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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**NOV 18 2011**

**CLERK OF THE SUPERIOR COURT  
BY      DEPUTY**

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

CENTER FOR ENVIRONMENTAL  
HEALTH, a non-profit corporation,

Plaintiffs,

VS.

AEROPOSTALE, INC., *et al.*,

Defendants.

) Case No. RG 10-514803

) ~~PROPOSED~~ CONSENT JUDGMENT

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH") and defendant BCBG Max Azria Group, Inc. ("BCBG"), to settle certain claims asserted by CEH against BCBG as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Aeropostale, Inc., et al.*, Alameda County Superior Court Case No. RG No. 10-514803.

1.2 On May 19, 2010, CEH served a Notice of Violation under Proposition 65 alleging that BCBG, along with other entities named in the notice, violated Proposition 65 by exposing

1 persons to cadmium contained in jewelry, without first providing a clear and reasonable warning  
2 pursuant to Proposition 65.

3 1.3 In April 2011, CEH filed the operative Second Amended Complaint ("Complaint")  
4 in this action.

5 1.4 BCBG is a corporation that employs ten or more persons, and which manufactures,  
6 distributes and/or sells Covered Products (as defined herein) in the State of California.

7 1.5 For purposes of this Consent Judgment only, CEH and BCBG (the "Parties")  
8 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
9 Complaint and personal jurisdiction over BCBG as to the acts alleged in the Complaint, that venue  
10 is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent  
11 Judgment as a full and final resolution of all claims which were or could have been raised in the  
12 Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
13 distributed, and/or sold by BCBG.

14 1.6 CEH and BCBG enter into this Consent Judgment as a full and final settlement of  
15 all claims that were raised in the Complaint, or which could have been raised in the Complaint,  
16 arising out of the facts or conduct related to BCBG alleged therein. By execution of this Consent  
17 Judgment and agreeing to comply with its terms, the Parties do not admit any facts or conclusions  
18 of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating  
19 any violations of Proposition 65 (California Health and Safety Code sections 25249.5 *et seq.*) or  
20 any other statutory, common law or equitable requirements relating to cadmium in jewelry.

21 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any  
22 fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
23 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
24 issue of law, or violation of law. BCBG denies the material, factual and legal allegations in  
25 CEH's Complaint and expressly denies any wrong doing whatsoever. Nothing in this Consent  
26 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may  
27 have in this or any other pending or future legal proceedings. This Consent Judgment is the  
28 product of negotiation and compromise and is accepted by the Parties solely for purposes of

1 settling, compromising, and resolving issues disputed in this action.

2 **2. DEFINITIONS**

3 2.1 The term "Cadmium Limit" means a concentration of 0.03 percent (300 parts per  
4 million ("ppm")) by weight cadmium in any component of a Covered Product, or in any material  
5 used in a Covered Product. The forgoing shall not apply to components of or materials used in  
6 Covered Product made from cubic zirconia (sometimes called cubic zirconium, CZ), glass,  
7 rhinestones or vitrified ceramics except where the Covered Products in question are subject to  
8 California Health and Safety Code section 25214.2(d).

9 2.2 The term "Covered Product" means (a) the following ornaments worn by a person:  
10 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, watch (excluding the  
11 timepiece itself if removable), decorated hair accessory, earring, necklace, pin, ring; similar  
12 clothing or shoe ornaments which are detachable; and body piercing jewelry; or (b) any bead,  
13 chain, link, pendant, or other component of such an ornament.

14 2.3 The term "Effective Date" means the date of entry of this Consent Judgment.

15 2.4 The term "Settling Defendant" and "Settling Defendants" shall mean BCBG and  
16 any other defendant that is a party to the Consent Judgment in this action between CEH and a  
17 group of settling defendants that includes, among others, A.I.J.J. Enterprises, Inc., Aeropostale,  
18 Inc., Hot Topic, Inc., Metropark USA, Inc., The New 5-7-9 and Beyond, Inc., Rainbow Apparel  
19 Distribution Center Corp., Rainbow USA, Inc., Rogers Sports Management, and Shalom  
20 International, Inc.

21 **3. INJUNCTIVE RELIEF**

22 3.1 **Reformulation of Covered Products.** BCBG shall comply with the following  
23 requirements to achieve expeditious reformulation of the Covered Products to reduce or eliminate  
24 exposures to cadmium arising from the Covered Products:

25 3.1.1 **Specification Compliance Date.** To the extent it has not already done so,  
26 no more than 30 days after the Effective Date, BCBG shall provide the Cadmium Limit to its  
27 vendors of Covered Products and shall instruct each vendor to expeditiously provide Covered  
28 Products that do not exceed the Cadmium Limit on a nationwide basis.

1                   3.1.2    **Inventory Cutoff/Shipping Restriction Date.** As of September 1, 2011,  
2 BCBG shall not manufacture, purchase, import, or supply to an unaffiliated third party any  
3 Covered Product that will be sold or offered for sale to California consumers that exceeds the  
4 Cadmium Limit.

5                   3.1.3    **Final Retail Compliance Date.** Commencing on December 31, 2011,  
6 BCBG shall not sell or offer for sale, or authorize any customer (including a merchandise  
7 liquidator) to sell or offer for sale in California, any Covered Product that exceeds the Cadmium  
8 Limit.

9                   3.2    **Market Withdrawal of Covered Products.** On or before the Effective Date,  
10 BCBG shall have: (i) ceased shipping the specific product identified as a Recall Product next to its  
11 name on Exhibit A (the "Recall Product"), to stores and/or customers in California, (ii) withdrawn  
12 the Recall Product from the market in California, and (iii) if the Recall Product was not withdrawn  
13 from sale in California prior to April 30, 2011, sent instructions to any of its stores and/or  
14 customers that offer the Recall Product for sale in California to cease offering such Recall Product  
15 for sale and to either return all Recall Products to BCBG for destruction, or to directly destroy the  
16 Recall Products. Any destruction of the Recall Products shall be in compliance with all applicable  
17 laws. Within 60 days of the Effective Date, BCBG shall certify to CEH that it has complied with  
18 this Section 3.2. If there is a dispute over the corrective action, the Parties shall meet and confer  
19 before seeking any remedy in court.

20    **4.    ENFORCEMENT**

21                   4.1    **General Enforcement Provisions.** CEH may, by motion or application for an  
22 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
23 Judgment. Any action to enforce alleged violations of the Cadmium Limit by BCBG shall be  
24 brought exclusively pursuant to this Section 4.

25                   4.2    **Enforcement of Materials Violation.**

26                   4.2.1    **Notice of Violation.** In the event that, at any time following the Effective  
27 Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by BCBG  
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1 that CEH believes in good faith exceed the Cadmium Limit, CEH may issue a Notice of Violation  
2 pursuant to this Section.

3 **4.2.2 Service of Notice of Violation and Supporting Documentation.**

4 4.2.2.1 The Notice of Violation shall be served on each Settling Defendant  
5 that CEH knows sold or offered for sale the Covered Product to California consumers.

6 4.2.2.2 With respect to BCBG, the Notice of Violation shall be sent to the  
7 person(s) identified in Exhibit A to receive notices for BCBG, and must be served within 75 days  
8 of the date the Covered Product at issue was purchased or otherwise acquired by CEH, provided,  
9 however, that: (i) CEH may have up to an additional 45 days to provide BCBG with the test data  
10 required by Section 4.2.2.3 below if it has not yet obtained it from its laboratory; and (ii) CEH  
11 may serve a subsequent Notice of Violation to a supplier of a Covered Product identified in a  
12 previous Notice of Violation so long as: (a) the identity of the supplier cannot be discerned from  
13 the labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served  
14 within 75 days of the date the supplier is identified in writing to CEH by another Settling  
15 Defendant.

16 4.2.2.3 The Notice of Violation shall, at a minimum, set forth for each  
17 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the  
18 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the  
19 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and  
20 supporting documentation sufficient for validation of the test results, including any laboratory  
21 reports, quality assurance reports and quality control reports associated with testing of the Covered  
22 Products. Such Notice of Violation shall be based upon total acid digest test data from an  
23 independent laboratory. Wipe, swipe, and swab testing are not sufficient to support a Notice of  
24 Violation.

25 4.2.2.4 CEH shall promptly make available for inspection and/or copying  
26 upon request by and at the expense of BCBG, any supporting documentation related to the testing  
27 of the Covered Products and associated quality control samples, including chain of custody  
28 records, all laboratory logbook entries for laboratory receiving, sample preparation, and

1 instrumental analysis, and all printouts from all analytical instruments relating to the testing of  
2 Covered Product samples and any and all calibration tests performed or relied upon in conjunction  
3 with the testing of the Covered Products, obtained by or available to CEH that pertains to the  
4 Covered Product's alleged exceedance of the Cadmium Limit, and, if available, any exemplars of  
5 Covered Products tested.

6           4.2.3   **Notice of Election of Response.** No more than 30 days after service of a  
7 Notice of Violation, BCBG shall provide written notice to CEH whether it elects to contest the  
8 allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice  
9 of Election within 30 days of service of a Notice of Violation shall be deemed an election to  
10 contest the Notice of Violation.

11           4.2.3.1   If a Notice of Violation is contested, the Notice of Election shall  
12 include all then-available documentary evidence regarding the alleged violation, including all test  
13 data, if any. If BCBG or CEH later acquires additional test or other data regarding the alleged  
14 violation, it shall notify the other party and promptly provide all such data or information to the  
15 party. Any test data used to contest a Notice of Violation shall meet the criteria of section 4.2.2.3.

16           4.2.4   **Meet and Confer.** If a Notice of Violation is contested, CEH, BCBG and  
17 any other affected Settling Defendants shall meet and confer to attempt to resolve their dispute.  
18 Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no  
19 enforcement motion or application has been filed by CEH pursuant to Section 4.1, BCBG may  
20 withdraw the original Notice of Election contesting the violation and serve a new Notice of  
21 Election conceding the violation, provided however that BCBG shall pay \$5,000 in addition to any  
22 payment required under Section 4.2.7. At any time, CEH may withdraw a Notice of Violation, in  
23 which case for purposes of this Section 4 the result shall be as if CEH never issued any such  
24 Notice of Violation. If no informal resolution of a Notice of Violation results within 30 days of a  
25 Notice of Election to contest, CEH may file an enforcement motion or application pursuant to  
26 Section 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties attorneys'  
27 fees or remedies are provided by law for failure to comply with the Consent Judgment.

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1           4.2.5   **Non-Contested Matters.** If BCBG elects not to contest the allegations in  
2 a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6 and shall make  
3 any payments required by Section 4.2.7.

4           4.2.6   **Corrective Action in Non-Contested Matters.** If BCBG elects not to  
5 contest the allegation, it shall include in its Notice of Election a detailed description with  
6 supporting documentation of the corrective action that it has undertaken or proposes to undertake  
7 to address the alleged violation. Any such correction shall, at a minimum, provide reasonable  
8 assurance that the Covered Product will no longer be offered for sale in California. Corrective  
9 action must include instructions to BCBG's stores and/or its customers that offer the Covered  
10 Product for sale to consumers to cease offering the Covered Product(s) identified in the Notice of  
11 Violation for sale in California as soon as practicable. The Notice of Election shall also include  
12 the name, address, telephone number, and other contact information, of BCBG's supplier(s) of  
13 each Covered Product identified in the Notice of Violation, and any other Settling Defendant to  
14 whom it sold any Covered Product(s) identified in the Notice of Violation. BCBG shall make  
15 available to CEH for inspection and/or copying records and correspondence regarding the  
16 corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer  
17 pursuant to Section 4.2.4 before seeking any remedy in court.

18           4.2.7   **Payments in Non-Contested Matters.** In addition to the corrective  
19 action, BCBG shall be required to make a payment as reimbursement for costs for investigating,  
20 preparing, sending and prosecuting Notices of Violation, and to reimburse attorneys' fees and  
21 costs incurred in connection with these activities, as specified below:

22           4.2.7.1   If BCBG has not previously received a Notice of Violation, or has  
23 only received one or more Notices of Violation that were successfully contested or withdrawn, and  
24 if BCBG serves a Notice of Election not to contest the allegations in the instant Notice of  
25 Violation, it shall not be required to make a payment under this Section.

26           4.2.7.2   If BCBG previously received a Notice of Violation that was not  
27 successfully contested or withdrawn, and BCBG serves a Notice of Election not to contest the  
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1 allegations in the instant Notice of Violation, it shall be required to make a payment of \$10,000.

2 This payment shall, however, be:

3           A.     Reduced to \$5,000 if BCBG produces with its Notice of Election test data  
4 showing that the Covered Product that is the subject of the Notice of Violation did not  
5 exceed the Cadmium Limit. For purposes of this Section 4.2.7.2A only, "test data" shall  
6 mean (i) total cadmium by acid digest performed by an accredited laboratory on the  
7 Covered Product alleged to be in violation of the Cadmium Limit where the test was  
8 conducted within one year prior to the date the Covered Product that is the subject of the  
9 Notice of Violation was purchased or obtained by CEH; or (ii) total cadmium by X-ray  
10 fluorescence (XRF) performed on the Covered Product alleged to be in violation of the  
11 Cadmium Limit by BCBG pursuant to an existing written screening policy for cadmium in  
12 Covered Products where the test was conducted within eighteen months prior to the date  
13 the Covered Product that is the subject of the Notice of Violation was purchased or  
14 obtained by CEH.

15           B.     Waived if the Attorney General or other public enforcer has, prior to the  
16 date the Notice of Violation was issued, brought an action or proceeding regarding the  
17 same violation;

18           C.     Waived if BCBG can demonstrate that the alleged violation pertains to an  
19 identical component or components for which a Settling Defendant has already made a  
20 payment to CEH under a substantially identical Consent Judgment entered in this action.  
21 For purposes of this Section, a component shall only be deemed identical if it is (i) made of  
22 the same materials; (ii) is of the identical size, shape, color and SKU (if any); and is (iii)  
23 supplied by the same entity.

24           D.     Reduced to \$5,000 if: (i) the Notice of Violation is issued during the time  
25 period running from the Effective Date to eighteen months thereafter; and (ii) only non-  
26 metallic components of the Covered Product exceeded the Cadmium Limit.

27           4.2.7.3     The payment shall be made by check payable to the Lexington Law  
28 Group and shall be paid within 15 days of service of a Notice of Election triggering a payment.

1                   4.2.7.4    A Settling Defendant's liability for payments shall be limited as  
2 follows:

3                   A.     A Settling Defendant that is a supplier to one or more retailers shall be  
4 liable for one required payment for any particular Covered Product within any 30-day  
5 period.

6                   B.     If more than one Settling Defendant has manufactured, sold or distributed a  
7 Covered Product identified in a Notice of Violation, only one required contribution may be  
8 assessed against all potentially liable Settling Defendants provided that the Settling  
9 Defendants stopped selling the Covered Product within 30 days of the Notice of Violation,  
10 in the following order of priority: (1) manufacturers, (2) importers, (3) distributors, and (4)  
11 retailers. Notwithstanding this priority, if BCBG receives a Notice of Violation and is not  
12 contesting the Notice of Violation, it shall comply with Section 4.2.6.

13                   C.     BCBG's monetary liability to make required payments shall be limited to  
14 \$30,000 for each 75-day period.

15                   4.2.8    **Interaction with Related Statute.** On January 1, 2012, the California the  
16 Department of Toxic Substances Control ("DTSC") will have authority to enforce Health &  
17 Safety Code section 25214.3 with respect to cadmium in children's jewelry. The parties agree that  
18 BCBG will not be subject to enforcement under the Consent Judgment if an enforcement  
19 proceeding regarding the same Covered Product has been initiated or resolved by DTSC pursuant  
20 to Health and Safety Code section 25214.3 prior to issuance of any Notice of Violation hereunder.

21                   4.2.9    **Repeat Violations.** If BCBG has received three or more Notices of  
22 Violation that were not successfully contested or withdrawn in any 12-month period then, at  
23 CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies  
24 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such  
25 relief, CEH shall meet and confer with BCBG for a period not to exceed 30 days (unless extended  
26 by mutual agreement) to determine if the parties can agree on measures BCBG can undertake to  
27 prevent future violations.

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1     **5.     PAYMENTS**

2             **5.1     Payments From BCBG.** Within five (5) days of entry of this Consent Judgment,  
3 BCBG shall pay the amount set forth as a settlement payment on Exhibit A, as further specified in  
4 Section 5.2 below.

5             **5.2     Allocation of Payments.** The total settlement amount for BCBG shall be paid in  
6 four separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503  
7 Divisadero Street, San Francisco, California 94117, and made payable and allocated as follows:

8                     **5.2.1** BCBG shall pay the amount designated on Exhibit A as a Penalty pursuant  
9 to Health & Safety Code §25249.7(b,) to be apportioned in accordance with California Health &  
10 Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's  
11 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the  
12 penalty remitted to CEH. Accordingly, one penalty payment check for the amount designated on  
13 Exhibit A as OEHHA Portion of Penalty shall be made payable to "OEHHA" for the Safe  
14 Drinking Water and Toxic Enforcement Fund and be attributed to taxpayer identification number  
15 68-0284486. A second penalty payment check in the amount designated for BCBG on Exhibit A  
16 as CEH Portion of Penalty shall made payable to the "Center For Environmental Health" and  
17 associated with taxpayer identification number 94-3251981.

18                     **5.2.2** BCBG shall also separately pay to CEH the amount designated on Exhibit  
19 A as Payment In Lieu of Civil Penalty pursuant to Health & Safety Code §25249.7(b), and  
20 California Code of Regulations, Title 11, §3202(b). CEH will restrict the use of such funds to the  
21 following purposes: (a) monitoring compliance with the reformulation requirements of this and  
22 other similar Consent Judgments; (b) purchasing and testing jewelry; (c) preparing and compiling  
23 the information and documentation necessary to support enforcement efforts under this Consent  
24 Judgment; (d) contributions to CEH's Community Environmental Action and Justice Fund; and  
25 (e) supporting CEH programs and activities that seek to reduce the public health impacts or risks  
26 of exposure to heavy metals, including cadmium, known to the State of California to cause cancer  
27 or reproductive harm. Such programs and activities currently include (i) CEH's membership on  
28 the ATSM toy safety committee and participation in a workgroup that is drafting a standard to

1 limit cadmium and other heavy metals in toys; (ii) CEH's work in support of policy initiatives at  
2 the state and federal level to restrict the use of cadmium and other heavy metals in consumer  
3 products; and (iii) CEH's advocacy for a reduction in the use of toxic chemicals, including heavy  
4 metals such as cadmium, in electronic devices and standards for the disposal/recycling of such  
5 products, including CEH's participation in an EPA-sponsored multi-stakeholder workgroup  
6 seeking to set standards for the design, manufacture, sale, labeling and disposal of televisions and  
7 printers. CEH will maintain records that document how these funds were spent. As part of its  
8 Community Environmental Action and Justice Fund, CEH will use four percent of such funds to  
9 award grants to grassroots environmental justice groups working to educate and protect people  
10 from exposures to toxic chemicals. The method of selection of such groups can be found at the  
11 CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made  
12 payable to the "Center For Environmental Health" and associated with taxpayer identification  
13 number 94-3251981.

14           5.2.3 BCBG shall also separately pay to the Lexington Law Group the amount  
15 designated for BCBG on Exhibit A as Attorneys' Fees and Costs Reimbursement as  
16 reimbursement for a portion of reasonable attorneys' fees and costs. The attorneys' fees and cost  
17 reimbursement check shall be made payable to the "Lexington Law Group" and associated with  
18 taxpayer identification number 94-3317175.

## 19   6.    **MODIFICATION AND DISPUTE RESOLUTION**

20       6.1    **Modification.** This Consent Judgment may be modified from time to time by  
21 express written agreement of the Parties with the approval of the Court, or by an order of this  
22 Court upon motion and in accordance with law.

23       6.2    **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
24 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
25 modify the Consent Judgment.

## 26   7.    **CLAIMS COVERED AND RELEASE**

27       7.1    This Consent Judgment is a full, final, and binding resolution between CEH and  
28 BCBG and BCBG's parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister

1 companies and their successors and assigns (“Defendant Releasees”), and all entities other than  
2 those entities listed on Exhibit B to whom they distribute or sell Covered Products including, but  
3 not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
4 and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 or any  
5 other statutory or common law claims that have been or could have been asserted in the public  
6 interest against BCBG, Defendant Releasees, and Downstream Defendant Releasees, regarding the  
7 failure to warn about exposure to cadmium arising in connection with Covered Products  
8 manufactured, distributed, or sold by BCBG prior to the Effective Date.

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

16 7.3 Compliance with the terms of this Consent Judgment by BCBG and the Defendant  
17 Releasees shall constitute compliance with Proposition 65 by BCBG, the Defendant Releasees and  
18 the Downstream Defendant Releasees with respect to any alleged failure to warn about cadmium  
19 in Covered Products manufactured, distributed or sold by BCBG after the Effective Date.

## 20 8. PROVISION OF NOTICE

21 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the  
22 notice shall be sent by first class and electronic mail as follows:

23 8.1.1 **Notices to BCBG.** The person(s) for BCBG to receive Notice pursuant to  
24 this Consent Judgment are identified on Exhibit A.

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

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Eric S. Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
[esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

8.2 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

**9. COURT APPROVAL**

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

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

**10. GOVERNING LAW AND CONSTRUCTION**

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

**11. ENTIRE AGREEMENT**

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

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

3 **12. RETENTION OF JURISDICTION**

4 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify  
5 the Consent Judgment.

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

7 13.1 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 **14. NO EFFECT ON OTHER SETTLEMENTS**

11 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
12 against any other entity on terms that are different than those contained in this Consent Judgment.

13 **15. EXECUTION IN COUNTERPARTS**

14 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
15 means of facsimile, which taken together shall be deemed to constitute one document.

16

17

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

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20 Dated: Nov 18, 2011

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**Robert B. Freedman**

Judge of the Superior Court of the State of California

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**IT IS SO STIPULATED:**

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| Dated: June 9, 2011 | CENTER FOR ENVIRONMENTAL HEALTH                                                    |
|                     |  |
|                     | CHARLIE PIZARRO                                                                    |
|                     | Printed Name                                                                       |
|                     | ASSOCIATE DIRECTOR                                                                 |
|                     | Title                                                                              |

|        |                            |
|--------|----------------------------|
| Dated: | BCBG MAX AZRIA GROUP, INC. |
|        |                            |
|        |                            |
|        | Printed Name               |
|        | Title                      |

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| Dated: May __, 2011 | <b>CENTER FOR ENVIRONMENTAL HEALTH</b><br><br><hr/><br><hr/><br>Printed Name<br><br><hr/><br>Title |
|---------------------|----------------------------------------------------------------------------------------------------|

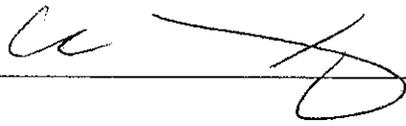
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| Dated: May 23, 2011 | <b>BCBG MAX AZRIA GROUP, INC.</b><br><br><br><hr/><br>Erica A Herwitz<br>Printed Name<br><br><hr/><br>Assistant General Counsel<br>Title |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

EXHIBIT A

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1. Section 3.2 Recall Product:

Miley Cyrus Max Azria Necklace with Clock Pendant  
SKU No. 7-25942-21838-1

2. Defendant's Settlement Payment and Allocation

|                                      |           |
|--------------------------------------|-----------|
| Total Settlement Payment             | \$110,000 |
| Total Civil Penalty                  | \$15,640  |
| OEHHA Portion of Civil Penalty (75%) | \$11,730  |
| CEH Portion of Civil Penalty (25%)   | \$3,910   |
| Payment in Lieu of Civil Penalty     | \$23,460  |
| Attorneys' Fees and Costs            | \$70,900  |

3. Person to Receive Notice for Setting Defendant:

Jeffrey Margulies  
Fulbright & Jaworski L.L.P.  
555 South Flower Street, 41<sup>st</sup> Floor  
Los Angeles, CA 90071  
[jmargulies@fulbright.com](mailto:jmargulies@fulbright.com)

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EXHIBIT B  
List of Entities Not Subject to Downstream Release

- Ashley Stewart Ltd.
- Atico International USA, Inc.
- Burlington Coat Factory Warehouse Corporation
- C2:8
- Cara Accessories Ltd.
- Charlotte Russe, Inc.
- Charlotte Russe Holding Inc.
- Cousin Corporation of America
- CVS Pharmacy, Inc.
- Fad, Inc.
- F.A.F., Inc.
- Forum Novelties, Inc.
- High Accessories, Inc.
- J.M. Hollister, LLC
- Metropark USA, Inc.
- New Ashley Stewart, Inc.
- NY Style
- Party City Corporation
- Rubie's Costume Company, Inc.
- Sears, Roebuck and Co.
- Spencer Gifts, LLC.
- Styles For Less, Inc.
- Sulyn Industries, Inc.
- Urban Brands, Inc.
- Western Fashion, Inc.