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ALAMEDA COUNTY

JUN 06 2012

N. Dyeste, Exec. Off./Clerk

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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~~ ND CONSENT JUDGMENT
) AS TO BURLINGTON COAT
) FACTORY WAREHOUSE
) CORPORATION

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center for Environmental Health, a California non-profit corporation ("CEH") and defendant Burlington Coat Factory Warehouse Corporation ("Settling Defendant"), to settle certain claims asserted by CEH against Settling Defendant 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 10-514803.

1.2 On January 11, 2011, CEH served a Notice of Violation under Proposition 65 alleging that Settling Defendant, along with other entities named in the notice, violated Proposition 65 by exposing persons to cadmium contained in jewelry, without first providing a

1 clear and reasonable warning pursuant to Proposition 65.

2 1.3 On April 8, 2011, CEH filed the operative Second Amended Complaint
3 (“Complaint”) in this action to name Settling Defendant as a party.

4 1.4 Settling Defendant is a corporation that employs ten or more persons, and which
5 manufactures, distributes and/or sells Covered Products (as defined herein) in the State of
6 California.

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

14 1.6 CEH and Settling Defendant enter into this Consent Judgment as a full and final
15 settlement of all claims that were raised in the Complaint, or which could have been raised in the
16 Complaint, arising out of the facts or conduct related to Settling Defendant alleged therein. By
17 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
18 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law
19 suggesting or demonstrating any violations of Proposition 65 (California Health & Safety Code
20 sections 25249.5, *et seq.*) or any other statutory, common law or equitable requirements relating to
21 cadmium in jewelry. Nothing in this Consent Judgment is or shall be construed as an admission
22 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
23 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
24 conclusion of law, issue of law, or violation of law. Settling Defendant denies the material, factual
25 and legal allegations in CEH’s Complaint and expressly denies any wrong doing whatsoever.
26 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or
27 defense the Parties may have in this or any other pending or future legal proceedings. This
28 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties

1 solely for purposes of 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 & 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 **3. INJUNCTIVE RELIEF**

16 3.1 **Reformulation of Covered Products.** Settling Defendant shall comply with the
17 following requirements to achieve expeditious reformulation of the Covered Products to reduce or
18 eliminate exposures to cadmium arising from the Covered Products:

19 3.1.1 **Specification Compliance Date.** To the extent it has not already done so,
20 no more than 30 days after the Effective Date, Settling Defendant shall provide the Cadmium
21 Limit to its vendors of Covered Products and shall instruct each vendor to expeditiously provide
22 Covered Products that do not exceed the Cadmium Limit on a nationwide basis.

23 3.1.2 **Cadmium Limit.** After the Effective Date, Settling Defendant shall not
24 manufacture, purchase, import, sell or offer for sale in California any Covered Product that
25 exceeds the Cadmium Limit.

26 **4. ENFORCEMENT**

27 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
28 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating

1 Party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
2 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
3 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
4 by new action, motion or order to show cause before the Superior Court of Alameda, seek to
5 enforce the terms and conditions contained in this Consent Judgment. In any such proceeding,
6 CEH may seek whatever fines, costs, penalties attorneys' fees or remedies are provided by law for
7 failure to comply with this Consent Judgment.

8 5. PAYMENTS

9 5.1 **Payments From Settling Defendant.** Within five (5) days of entry of this Consent
10 Judgment, Settling Defendant shall pay the amount set forth as a settlement payment on Exhibit A,
11 as further specified in Section 5.2 below.

12 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
13 be paid in four separate checks delivered to the offices of the Lexington Law Group (Attn: Eric
14 Somers), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
15 as follows:

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

26 5.2.2 Settling Defendant shall also separately pay to CEH the amount designated
27 on Exhibit A as Payment In Lieu of Civil Penalty pursuant to Health & Safety Code §25249.7(b),
28 and California Code of Regulations, Title 11, §3202(b). CEH will restrict the use of such funds to

1 the following purposes: (a) monitoring compliance with the reformulation requirements of this
2 and other similar Consent Judgments; (b) purchasing and testing jewelry; (c) preparing and
3 compiling the information and documentation necessary to support enforcement efforts under this
4 Consent Judgment; (d) contributions to CEH's Community Environmental Action and Justice
5 Fund; and (e) supporting CEH programs and activities that seek to reduce the public health
6 impacts or risks of exposure to heavy metals, including cadmium, known to the State of California
7 to cause cancer or reproductive harm. Such programs and activities currently include (i) CEH's
8 membership on the ASTM toy safety committee and participation in a workgroup that is drafting a
9 standard to limit cadmium and other heavy metals in toys; (ii) CEH's work in support of policy
10 initiatives at the state and federal level to restrict the use of cadmium and other heavy metals in
11 consumer products; and (iii) CEH's advocacy for a reduction in the use of toxic chemicals,
12 including heavy metals such as cadmium, in electronic devices and standards for the
13 disposal/recycling of such products, including CEH's participation in an EPA-sponsored multi-
14 stakeholder workgroup seeking to set standards for the design, manufacture, sale, labeling and
15 disposal of televisions and printers. CEH will maintain records that document how these funds
16 were spent. As part of its Community Environmental Action and Justice Fund, CEH will use four
17 percent of such funds to award grants to grassroots environmental justice groups working to
18 educate and protect people from exposures to toxic chemicals. The method of selection of such
19 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of
20 penalty check shall be made payable to the "Center For Environmental Health" and associated
21 with taxpayer identification number 94-3251981.

22 5.2.3 Settling Defendant shall also separately pay to the Lexington Law Group
23 the amount designated for Settling Defendant on Exhibit A as Attorneys' Fees and Costs
24 Reimbursement as reimbursement for a portion of reasonable attorneys' fees and costs. The
25 attorneys' fees and cost reimbursement check shall be made payable to the "Lexington Law
26 Group" and associated with taxpayer identification number 94-3317175.

27 **6. MODIFICATION AND DISPUTE RESOLUTION**

28 6.1 **Modification.** This Consent Judgment may be modified from time to time by

1 express written agreement of the Parties with the approval of the Court, or by an order of this
2 Court upon motion and in accordance with law.

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

6 **7. CLAIMS COVERED AND RELEASE**

7 7.1 This Consent Judgment is a full, final, and binding resolution between CEH acting
8 in the public interest and Settling Defendant and Settling Defendant's parents, shareholders,
9 divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns
10 ("Defendant Releasees"), and all entities other than those entities listed on Exhibit B to whom they
11 distribute or sell Covered Products including, but not limited to, distributors, wholesalers,
12 customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant
13 Releasees"), of all claims of violation of Proposition 65 up through the Effective Date based on
14 the failure to warn about exposure to cadmium in the Covered Products manufactured, distributed,
15 or sold by Settling Defendant prior to the Effective Date as set forth in the Notice of Violation.

16 7.2 CEH, for itself releases, waives, and forever discharges any and all claims against
17 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
18 violation of Proposition 65 or any other statutory or common law claims that have been or could
19 have been asserted by CEH regarding the failure to warn about exposure to cadmium arising in
20 connection with Covered Products manufactured, distributed or sold by Settling Defendant prior to
21 the Effective Date.

22 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant and the
23 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant, the
24 Defendant Releasees and the Downstream Defendant Releasees with respect to any alleged failure
25 to warn about cadmium in Covered Products manufactured, distributed or sold by Settling
26 Defendant after the Effective Date.

27 **8. PROVISION OF NOTICE**

28 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the

1 notice shall be sent by first class and electronic mail as follows:

2 8.1.1 **Notices to Settling Defendant.** The person(s) for Settling Defendant to
3 receive Notice pursuant to this Consent Judgment are identified on Exhibit A.

4 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
5 this Consent Judgment shall be:

6 Eric S. Somers
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 esomers@lexlawgroup.com

11 8.2 Any Party may modify the person and address to whom the notice is to be sent by
12 sending the other Party notice by first class and electronic mail.

13 **9. COURT APPROVAL**

14 9.1 This Consent Judgment shall become effective on the Effective Date, provided
15 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
16 Settling Defendant shall support approval of such Motion.

17 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
18 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

19 **10. GOVERNING LAW AND CONSTRUCTION**

20 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California.

22 **11. ENTIRE AGREEMENT**

23 11.1 This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
26 and therein. There are no warranties, representations, or other agreements between the Parties
27 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
28 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

1 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
2 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
3 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
4 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
5 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
6 whether or not similar, nor shall such waiver constitute a continuing waiver.

7 **12. RETENTION OF JURISDICTION**

8 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
9 the Consent Judgment.

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

11 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
13 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

15 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
16 against any other entity on terms that are different than those contained in this Consent Judgment.

17 **15. EXECUTION IN COUNTERPARTS**

18 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
19 means of facsimile, which taken together shall be deemed to constitute one document.

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

Dated: 6-6-12



Judge of the Superior Court of the State of California

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IT IS SO STIPULATED:

Dated: February 8 2012

CENTER FOR ENVIRONMENTAL HEALTH

[Signature]

CHARLIE PIZZANO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: February __, 2012

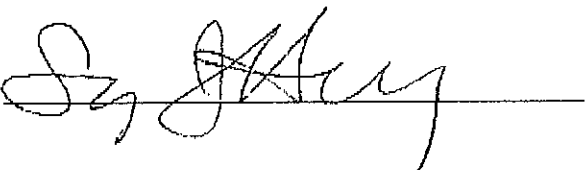
**BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION**

Printed Name

Title

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IT IS SO STIPULATED:

Dated: February 2, 2012	CENTER FOR ENVIRONMENTAL HEALTH <hr/> <hr/> Printed Name <hr/> Title
Dated: February 7, 2012	BURLINGTON COAT FACTORY WAREHOUSE CORPORATION  <hr/> STACY J HAINHEY <hr/> Printed Name <hr/> VP - Ass't Gen'l Counsel <hr/> Title

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EXHIBIT A

Settling Defendant: Burlington Coat Factory Warehouse Corporation

1. Settling Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$55,000.00
Total Civil Penalty	\$ 7,270.00
OEHHA Portion of Civil Penalty (75%)	\$ 5,452.50
CEH Portion of Civil Penalty (25%)	\$ 1,817.50
Payment in Lieu of Civil Penalty	\$10,900.00
Attorneys' Fees and Costs	\$36,830.00

2. Person to Receive Notice for Settling Defendant:

Stacy Haigney
Vice President, Assistant General Counsel
Burlington Coat Factory
1400 Broadway, 11th Floor
New York, NY 10018

With a copy to:

Jeffrey Margulies
Fulbright & Jaworski L.L.P.
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
jmargulies@fulbright.com

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EXHIBIT B

List of Entities Not Subject to Downstream Release

- American Accessories, Inc.
- Any Time Costumes.com, Inc.
- Basic
- C2:8
- Cornerstone Apparel, Inc.
- FAD, Inc.
- Fashion Plaza
- Forum Novelties, Inc.
- Halloween Express
- High Accessories, Inc.
- INVU Accessories
- Joppa, Inc.
- Love Culture Inc. and Love Culture LLC
- M&P Central, Inc.
- Metropark USA, Inc.
- New Ashley Stewart, Inc.
- NY Style
- Rubie's Costume Company, Inc.
- Sears, Roebuck and Co.
- Spencer Gifts, LLC
- Toynk Toys, LLC
- Urban Brands, Inc.
- Wal-Mart Stores Inc.
- Western Fashion, Inc.
- Xpose