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ENDORSED  
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ALAMEDA COUNTY

JAN 13 2012

CLERK OF THE SUPERIOR COURT  
By J. Gonzalez Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,	)	Case No. RG 10-545680
Plaintiff,	)	
vs.	)	[PROPOSED] CONSENT JUDGMENT
TWO'S COMPANY, INC., et al,	)	AS TO KNITWORK PRODUCTION II,
Defendants.	)	LLC AND WINDSOR FASHIONS,
	)	INC.
	)	
	)	
	)	

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and defendants Knitwork Production II, LLC ("Knitwork") and Windsor Fashions, Inc. ("Windsor") (collectively, "Defendants"), to settle certain claims asserted by CEH against Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Two's Company, Inc.*, Alameda County Superior Court Case No. RG 10-545680 (the "Action").

1.2 On February 4, 2011 as to Windsor and March 30, 2011 as to Knitwork, CEH provided a "Notice of Violation of Proposition 65" to the California Attorney General, the District

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

4 1.3 On May 25, 2011, CEH amended the operative complaint in the Action to name  
5 Windsor, and on July 20, 2011, CEH amended the operative complaint in the Action to name  
6 Knitwork.

7 1.4 Defendants are corporations that employ 10 or more persons, and which  
8 manufacture, distribute and/or sell Covered Products in the State of California.

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

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

1 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
2 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
3 disputed in this action.

4 **2. DEFINITIONS**

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

9 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendants shall  
12 not manufacture, ship, sell or offer for sale any Covered Product in California or anywhere else in  
13 the United States that contains:

14 3.1.1 Any component not covered under Section 3.1.2, or that is made of any  
15 material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million  
16 ("ppm")) Lead by weight; or

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

26 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,  
27 Defendants shall cease shipping the Rhinestone Elephant Necklace, SKU No. 4-07002-01526, as  
28 identified in CEH's pre-suit Notices of Violation to Defendants (the "Recall Covered Products"),

1 to stores and/or customers in California, and Defendants shall withdraw the Recall Covered  
2 Products from the market in California, and, at a minimum, send instructions to any of its stores  
3 and/or customers that offer the Recall Covered Products for sale in California to cease offering  
4 such Recall Covered Products for sale and to either return all Recall Covered Products to  
5 Defendants for destruction, or to directly destroy the Recall Covered Products. Any destruction of  
6 the Recall Covered Products shall be in compliance with all applicable laws. Defendants shall  
7 keep and make available to CEH for inspection and copying records and correspondence regarding  
8 the market withdrawal and destruction of the Recall Covered Products. If there is a dispute over  
9 the corrective action, the Parties shall meet and confer before seeking any remedy in court

10 **4. ENFORCEMENT**

11 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
12 enforce the terms of this Consent Judgment, a Party seeking to enforce shall meet and confer with  
13 the other Party in an effort to try to reach agreement on an appropriate cure for the alleged  
14 violation. After such meet and confer effort, the Party seeking to enforce may, by new action,  
15 motion or order to show cause before the Superior Court of Alameda, seek to enforce the terms  
16 and conditions contained in this Consent Judgment.

17 **5. PAYMENTS**

18 5.1 **Payments From Defendants.** Within five (5) days of the entry of this Consent  
19 Judgment, Defendants shall jointly pay the total sum of \$85,000 as a settlement payment. Any  
20 failure by Defendants to comply with the payment terms herein shall be subject to a stipulated late  
21 fee in the amount of \$100 for each day after the due date the payment is received. The late fees  
22 required under this section shall be recoverable together with reasonable attorneys' fees and costs  
23 in any action or proceeding arising out of this Consent Judgment.

24 5.2 **Allocation of Payments.** The total settlement amount for Defendants shall be paid  
25 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),  
26 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated as  
27 follows:

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1           5.2.1    Defendants shall pay the sum of \$11,150 as a penalty pursuant to Health &  
2 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &  
3 Safety Code §25249.12. The penalty check shall be made payable to the Center For  
4 Environmental Health.

5           5.2.2    Defendants shall pay the sum of \$17,100 as payment to CEH in lieu of  
6 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title  
7 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from  
8 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
9 to monitor compliance with the reformulation requirements of this and other similar Consent  
10 Judgments and to purchase and test Covered Products to confirm compliance with such  
11 reformulation requirements. In addition, as part of its Community Environmental Action and  
12 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental  
13 justice groups working to educate and protect people from exposures to toxic chemicals. The  
14 method of selection of such groups can be found at the CEH web site at [http://www.ceh.org/what-](http://www.ceh.org/what-we-do/supporting-communities/the-justice-fund)  
15 [we-do/supporting-communities/the-justice-fund](http://www.ceh.org/what-we-do/supporting-communities/the-justice-fund). The payment in lieu of penalty check shall be  
16 made payable to the Center For Environmental Health.

17           5.2.3    Defendants shall pay the sum of \$56,750 as reimbursement of reasonable  
18 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
19 payable to the Lexington Law Group.

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

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

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

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

28           7.1    This Consent Judgment is a full, final, and binding resolution between CEH and

1 Defendants and Defendants' parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
2 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other  
3 than those listed on Exhibit A of this Consent Judgment to whom they distribute or sell Covered  
4 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
5 cooperative members, and licensees ("Downstream Defendant Releasees"), of 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 against Defendants, Defendant Releasees, and Downstream  
8 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection  
9 with Covered Products manufactured, distributed, or sold by Defendants prior to the Effective  
10 Date.

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

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

## 23 8. PROVISION OF NOTICE

24 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the  
25 notice shall be sent by first class or electronic mail as follows:

26 8.1.1 **Notices to Knitwork.** The person for Knitwork to receive Notices  
27 pursuant to this Consent Judgment shall be:  
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Kathryn S. Marshall  
Wasserman, Comden, Casselman & Essensten, L.CI.P.  
5567 Reseda Blvd., Suite 330  
Tarzana, CA 91356  
kmarshall@wccelaw.com

8.1.2 **Notices to Windsor.** The persons for Windsor to receive Notices pursuant to this Consent Judgment shall be:

Dennis Kass  
Alex Caraveo  
Manning & Kass Ellrod, Ramirez Trester LLP  
801 S. Figueroa Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90017  
dbk@manningllp.com  
ayc@manningllp.com

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

Eric Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
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 or 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 Defendants 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.

1     **11.   ATTORNEYS' FEES**

2           11.1   A Party who unsuccessfully brings or contests an action arising out of this Consent  
3 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
4 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
5 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
6 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

7           11.2   Notwithstanding Section 11.1, a Party who prevails in a contested enforcement  
8 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of  
9 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
10 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
11 provision shall not be construed as altering any procedural or substantive requirements for  
12 obtaining such an award.

13           11.3   Nothing in this Section 11 shall preclude a Party from seeking an award of  
14 sanctions pursuant to law.

15     **12.   ENTIRE AGREEMENT**

16           12.1   This Consent Judgment contains the sole and entire agreement and understanding  
17 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
18 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
19 and therein. There are no warranties, representations, or other agreements between the Parties  
20 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
21 other than those specifically referred to in this Consent Judgment have been made by any Party  
22 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
23 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
24 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
25 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
26 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
27 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
28 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof



1 whether or not similar, nor shall such waiver constitute a continuing waiver.

2 **13. RETENTION OF JURISDICTION**

3 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
4 Consent Judgment.

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

6 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
7 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
8 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

10 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
11 against an entity that is not Windsor or Knitwork on terms that are different than those contained  
12 in this Consent Judgment.

13 **16. EXECUTION IN COUNTERPARTS**

14 16.1 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.

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17 IT IS SO STIPULATED:

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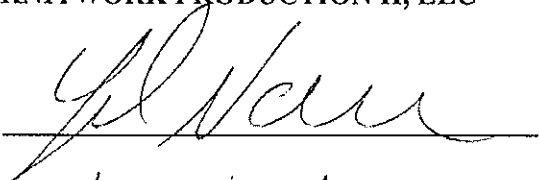
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Dated: October <u>4</u> , 2011	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ CHARLIE PIZARRO Printed Name _____ ASSOCIATE DIRECTOR Title
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Dated: <sup>Nov</sup> October <u>4</u> , 2011	KNITWORK PRODUCTION II, LLC  _____ Yuval NAYON Printed Name  C.O.O. _____ Title
Dated: October __, 2011	WINDSOR FASHIONS, INC.  _____  _____ Printed Name  _____ Title


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

Dated: 01/13/2012

**Judge Wynne Carvill**

~~Honorable Robert B. Freedman~~ Wynne S. Carvill  
Judge of the Superior Court of the State of California

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Dated: October __, 2011	KNITWORK PRODUCTION II, LLC  <hr/> <hr/> Printed Name  <hr/> Title
Dated: <del>October</del> <sup>D</sup> , 2011 November 3, 2011	WINDSOR FASHIONS, INC.   <hr/> ISAAC ZEKARIA Printed Name  <hr/> Vice-President Title

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

Dated: < prior page / WSC >  
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. Big A Drug Stores, Inc.
6. Candela Sales Company, Inc.
7. Forum Novelties, Inc.
8. Georgiou Studio, Inc.
9. I Love Bracelets, Inc.
10. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
11. Jacadi USA, Inc.
12. Legoland California LLC
13. Long Rap, Inc.
14. Marin Beauty Company
15. Max Rave, LLC
16. Rite Aid Corporation
17. Rubie's Costume Company, Inc.
18. Safeway, Inc.
19. Scinci International, Inc.
20. Sea World, Inc.
21. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
22. Six Flags Theme Parks, Inc.
23. Wal-Mart Stores, Inc.