditions contained in this Consent
2 Judgment. In any such proceeding, the Attorney General and CEH may seek whatever fines,
3 costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

4 **4.2.5 Non-Contested Matters.** If the Defendant elects not to contest the
5 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
6 and shall make any contributions required by Section 4.2.7.

7 **4.2.6 Corrective Action in Non-Contested Matters.** If the Defendant elects
8 not to contest the allegation, it shall include in its Notice of Election a detailed description of
9 corrective action that it has undertaken or proposes to undertake to remove the Covered Product(s)
10 identified in the Notice of Violation for sale in California. Corrective action must include
11 instructions to the Defendant's customer and/or stores to cease offering the Covered Product(s)
12 identified in the Notice of Violation for sale in California as soon as practicable. The Defendant
13 shall keep and make available to the Notifying Person for inspection and/or copying records and
14 correspondence regarding the corrective action. If there is a dispute over the corrective action, the
15 Parties shall meet and confer pursuant to Section 4.2.4 before seeking any remedy in court.

16 **4.2.7 Required Contributions to Proposition 65 Jewelry Testing Fund in**
17 **Non-Contested Matters.** The Defendant shall be required to make a contribution to the
18 Proposition 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as
19 specified below:

20 **4.2.7.1** If the Defendant serves a Notice of Election not to contest the
21 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not
22 be required to make any contributions pursuant to this Section.

23 **4.2.7.2** If the Defendant serves a Notice of Election not to contest the
24 allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the
25 Notice of Violation, the Defendant shall make a required contribution in the amount of \$2,500 for
26 each Supplier from whom it purchased the Covered Product(s) identified in any Notices of
27 Violation served within a 30-day period.

28 **4.2.7.3** If the Defendant withdraws a Notice of Election contesting the

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

6 4.2.7.4 The contributions shall be paid within 15 days of e-mail service of a
7 Notice of Election.

8 4.2.7.5 The Defendant's liability for required contributions shall be limited
9 as follows:

10 4.2.7.5.1 The Defendant as a Supplier to one or more retailers
11 shall be liable for one required contribution within any 30-day
12 period, regardless of the number of retailers to whom the Covered
13 Product is distributed.

14 4.2.7.5.2 If the Defendant has manufactured, sold, or
15 distributed a Covered Product identified in a Notice of Violation,
16 only one required contribution may be assessed against the
17 Defendant potentially liable therefore in any 30-day period, in the
18 following order of priority: (1) Manufacturers; (2) Importers; (3)
19 Distributors, and (4) Retailers.

20 4.2.7.5.3 The Defendant's monetary liability to make required
21 contributions under Section 4.2.7.2 shall be limited to \$5,000 for
22 each 30-day period. The Defendant's monetary liability to make
23 required contributions under Section 4.2.7.3 shall be limited to
24 \$15,000 for each 30-day period.

25 4.2.7.6 If the Defendant has paid either of the payments set forth in Sections
26 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
27 12-month period for Covered Products sold to the Defendant from the same Supplier then, at the
28 Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or

1 remedies are provided by law for failure to comply with the Consent Judgment.

2 **4.2.8 Limitation on Liability.** The Defendant's liability when it elects not to
3 contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

4 **4.3 Enforcement of Terms Other Than Reformulation Requirements.** CEH may,
5 by motion or application for an order to show cause before the Superior Court of the County of
6 Alameda, enforce the terms and conditions other than the reformulation requirements of this
7 Consent Judgment. Should CEH prevail on any motion or application under this section, CEH
8 shall be entitled to recover its reasonable attorneys' fees and costs associated with such motion or
9 application.

10 **5. PAYMENTS**

11 **5.1 Payments From Defendant.** Defendant shall pay the total sum of \$40,000 as a
12 settlement payment pursuant to this Section.

13 **5.1.1** Defendant shall pay the sum of \$1,000 as a civil penalty pursuant to
14 Health & Safety Code §25249.7(b).

15 **5.1.2** Defendant shall pay the sum of \$12,800 as payment to CEH in lieu of civil
16 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
17 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
18 exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such
19 funds to monitor compliance with the reformulation requirements of this and other similar consent
20 judgments, to purchase and test jewelry, and to prepare and compile the information and
21 documentation necessary to support a Notice of Violation.

22 **5.1.3** Defendant shall pay the sum of \$26,200 as reimbursement of CEH's
23 reasonable attorneys' fees and costs.

24 **5.2 Timing and Delivery of Payments.** All payments shall be delivered to the offices
25 of the Lexington Law Group (Attn: Eric Somers), 1627 Irving Street, San Francisco, California
26 94122.

27 **5.2.1** On or before May 1, 2009, Defendant shall deliver three separate checks
28 as follows: (1) a check in the amount of \$500 made payable to the Center For Environmental

1 Health as a civil penalty; (2) a check in the amount of \$6,400 made payable to the Center For
2 Environmental Health as a payment in lieu of additional civil penalty; and (3) a check in the
3 amount of \$13,100 made payable to the Lexington Law Group as reimbursement of attorneys' fees
4 and costs.

5 5.2.2 On or before August 17, 2009, Defendant shall deliver three separate
6 checks as follows: (1) a check in the amount of \$500 made payable to the Center For
7 Environmental Health as a civil penalty; (2) a check in the amount of \$6,400 made payable to the
8 Center For Environmental Health as a payment in lieu of additional civil penalty; and (3) a check
9 in the amount of \$13,100 made payable to the Lexington Law Group as reimbursement of
10 attorneys' fees and costs.

11 6. MODIFICATION AND DISPUTE RESOLUTION

12 6.1 **Modification.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties, with the approval of the Court, or by an order of this
14 Court upon motion and in accordance with law.

15 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
16 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
17 modify the Consent Judgment.

18 7. CLAIMS COVERED AND RELEASE

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

1 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
2 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
3 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation
4 of Proposition 65 or any other statutory or common law claims that have been or could have been
5 asserted in the public interest regarding the failure to warn about exposure to lead arising in
6 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
7 Effective Date.

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

13 7.4 Nothing in this Section 7 shall apply to any Supplier that is not Defendant unless
14 such Supplier is a parent, subsidiary, or sister company of Defendant.

15 7.5 Without limiting the generality of the foregoing, Defendant reserves all of its rights
16 and claims against any other party in this action.

17 **8. PROVISION OF NOTICE**

18 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
19 notice shall be sent by certified mail and electronic mail as follows:

20 8.1.1 **Notices to Defendant.** The persons for Defendant to receive Notices
21 pursuant to this Consent Judgment shall be:

22 Andrew E. Mishkin
23 Duane Morris LLP
24 505 9th Street, N.W., Suite 1000
25 Washington, DC 20004-2166
26 aemishkin@duanemorris.com

27 Paul Rosenlund
28 Duane Morris LLP
 Suite 2000, One Market, Spear Tower
 San Francisco, CA 94105-1104
 psrosenlund@duanemorris.com

1
2 Joel A. Klarreich
3 Tannenbaum Helpem Syracuse & Hirschtritt LLP
4 900 Third Ave
5 New York, NY 10022
6 jak@thshlaw.com

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

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

17
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
Consent Judgment has been accepted and approved as to its final form by all Parties and their
counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.
Each Party to this Consent Judgment agrees that any statute or rule of construction providing that

1 ambiguities are to be resolved against the drafting Party should not be employed in the
2 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
3 Civil Code §1654.

4 **11. ATTORNEYS' FEES**

5 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs
7 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent
8 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
9 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

10 11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement
11 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
12 Civil Procedure §1021.5 against a party that acted with substantial justification. The party seeking
13 such an award shall bear the burden of meeting all of the elements of §1021.5, and this provision
14 shall not be construed as altering any procedural or substantive requirements for obtaining such an
15 award.

16 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

19 12.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein. There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
24 other than those specifically referred to in this Consent Judgment have been made by any Party
25 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
27 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
28 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be

1 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
2 nor shall such waiver constitute a continuing waiver.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

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

7 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
9 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

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

11 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
12 against an entity that is not Defendant on terms that are different than those contained in this
13 Consent Judgment.


14 **16. EXECUTION IN COUNTERPARTS**

15 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
16 means of facsimile, which taken together shall be deemed to constitute one document.

17
18 IT IS SO STIPULATED:

19 Dated: April 28, 2009

20 **CENTER FOR ENVIRONMENTAL HEALTH**

21 

22
23
24 Michael Green

25 Printed Name

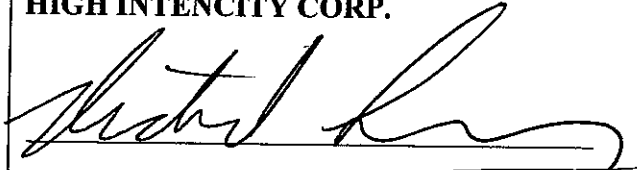
26 Executive Director

27 Title

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Dated: April 28 2009

HIGH INTENCITY CORP.

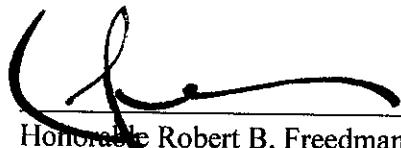


Richard Levy
Printed Name

CFO
Title

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

Dated: *June 19, 2009*



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

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EXHIBIT A (TESTING PROTOCOLS)

The following test methods must be used to determine compliance with the lead standards set forth in this Consent Judgment. A material shall not meet the applicable lead standard if the mean lead level of: (1) one or two samples exceeds 300% of the component specification limit; (2) three samples exceeds 200% of the component specification limit; or (3) four or more samples exceeds the component specification limit.

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

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

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

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 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.
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

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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)**

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. BCBG Max Azria Group, Inc.
7. Big A Drug Stores, Inc.
8. Conair Corporation
9. Cousin Corporation of America
10. Elite Distributing Company dba Edco
11. Forum Novelties, Inc.
12. Georgiou Studio, Inc.
13. Hayun Fashion Investments Corporation dba Planet Funk
14. H.E.R. Accessories, LLC
15. ICU Eyewear
16. I Love Bracelets, Inc.
17. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
18. Jacadi USA, Inc.
19. JOIA Accessories, Inc.
20. Legoland California LLC
21. Lisa Kline, Inc.
22. Long Rap, Inc..
23. Mango
24. Marin Beauty Company
25. Max Rave, LLC
26. O.D.Y. Accessories, Inc.
27. Peninsula Beauty Supply, Inc.

- 1 28. Quest Beads & Cast, Inc.
- 2 29. Raley's
- 3 30. Rite Aid Corporation
- 4 31. Ruby's Costume Company, Inc.
- 5 32. Safeway, Inc.
- 6 33. Scünci International, Inc.
- 7 34. Sea World, Inc.
- 8 35. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 9 36. Six Flags Theme Parks, Inc.
- 10 37. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 11 38. Volume Distributors, Inc.
- 12 39. Whole Foods Market California, Inc.
- 13 40. Zoom Eyeworks, Inc.

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