

ENDORSED
FILED
ALAMEDA COUNTY
OCT 30 2009
CLERK OF THE SUPERIOR COURT
BY 760 DEPUTY

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

PEOPLE OF THE STATE OF CALIFORNIA, ex) Case No. RG 04-162075
rel. BILL LOCKYER, Attorney General, et al.,)
Plaintiffs,) (Consolidated with RG 04-162037, RG 04
vs.) -169511)
BURLINGTON COAT FACTORY) [PROPOSED] CONSENT JUDGMENT
WAREHOUSE CORPORATION, et al,) AS TO VOLUME DISTRIBUTORS, INC.
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 Volume Distributors, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the operative Complaint as amended herein in the matter entitled *Center for Environmental Health v. Nadri, Inc., et al.*, Alameda County Superior Court Case No. RG 06-269531 (the "*Nadri* Action").

1.2 On May 12, 2006, CEH filed the original Complaint in the *Nadri* Action, which was later consolidated with three other actions including the lead case entitled *People v. Burlington Coat*

1 *Factory et al.* (Alameda Superior Court Case No. RG 04-162075).

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

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

7 1.5 On November 20, 2008, CEH provided a "Notice of Violation of Proposition 65" to
8 the California Attorney General, the District Attorneys of every county in California, the City
9 Attorneys of every California city with a population greater than 750,000, and to Defendant regarding
10 the presence of lead in jewelry manufactured, distributed or sold by Defendant.

11 1.6 On February 17, 2009, the Complaint in the *Nadri* Action was amended to name
12 Defendant as a party.

13 1.7 Defendant is a corporation that employs 10 or more persons, and which manufactures,
14 distributes and/or sells Covered Products in the State of California.

15 1.8 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
16 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
17 and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper
18 in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full
19 and final resolution of all claims which were or could have been raised in the Complaint based on the
20 facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
21 Defendant.

22 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement of
23 all claims that were raised in the Complaint, or which could have been raised in the Complaint,
24 arising out of the facts or conduct related to Defendant alleged therein. By execution of this Consent
25 Judgment and agreeing to comply with its terms, the Parties do not admit any facts or conclusions of
26 law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any
27 violations of Proposition 65 or any other statutory, common law or equitable requirements relating to
28 lead in the Covered Products as defined in paragraph 2.1. Nothing in this Consent Judgment shall be

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

8 2. DEFINITIONS

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

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

14 3. INJUNCTIVE RELIEF

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

18 3.1.1 Any component, or is made of any material, that is more than 0.02
19 percent lead by weight (200 parts per million ("ppm")); and

20 3.1.2 Any Surface Coating that is more than 0.009 percent lead by weight (90
21 ppm). For purposes of this Consent Judgment, "Surface Coating" shall carry the same meaning as
22 "Paint or other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other similar
23 surface-coating materials means a fluid, semi-fluid, or other material, with or without a suspension of
24 finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal,
25 wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks
26 or those materials which actually become a part of the substrate, such as the pigment in a plastic
27 article, or those materials which are actually bonded to the substrate, such as by electroplating or
28 ceramic glazing.").

1 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
2 Defendant shall cease shipping the V Accessories Necklace, Item No. CHN-5461, SKU No. 7-49732-
3 05461-4, which was identified in the 60-Day Notice of Violation sent by CEH to Defendant (the
4 “Recall Products”), to stores and/or customers in California, and Defendant shall withdraw the Recall
5 Products from the market in California, and, at a minimum, send instructions to any of its stores
6 and/or direct customers offering the Recall Products for sale in California to cease offering such
7 Recall Products for sale in California and to either return all Recall Products to Defendant for
8 destruction, or to directly destroy the Recall Products. Any destruction of the Recall Products shall
9 be in compliance with all applicable laws. Defendant shall keep and make available to CEH for
10 inspection and copying records and correspondence regarding the market withdrawal and destruction
11 of the Recall Products. If there is a dispute over the corrective action, the Parties shall meet and
12 confer before seeking any remedy in court.

13 **4. ENFORCEMENT**

14 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
15 enforce the terms of this Consent Judgment, CEH shall provide Defendant with thirty (30) days
16 advanced written notice of the alleged violation and shall meet and confer with Defendant during
17 such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the
18 alleged violation. After such thirty (30) day period, CEH may, by new action, noticed motion or
19 order to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions
20 contained in this Consent Judgment. Should CEH prevail on any motion or application under this
21 section, CEH shall be entitled to recover its reasonable attorneys’ fees and costs associated with
22 such new action, motion or order to show cause from Defendant.

23 **5. PAYMENTS**

24 5.1 **Payments From Defendant.** Defendant shall pay the total sum of \$20,000 as a
25 settlement payment pursuant to this Section.

26 5.1.1 Defendant shall pay the sum of \$800 as a civil penalty pursuant to Health &
27 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety
28 Code §25249.12.

1 5.1.2 Defendant shall pay the sum of \$6,200 as payment to CEH in lieu of penalty
2 pursuant to California Health & Safety Code §25249.7(b), and California Code of Regulations, Title
3 11, §3203(b), which sets forth criteria for such payments. CEH will use such funds to continue its
4 work educating and protecting people from exposures to toxic chemicals, including heavy metals.
5 CEH may also use a portion of such funds to monitor compliance with the reformulation
6 requirements of this and other similar Consent Judgments, to purchase and test jewelry, and to
7 prepare and compile the information and documentation necessary to support a Notice of Violation.
8 In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
9 percent of such funds to award grants to grassroots environmental justice groups working to educate
10 and protect people from exposures to toxic chemicals. The method of selection of such groups can be
11 found at the CEH web site at www.ceh.org/justicefund.

12 5.1.3 Defendant shall pay the sum of \$13,000 as reimbursement of CEH's
13 reasonable attorneys' fees and costs.

14 **5.2 Timing and Delivery of Payments.** All payments shall be delivered to the offices of
15 the Lexington Law Group (Attn: Eric Somers), 1627 Irving Street, San Francisco, California 94122.

16 5.2.1 On or before August 25, 2009, Defendant shall deliver three separate checks
17 as follows: (1) a check in the amount of \$400 made payable to the Center For Environmental Health
18 as a civil penalty; (2) a check in the amount of \$3,100 made payable to the Center For Environmental
19 Health as a payment in lieu of additional civil penalty; and (3) a check in the amount of \$6,500 made
20 payable to the Lexington Law Group as reimbursement of attorneys' fees and costs.

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

26 **6. MODIFICATION AND DISPUTE RESOLUTION**

27 6.1 **Modification.** This Consent Judgment may be modified from time to time by express
28 written agreement of the Parties, with the approval of the Court, or by an order of this Court upon

1 motion and in accordance with law.

2 **6.2 Notice; Meet and Confer.** Any party seeking to modify this Consent Judgment shall
3 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify
4 the Consent Judgment.

5 **6.2.1 Notices to Defendant.** The person for Defendant to receive Notices pursuant
6 to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

7 H. Joseph Nourmand
8 Law Offices of H. Joseph Nourmand, APC
9 660 S Figueroa Street, 24th Floor
 Los Angeles, California 90017

10 With Copy to:

11 Volume Distributors Inc.
12 4199 Bandini Boulevard
13 Vernon, California 90023
 Attention: Patricia Lozano

14 **6.2.2 Notices to Plaintiff.** The person for CEH to receive Notices pursuant to this
15 Consent Judgment, until and unless modified pursuant to Section 8, shall be:

16 Eric S. Somers
17 Lexington Law Group
18 1627 Irving Street
 San Francisco, California 94122

19 **7. CLAIMS COVERED AND RELEASE**

20 **7.1** This Consent Judgment is a full, final, and binding resolution between CEH and
21 Defendant and Defendant's parent and sister companies, shareholders, officers, directors, employees,
22 divisions, subdivisions, subsidiaries, partners, lenders, attorneys, and their successors and assigns
23 ("Defendant Releasees"), and all entities other than those listed on Exhibit A of this Consent
24 Judgment to whom they have ever distributed or sold Covered Products including, but not limited to,
25 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
26 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or
27 common law claims that have been or could have been asserted in the public interest against
28 Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to

1 warn about exposure to lead arising in connection with Covered Products manufactured, distributed,
2 or sold by Defendant prior to the Effective Date.

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

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

14 **8. PROVISION OF NOTICE**

15 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
16 notice shall be sent by certified mail to the party identified in Section 6.2. Any party may modify the
17 person and address to whom the notice is to be sent by sending each other party notice by certified
18 mail and/or other verifiable form of written communication.

19 **9. COURT APPROVAL**

20 9.1 This Consent Judgment shall become effective on the Effective Date, provided
21 however, that CEH, at CEH's cost and expense, shall, by no later than September 18, 2009, prepare
22 and file a Motion for Approval of this Consent Judgment and Defendant shall support approval of
23 such Motion.

24 9.2 If this Consent Judgment is not entered by the Court by December 31, 2009, it shall be
25 of no force or effect (*ab initio*) and shall not be introduced into evidence or otherwise used in any
26 proceeding for any purpose. To the extent that this Consent Judgment is not entered by the Court by
27 December 31, 2009, then the entire amount paid by Defendant under Section 5 shall be promptly
28 refunded to Defendant by CEH and its counsel of record.

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 10.2 The Parties, including their counsel, have participated in the preparation of this
5 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment has been accepted and approved as to its final form by all Parties and their
7 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
8 interpreted against any party as a result of the manner of the preparation of this Consent Judgment.
9 Each party to this Consent Judgment agrees that any statute or rule of construction providing that
10 ambiguities are to be resolved against the drafting party should not be employed in the interpretation
11 of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code §1654.

12 **11. ENTIRE AGREEMENT**

13 11.1 This Consent Judgment contains the sole and entire agreement and understanding of
14 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
16 therein. There are no warranties, representations, or other agreements between the Parties except as
17 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
18 specifically referred to in this Consent Judgment have been made by any party hereto. No other
19 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist
20 or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this
21 Consent Judgment shall be binding unless executed in writing by the party to be bound thereby. No
22 waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver
23 of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a
24 continuing waiver.

25 **12. RETENTION OF JURISDICTION**

26 12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
27 Judgment.

28 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

1 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
2 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
3 Consent Judgment on behalf of the party represented and legally to bind that party.

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

5 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
6 against an entity that is not a Defendant, Defendant Releasees or Downstream Defendant Releasees
7 on terms that are different than those contained in this Consent Judgment.

8 **15. EXECUTION IN COUNTERPARTS**

9 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
10 means of facsimile, which taken together shall be deemed to constitute one document.

11 IT IS SO STIPULATED:

12
13 Dated: August 13, 2009

CENTER FOR ENVIRONMENTAL HEALTH

14
15 

16
17 Michael Green
Printed Name

18
19 Executive Director
Title

20
21 Dated: August __, 2009

VOLUME DISTRIBUTORS, INC.

22
23 _____

24
25 _____
Printed Name

26
27 _____
Title

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2 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
3 Consent Judgment on behalf of the party represented and legally to bind that party.

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11 IT IS SO STIPULATED:

12
13 Dated: August __, 2009

CENTER FOR ENVIRONMENTAL HEALTH

14 _____
15
16 _____
17 Printed Name

18 _____
19 Title

20
21 Dated: August th 20, 2009

VOLUME DISTRIBUTORS, INC.

22 _____
23 *Charles Rabban*

24 _____
25 Printed Name

26 *V.P.*
27 _____
28 Title

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

Dated: **OCT 30 2009**

Robert B. Freedman

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

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EXHIBIT A

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

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

- 1 25. Raley's
- 2 26. Rite Aid Corporation
- 3 27. Ruby's Costume Company, Inc.
- 4 28. Safeway, Inc.
- 5 29. Scünci International, Inc.
- 6 30. Sea World, Inc.
- 7 31. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 8 32. Six Flags Theme Parks, Inc.
- 9 33. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 10 34. Whole Foods Market California, Inc.
- 11 35. Zoom Eyeworks, Inc.

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