

1 Attorneys of every California city with a population greater than 750,000, and to Defendant
2 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

3 1.3 On November 8, 2010, CEH filed the complaint against Defendant in the Action.

4 1.4 Defendant is a corporation that employs 10 or more persons, and which
5 manufactures, distributes and/or sells Covered Products in the State of California.

6 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the
8 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
9 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
10 Consent Judgment as a full and final resolution of all claims which were or could have been raised
11 in the Complaint based on the facts alleged therein with respect to Covered Products
12 manufactured, distributed, and/or sold by Defendant.

13 1.6 CEH and Defendant enter into this Consent Judgment as a full and final settlement
14 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
15 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
16 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
17 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
18 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
19 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be
20 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
21 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
22 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies
23 the material, factual and legal allegations in CEH's Complaint and expressly denies any wrong
24 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
25 remedy, argument or defense the Parties may have in this or any other pending or future legal
26 proceedings. This Consent Judgment is the product of negotiation and compromise and is
27 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
28 disputed in this action.

1 **2. DEFINITIONS**

2 2.1 The term "Covered Product" means (a) the following ornaments worn by a person:
3 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories,
4 earring, necklace, pin, ring and body piercing jewelry; or (b) any bead, chain, link, pendant, or
5 other component of such an ornament.

6 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

7 **3. INJUNCTIVE RELIEF**

8 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall
9 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product
10 that contains:

11 3.1.1 Any component not covered under Section 3.1.2, or that is made of any
12 material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million
13 ("ppm")) Lead by weight; or

14 3.1.2 Any Paint or Surface Coating that is more than 0.009 percent Lead by
15 weight (90 ppm). For purposes of this Consent Judgment, "Paint or Surface Coating" shall carry
16 the same meaning as "Paint or other similar surface coating" under 16 C.F.R. §1303.2(b)(1)
17 ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,
18 with or without a suspension of finely divided coloring matter, which changes to a solid film when
19 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This
20 term does not include printing inks or those materials which actually become a part of the
21 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
22 the substrate, such as by electroplating or ceramic glazing.").

23 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
24 Defendant shall cease shipping the Fashionista Brights Headband, as identified in CEH's pre-suit
25 Notice of Violation to Defendant (the "Recall Covered Products"), to stores and/or customers in
26 California, and Defendant shall withdraw the Recall Covered Products from the market in
27 California, and, at a minimum, send instructions to any of its stores and/or customers that offer the
28 Recall Covered Products for sale in California to cease offering such Recall Covered Products for

1 sale and to either return all Recall Covered Products to Defendant for destruction, or to directly
2 destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in
3 compliance with all applicable laws. Defendant shall keep and make available to CEH for
4 inspection and copying records and correspondence regarding the market withdrawal and
5 destruction of the Recall Covered Products. If there is a dispute over the corrective action, the
6 Parties shall meet and confer before seeking any remedy in court

7 **4. ENFORCEMENT**

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

18 **5. PAYMENTS**

19 5.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
20 Judgment, Defendant shall pay the total sum of \$45,000 as a settlement payment.

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

25 5.2.1 Defendant shall pay the sum of \$4,500 as a penalty pursuant to Health &
26 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
27 Safety Code §25249.12. The penalty check shall be made payable to the Center For
28 Environmental Health.

1 5.2.2 Defendant shall pay the sum of \$11,500 as payment to CEH in lieu of
2 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
3 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
4 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
5 to monitor compliance with the reformulation requirements of this and other similar Consent
6 Judgments and to purchase and test Covered Products to confirm compliance with such
7 reformulation requirements. In addition, as part of its Community Environmental Action and
8 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
9 justice groups working to educate and protect people from exposures to toxic chemicals. The
10 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
11 The payment in lieu of penalty check shall be made payable to the Center For Environmental
12 Health.

13 5.2.3 Defendant shall pay the sum of \$29,000 as reimbursement of reasonable
14 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable
15 to the Lexington Law Group.

16 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

20 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
21 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
22 modify the Consent Judgment.

23 **7. CLAIMS COVERED AND RELEASE**

24 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
25 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,
26 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other
27 than those listed on Exhibit A of this Consent Judgment to whom they distribute or sell Covered
28 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,

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

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

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

18 **8. PROVISION OF NOTICE**

19 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail as follows:

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

23 Michael E. Gallagher
24 Dongell Lawrence Finney LLP
25 707 Wilshire Boulevard, 45th Floor
26 Los Angeles, CA 90017-3609
27 mgallagher@dlflawyers.com

28 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
this Consent Judgment shall be:

1 Howard Hirsch
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 hhirsch@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 first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective on the Effective Date, provided
10 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
11 Defendant shall support approval of such Motion.

12 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
13 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

14 **10. GOVERNING LAW AND CONSTRUCTION**

15 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California.

17 **11. ATTORNEYS' FEES**

18 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
20 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
21 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
22 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

23 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
24 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
25 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
26 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
27 provision shall not be construed as altering any procedural or substantive requirements for
28 obtaining such an award.

11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of

1 sanctions pursuant to law.

2 **12. ENTIRE AGREEMENT**

3 12.1 This Consent Judgment contains the sole and entire agreement and understanding
4 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
5 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
6 and therein. There are no warranties, representations, or other agreements between the Parties
7 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
8 other than those specifically referred to in this Consent Judgment have been made by any Party
9 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
10 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
11 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
12 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
13 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
14 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
15 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
16 whether or not similar, nor shall such waiver constitute a continuing waiver.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

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

21 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
23 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.


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

25 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
26 against an entity that is not Defendant on terms that are different than those contained in this
27 Consent Judgment.

28 **16. EXECUTION IN COUNTERPARTS**

1 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
2 means of facsimile, which taken together shall be deemed to constitute one document.

3
4 IT IS SO STIPULATED:

5 Dated: May <u>13</u> , 2011	6 CENTER FOR ENVIRONMENTAL HEALTH 7  8 _____ 9 10 <u>Michael Gleason</u> 11 Printed Name 12 13 <u>EXECUTIVE DIRECTOR</u> 14 Title
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15 16 Dated: May __, 2011	17 TWO'S COMPANY, INC. 18 _____ 19 20 21 Printed Name 22 23 24 Title
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1 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
2 means of facsimile, which taken together shall be deemed to constitute one document.
3

4 IT IS SO STIPULATED:

5 Dated: May __, 2011 6 7 8 9 10 11 12 13	CENTER FOR ENVIRONMENTAL HEALTH _____ _____ Printed Name _____ Title
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14 15 16 Dated: May <u>17</u> , 2011 17 18 19 20 21 22 23 24	TWO'S COMPANY, INC. <i>Harvey W. Matlicke</i> _____ Harvey W. MATLICE Printed Name TREASURER _____ Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: *August 15, 2011*

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. 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. Forum Novelties, Inc.
9. Georgiou Studio, Inc.
10. I Love Bracelets, Inc.
11. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
12. Jacadi USA, Inc.
13. Legoland California LLC
14. Long Rap, Inc.
15. Marin Beauty Company
16. Max Rave, LLC
17. Rite Aid Corporation
18. Rubie's Costume Company, Inc.
19. Safeway, Inc.
20. Scünci International, Inc.
21. Sea World, Inc.
22. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
23. Six Flags Theme Parks, Inc.