

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSED
FILED
ALAMEDA COUNTY

JUL 16 2010

CLERK OF THE SUPERIOR COURT
BY [Signature] 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.,)	Case No. RG 04-162075
Plaintiffs,)	(Consolidated with RG 04-162037, RG 04-169511)
vs.)	[PROPOSED] CONSENT JUDGMENT AS TO AMERICAN ACCESSORIES, INC.
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 American Accessories, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Nadri, Inc., et al.*, Alameda County Superior Court Case No. RG 06-269531 (the "*Nadri Action*").

1.2 On May 12, 2006, CEH filed the original complaint in the *Nadri Action*, which was later consolidated with three other actions including the lead case, *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 September 22, 2009, CEH provided a "Notice of Violation of Proposition 65"
8 to the California Attorney General, the District Attorneys of every county in California, the City
9 Attorneys of every California city with a population greater than 750,000, and to Defendant
10 regarding the presence of lead in wallets, handbags, purses, clutches and totes made with leather,
11 vinyl or imitation leather materials manufactured, distributed or sold by Defendant.

12 1.6 On October 2, 2009, CEH provided a "Notice of Violation of Proposition 65" to the
13 California Attorney General, the District Attorneys of every county in California, the City
14 Attorneys of every California city with a population greater than 750,000, and to Defendant
15 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

16 1.7 On March 23, 2010, the Complaint in the *Nadri* Action was amended to name
17 Defendant as a party.

18 1.8 On the Effective Date, which will be more than sixty (60) days after the September
19 22, 2009 and October 2, 2009 Notices were served on Defendant, the operative Complaint in this
20 matter is hereby amended as to only Defendant to amend the definition of Products to include
21 wallets, handbags, purses, clutches and totes made with leather, vinyl or imitation leather
22 materials.

23 1.9 Defendant is a corporation that employs 10 or more persons, and which
24 manufactures, distributes and/or sells Covered Products in the State of California.

25 1.10 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
26 stipulate that this Court has jurisdiction over the allegations of violations contained in the
27 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
28 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this

1 Consent Judgment as a full and final resolution of all claims which were or could have been raised
2 in the Complaint based on the facts alleged therein with respect to Covered Products
3 manufactured, distributed, and/or sold by Defendant.

4 1.11 CEH and Defendant enter into this Consent Judgment as a full and final settlement
5 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
6 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
7 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
8 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
9 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
10 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be
11 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
12 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
13 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies
14 the material, factual and legal allegations in CEH's Complaint and expressly denies any wrong
15 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
16 remedy, argument or defense the Parties may have in this or any other pending or future legal
17 proceedings. This Consent Judgment is the product of negotiation and compromise and is
18 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
19 disputed in this action.

20 **2. DEFINITIONS**

21 2.1 The term "Covered Product" means (a) the following ornaments worn by a person:
22 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories,
23 earring, necklace, pin, ring and Body Piercing Jewelry; (b) any bead, chain, link, pendant, or other
24 component of such an ornament; and (c) wallets, handbags, purses, clutches and totes made with
25 leather, vinyl or imitation leather materials.

26 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

27 **3. INJUNCTIVE RELIEF**

28 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall

1 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product
2 that contains:

3 3.1.1 Any metal component, or is made of any metallic material, that is more
4 than 0.03 percent lead by weight (300 parts per million (“ppm”));

5 3.1.2 Any non-metallic component, or is made of any non-metallic material, that
6 is more than 0.02 percent lead by weight (200 ppm); and

7 3.1.3 Any Paint or Surface Coating that is more than 0.009 percent lead by
8 weight (90 ppm). For purposes of this Consent Judgment, “Paint or Surface Coating” shall carry
9 the same meaning as “Paint or other similar surface coating” under 16 CFR §1303.2(b)(1) (“Paint
10 and other similar surface-coating materials means a fluid, semi-fluid, or other material, with or
11 without a suspension of finely divided coloring matter, which changes to a solid film when a thin
12 layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term
13 does not include printing inks or those materials which actually become a part of the substrate,
14 such as the pigment in a plastic article, or those materials which are actually bonded to the
15 substrate, such as by electroplating or ceramic glazing.”).

16 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
17 Defendant shall cease shipping Covered Products identified below as the “Recalled Covered
18 Products” to stores and/or customers in California, and Defendant shall withdraw such Recalled
19 Covered Product from the market in California, and, at a minimum, send instructions to any of
20 their stores and/or customers that offer the Recalled Covered Product for sale in California to
21 cease offering the Recalled Covered Product for sale in California and to return all such Recalled
22 Covered Products to Defendant’s headquarters for destruction. Any destruction of such Recalled
23 Covered Products shall be in compliance with all applicable laws. Defendant shall keep and make
24 available to CEH for inspection and copying records and correspondence regarding the market
25 withdrawal and destruction of such Recalled Covered Products. If there is a dispute over the
26 corrective action, the Parties shall meet and confer before seeking any remedy in court.

27 3.2.1 The Recalled Covered Products are the following:

28 1) Princess Accessories Tote Handbag in Yellow, Item No. 04015000, as

1 identified in CEH's September 22, 2009 Notice to Defendant;

2 2) Analie by Princess Accessories Handbag in Green, Item No. BG-
3 59061NS; and

4 3) Princess Accessories Earrings, Item No. ER-83872ST, as identified in
5 CEH's October 2, 2009 Notice to Defendant.

6 **4. ENFORCEMENT**

7 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
8 enforce the terms of this Consent Judgment, CEH shall provide Defendant with thirty (30) days
9 advanced written notice of the alleged violation and shall meet and confer with Defendant during
10 such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the
11 alleged violation. After such thirty (30) day period, CEH may, by new action, motion or order to
12 show cause before the Superior Court of Alameda, seek to enforce the terms and conditions
13 contained in this Consent Judgment. Should CEH prevail on any motion or application under
14 this section, CEH shall be entitled to its reasonable attorneys' fees and costs associated with
15 such new action, motion or order to show cause.

16 **5. PAYMENTS**

17 5.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
18 Judgment, Defendant shall pay the total sum of \$37,500 as a settlement payment.

19 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
20 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),
21 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as follows:

22 5.2.1 Defendant shall pay the sum of \$1,000 as a penalty pursuant to Health &
23 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
24 Safety Code §25249.12. The penalty check shall be made payable to the Center For
25 Environmental Health. The characterization in this Section 5.2.1 is not intended to convey an
26 admission of any wrong-doing by Defendant.

27 5.2.2 Defendant shall pay the sum of \$12,000 as payment to CEH in lieu of
28 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title

1 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
2 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
3 to monitor compliance with the reformulation requirements of this and other similar Consent
4 Judgments and to purchase and test Covered Products to confirm compliance with such
5 reformulation requirements. In addition, as part of its Community Environmental Action and
6 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
7 justice groups working to educate and protect people from exposures to toxic chemicals. The
8 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
9 The payment in lieu of penalty check shall be made payable to the Center For Environmental
10 Health.

11 5.2.3 Defendant shall pay the sum of \$24,500 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.

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

21 7. CLAIMS COVERED AND RELEASE

22 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
23 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,
24 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other
25 than those listed on Exhibit A of this Consent Judgment to whom they distribute or sell Covered
26 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,
27 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of
28 Proposition 65 or any other statutory or common law claims that have been or could have been

1 asserted in the public interest against Defendant, Defendant Releasees, and Downstream
2 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection
3 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

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

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

16 8. PROVISION OF NOTICE

17 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by certified mail and electronic mail as follows:

19 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
20 pursuant to this Consent Judgment shall be:

21 Dana M. Dorsett
22 Law Offices of Dana Moon
23 3435 Wilshire Boulevard
24 Suite 1060
Los Angeles, CA 90010
dm@danamoon.com

25 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
26 this Consent Judgment shall be:

27
28

1 Eric S. Somers
2 Lexington Law Group
3 1627 Irving Street
4 San Francisco, CA 94122
5 esomers@lexlawgroup.com

6 8.2 Any Party may modify the person and address to whom the notice is to be sent by
7 sending the other Party notice by certified mail and/or other verifiable form of written
8 communication.

9 **9. COURT APPROVAL**

10 9.1 This Consent Judgment shall become effective on the Effective Date, provided
11 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
12 Defendant shall support approval of such Motion.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
14 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

15 **10. GOVERNING LAW AND CONSTRUCTION**

16 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California.

18 **11. ENTIRE AGREEMENT**

19 11.1 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. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
28 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
modification, waiver, or termination of this Consent Judgment shall be binding unless executed in

1 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
2 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
3 whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **12. RETENTION OF JURISDICTION**

5 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
6 Consent Judgment.

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

8 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
10 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

12 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
13 against an entity that is not Defendant on terms that are different than those contained in this
14 Consent Judgment.

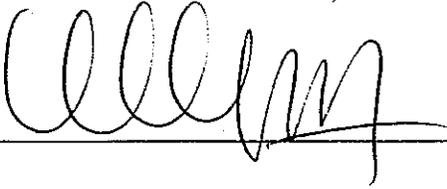
15 **15. EXECUTION IN COUNTERPARTS**

16 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
17 means of facsimile, which taken together shall be deemed to constitute one document.

18 IT IS SO STIPULATED:

19 Dated: April ²⁸ , 2010 20 21 22 23 24 25 26 27 28	CENTER FOR ENVIRONMENTAL HEALTH  _____ <i>CHARLIE PIZZANO</i> _____ Printed Name <i>Assistant Director</i> _____ Title
--	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 23, 2010	AMERICAN ACCESSORIES, INC.
	
	Anna M. Lee Printed Name
	CEO Title

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

Dated: July 16, 2010

Robert B. Freedman

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

28. Six Flags Theme Parks, Inc.