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FILED  
ALAMEDA COUNTY

JAN - 6 2015

CLERK OF THE SUPERIOR COURT  
**YOLANDA ESTRADA**  
Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,  
A non-profit corporation,

Plaintiff,

vs.

AEROPOSTALE, INC., *et al.*,

Defendants.

Lead Case No. RG 10-514803

(Consolidated with Case Nos.  
RG 10-545680 and RG 10-545687)

ASSIGNED FOR ALL PURPOSES TO:  
Judge George C. Hernandez, Jr., Dept. 17

**[PROPOSED] CONSENT JUDGMENT  
AS TO BIJOU INTERNATIONAL  
CORPORATION**

AND CONSOLIDATED CASES

This Document Relates To:

*Center For Environmental Health v. Two's  
Company, Inc.*, Case No. RG 10-545680

**1. INTRODUCTION**

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

1.2 On October 24, 2011, CEH provided a "Notice of Violation of Proposition 65" to

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

4 1.3 On November 8, 2010, CEH filed its complaint in *CEH v. Two's Company*. On  
5 January 12, 2012, CEH amended the *Two's Company* complaint to name Defendant as Doe 9. On  
6 November 19, 2012, the Court entered Defendant's default, and on February 7, 2014, the Court  
7 entered Default Judgment against Defendant. The Default Judgment imposed injunctive relief  
8 ordering Defendant to cease offering for sale in California jewelry containing lead in quantities  
9 exceeding certain reformulation levels, and ordered Defendant to pay \$1,448,655 in civil penalties  
10 and attorneys' fees and costs. A true a correct copy of that Default Judgment is attached hereto as  
11 Exhibit A.

12 1.4 CEH and Defendant (the "Parties") stipulate that, immediately prior to entry of this  
13 Consent Judgment, the Court set aside the Default Judgment and enter this Consent Judgment in  
14 its place. The Parties agree that, should Defendant fail to make any of the payments set forth in  
15 Section 5 below in a timely fashion, the terms of this Consent Judgment shall cease to have effect  
16 and the terms of the Default Judgment shall be reinstated forthwith, as set forth in Section 5.3.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
19 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of  
20 Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
21 resolution of all claims which were or could have been raised in the Complaint based on the facts  
22 alleged therein with respect to Covered Products manufactured, distributed, and/or sold by  
23 Defendant.

24 1.6 CEH and Defendant enter into this Consent Judgment as a full and final settlement  
25 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,  
26 arising out of the facts or conduct related to Defendant alleged therein. By execution of this  
27 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or  
28 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or

1 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable  
2 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be  
3 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of  
4 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission  
5 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies  
6 the material, factual and legal allegations in CEH's Complaint and expressly denies any wrong  
7 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
8 remedy, argument or defense the Parties may have in this or any other pending or future legal  
9 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
10 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
11 disputed in this Action.

## 12 **2. DEFINITIONS**

13 2.1 The term "Covered Product" means (a) the following ornaments worn by a person:  
14 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories,  
15 earring, necklace, pin, ring and body piercing jewelry; or (b) any bead, chain, link, pendant, or  
16 other component of such an ornament.

17 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

## 18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall  
20 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product  
21 that contains:

22 3.1.1 Any component not covered under Section 3.1.2, or that is made of any  
23 material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million  
24 ("ppm")) lead by weight; or

25 3.1.2 Any Paint or Surface Coating that is more than 0.009 percent lead by  
26 weight (90 ppm). For purposes of this Consent Judgment, "Paint or Surface Coating" shall carry  
27 the same meaning as "Paint or other similar surface coating" under 16 C.F.R. §1303.2(b)(1)  
28 ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,

1 with or without a suspension of finely divided coloring matter, which changes to a solid film when  
2 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This  
3 term does not include printing inks or those materials which actually become a part of the  
4 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
5 the substrate, such as by electroplating or ceramic glazing.”).

6       **3.2 Market Withdrawal of Covered Products.** To the extent it has not already done  
7 so, on or before the Effective Date, Defendant shall cease shipping the Statement Necklace with  
8 Jewel Rhinestones in Gold, SKU No. 0413000042367, as identified in CEH’s pre-suit Notice of  
9 Violation to Defendant (the “Recall Covered Products”) to stores and/or customers in California.  
10 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any  
11 remedy in court

12 **4. ENFORCEMENT**

13       **4.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
14 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating  
15 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and  
16 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate  
17 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,  
18 by new action, motion or order to show cause before the Superior Court of Alameda, seek to  
19 enforce the terms and conditions contained in this Consent Judgment.

20 **5. PAYMENTS**

21       **5.1 Payments by Defendant.** Defendant shall pay a total of \$100,000 to CEH by  
22 delivering checks payable to Lexington Law Group Client Trust Account in the following amounts  
23 on or before each of the following dates:

- 24           5.1.1 \$20,000 on August 15, 2014
- 25           5.1.2 \$20,000 on August 31, 2014
- 5.1.3 \$20,000 on October 31, 2014
- 26           5.1.4 \$5,000 on December 31, 2014
- 5.1.5 \$5,000 on January 30, 2015
- 27           5.1.6 \$5,000 on February 6, 2015
- 5.1.7 \$5,000 on February 13, 2015
- 28           5.1.8 \$20,000 on March 31, 2015

1 With respect to each payment, time shall be of the essence.

2           **5.2 Delivery and Allocation of Payments.** The funds paid by Defendant shall be  
3 delivered on or before the above due dates to the offices of the Lexington Law Group (Attn: Eric  
4 S. Somers), 503 Divisadero Street, San Francisco, California 94117, and allocated between the  
5 following categories by CEH:

6           5.2.1 The sum of \$13,200 shall be allocated as a civil penalty pursuant to Health  
7 & Safety Code §25249.7(b), such money to be apportioned in accordance with Health & Safety  
8 Code §25249.12 by CEH.

9           5.2.2 The sum of \$19,800 shall be allocated as payment in lieu of civil penalty to  
10 CEH pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title  
11 11, §3203(b). CEH will use such funds to continue its work educating and protecting people from  
12 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
13 to monitor compliance with the reformulation requirements of this and other similar Consent  
14 Judgments and to purchase and test Covered Products to confirm compliance with such  
15 reformulation requirements. In addition, as part of its Community Environmental Action and  
16 Justice Fund, CEH will use four (4) percent of such funds to award grants to grassroots  
17 environmental justice groups working to educate and protect people from exposures to toxic  
18 chemicals. The method of selection of such groups can be found at the CEH web site at  
19 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

20           5.2.3 The sum of \$67,000 shall be allocated to the Lexington Law Group as  
21 reimbursement of a portion of CEH's reasonable attorneys' fees and costs.

22           **5.3 Effect of Untimely Payment.** Should Defendant fail to pay in full any of the  
23 installment amounts required under Section 5.1 by the date specified therein, then within five (5)  
24 days of service of a notification from CEH of such failure to pay, Defendant shall be deemed in  
25 default of this Consent Judgment. Upon occurrence of any such default by Defendant:

26           5.3.1 The parties stipulate and the Court orders that the terms of the Default  
27 Judgment attached as Exhibit A shall be reinstated immediately, including all injunctive terms.  
28 Plaintiff may obtain an order vacating entry of this Consent Judgment and reinstating the Default

1 Judgment by presenting *ex parte* to the appropriate judicial officer a declaration stating that a  
2 default under this Consent Judgment has occurred. Defendant waives any right to a noticed  
3 hearing on such an order vacating entry of this Consent Judgment and reinstating the Default  
4 Judgment.

5           5.3.2 Defendant shall become liable to CEH for the full monetary amount  
6 specified in the Default Judgment, less any payments already made by Defendant pursuant to  
7 Section 5.1, together with any additional taxable costs incurred by CEH in obtaining an order  
8 vacating entry of this Consent Judgment. Such payment shall be made by Defendant within ten  
9 (10) days of receiving a Notice of Entry of the Order vacating entry of this Consent Judgment and  
10 reinstating the Default Judgment.

11           5.3.3 The terms of this Consent Judgment, except as relating to the transition to  
12 the reinstatement of the Default Judgment, shall become null and void.

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

14           6.1 **Modification.** This Consent Judgment may be modified from time to time by  
15 express written agreement of the Parties, with the approval of the Court, or by an order of this  
16 Court upon motion and in accordance with law.

17           6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
18 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
19 modify the Consent Judgment.

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

21           7.1 This Consent Judgment is a full, final, and binding resolution between CEH acting  
22 in the public interest and Defendant and Defendant's parents, shareholders, subsidiaries and their  
23 successors and assigns ("Defendant Releasees"), and all entities other than those entities listed on  
24 Exhibit B to whom they distribute or sell Covered Products including, but not limited to,  
25 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
26 ("Downstream Defendant Releasees"), of any violation of Proposition 65 up through the Effective  
27 Date based on the failure to warn about exposure to lead in Covered Products manufactured,  
28 distributed, or sold by Defendant prior to the Effective Date as set forth in the Notice of Violation.

1           7.2     CEH, for itself releases, waives, and forever discharges any and all claims against  
2 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
3 of Proposition 65 or any other statutory or common law claims that have been or could have been  
4 asserted in the public interest regarding the failure to warn about exposure to lead arising in  
5 connection with Covered Products manufactured, distributed or sold by Defendant prior to the  
6 Effective Date.

7           7.3     Compliance with the terms of this Consent Judgment by Defendant and the  
8 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, Defendant  
9 Releasees and Downstream Defendant Releasees with respect to any alleged failure to warn about  
10 lead in Covered Products manufactured, distributed or sold by Defendant after the Effective Date.

11       **8.     PROVISION OF NOTICE**

12           8.1     When any Party is entitled to receive any notice under this Consent Judgment, the  
13 notice shall be sent by first class and electronic mail as follows:

14                 8.1.1    **Notices to Defendant.** The person for Defendant to receive Notices  
15 pursuant to this Consent Judgment shall be:

16                             Maurice Haber  
17                             Bijou International Corporation  
18                             42 W 39th St FL 8  
19                             New York, New York 10018-2086  
20                             [maurice@bijoudrive.com](mailto:maurice@bijoudrive.com)

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

23                             Eric S. Somers  
24                             Lexington Law Group  
25                             503 Divisadero Street  
26                             San Francisco, CA 94117  
27                             [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

28           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.

29       **9.     COURT APPROVAL**

30           9.1     This Consent Judgment shall become effective on the Effective Date, provided

1 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
2 Defendant shall support approval of such Motion.

3 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
4 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

5 **10. GOVERNING LAW AND CONSTRUCTION**

6 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
7 California.

8 **11. ATTORNEYS' FEES**

9 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
10 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
11 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
12 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
13 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

14 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement  
15 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of  
16 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
17 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
18 provision shall not be construed as altering any procedural or substantive requirements for  
19 obtaining such an award.

20 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of  
21 sanctions pursuant to law.

22 **12. ENTIRE AGREEMENT**

23 12.1 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

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

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
11 Consent Judgment.

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

13 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
14 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
15 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

17 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
18 against an entity that is not Defendant on terms that are different than those contained in this  
19 Consent Judgment.

20 **16. EXECUTION IN COUNTERPARTS**

21 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
22 means of facsimile or e-mail in pdf format, which taken together shall be deemed to constitute one  
23 document.

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

26 Dated: JAN - 6 2015

27 **GEORGE C. HERNANDEZ, JR.**

28 \_\_\_\_\_  
Honorable George C. Hernandez, Jr.  
Judge of the Superior Court of the State of California

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IT IS SO STIPULATED:

Dated: Aug 14, 2014

CENTER FOR ENVIRONMENTAL HEALTH



Carlito Pizarro

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: \_\_\_\_\_, 2014

BIJOU INTERNATIONAL CORPORATION

\_\_\_\_\_  
Printed Name

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Title

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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2014

**CENTER FOR ENVIRONMENTAL HEALTH**

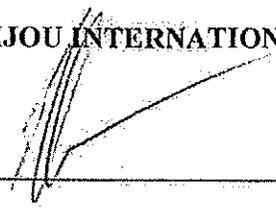
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Printed Name

\_\_\_\_\_  
Title

Dated: Aug 13, 2014

**BIJOU INTERNATIONAL CORPORATION**

  
\_\_\_\_\_

Maurice Haber  
Printed Name

President  
Title

# **Exhibit A**

1 LEXINGTON LAW GROUP  
Eric S. Somers, State Bar No. 139050  
2 Howard Hirsch, State Bar No. 213209  
Victoria Hartanto, State Bar No. 259833  
3 503 Divisadero Street  
San Francisco, CA 94117  
4 Telephone: (415) 913-7800  
Facsimile: (415) 759-4112  
5 esomers@lexlawgroup.com  
hhirsch@lexlawgroup.com  
6 vhartanto@lexlawgroup.com

7 Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH  
8  
9

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB - 7 2014

CLERK OF THE SUPERIOR COURT  
By **YOLANDA ESTRADA**, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12

13 CENTER FOR ENVIRONMENTAL HEALTH, )  
14 a non-profit corporation, )

15 Plaintiff, )  
16 v. )

17 AEROPOSTALE, INC., et al., )  
18 Defendants. )

Lead Case No. RG 10-514803

[Consolidated with Case Nos.  
RG 10-545680; and RG 10-545687]

ASSIGNED FOR ALL PURPOSES TO:  
Judge George C. Hernandez, Jr., Dept. 17

**[PROPOSED] DEFAULT JUDGMENT  
AGAINST BIJOU INTERNATIONAL  
CORPORATION**

19 This Document Relates to:

20 *Center for Environmental Health v. Two's*  
*Company, Inc., et al., Case No. RG 10-545680*  
21

Date: February 7, 2014  
Time: 8:30 a.m.

Complaint Filed: May 12, 2010  
Trial Date: None

RECEIVED

FEB 09 REC'D

ANGELA YAMSAW  
ALAMEDA COUNTY SUPERIOR COURT

26

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28

1 Pursuant to California Code of Civil Procedure ("C.C.P.") §585, the Court hereby  
2 enters final judgment in favor of Plaintiff Center for Environmental Health ("CEH") against  
3 Defendant Bijou International Corporation ("Bijou") as follows<sup>1</sup>:

4 1. Bijou is permanently enjoined from offering for sale in California all  
5 jewelry that contain lead and lead compounds in quantities that exceed the reformulation levels  
6 permitted under California's Lead-Containing Jewelry Statute, Health & Safety Code §25214.1,  
7 *et seq.*;

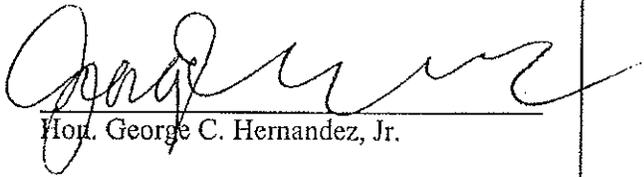
8 2. Bijou is ordered to pay \$1,147,500 or \$                      in civil penalties  
9 pursuant to Health & Safety Code §25249.7(b);

10 3. Bijou is ordered to pay \$300,000 in attorneys' fees pursuant to C.C.P.  
11 §1021.5 and \$1,155 in costs pursuant to C.C.P. §1032; and

12 4. All amounts required by paragraphs 2 and 3 of this Default Judgment are  
13 due within thirty days of the date of entry of this Default Judgment. These amounts shall be paid  
14 to CEH's attorneys by check made out to "Lexington Law Group," and shall be sent to CEH's  
15 attorneys at the following address: Lexington Law Group, Attn: Eric S. Somers, 503 Divisadero  
16 Street, San Francisco, California, 94117.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: 2/7/2014

  
21 \_\_\_\_\_  
22 Hon. George C. Hernandez, Jr.  
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28 <sup>1</sup> Pursuant to C.C.P. §579, this Default Judgment is entered as a separate and final judgment against Bijou International Corporation only.

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**EXHIBIT B**

**(LIST OF ENTITIES NOT SUBJECT  
TO DOWNSTREAM DEFENDANT RELEASE)**

1. ABC Online Resources, LLC
2. Adia Kibur Accessories, Inc.
3. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
4. Andrea Bijoux
5. Ann 2 La Moda, Inc.
6. Art Box
7. Artini Accessories Inc.
8. Athenian Fashions, Inc.
9. AZ3, Inc.; BCBG Max Azria Group, Inc.
10. B&J Accessories
11. Banana Republic, LLC
12. Barnes & Noble, Inc.
13. Bien Bien, Inc.
14. Big A Drug Stores, Inc.
15. Bon Jewel, Inc.
16. Brandy Melville; Brandy and Melville NY Incorporated
17. California Dream Co., Inc.
18. Cocomo Connection, Inc.
19. Costume Craze, L.C.
20. Elegance Fashion Mart, Inc.
21. Fashion Fantasia, Inc.
22. First Fantasies-Costume Cuzzins, Inc.
23. Georgiou Studio, Inc.
24. Ginerva SRL

- 1 25. Halloween Express
- 2 26. I Love Bracelets, Inc.
- 3 27. INVU Accessories
- 4 28. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
- 5 29. Jacadi USA, Inc.
- 6 30. Jones Jewelry Group, Inc.
- 7 31. Legoland California LLC
- 8 32. Long Rap, Inc.
- 9 33. Marin Beauty Company
- 10 34. Max Rave, LLC
- 11 35. Pink Ice, Inc.
- 12 36. Precious Accessories, Inc.
- 13 37. Rite Aid Corporation
- 14 38. Safeway, Inc.
- 15 39. Scorpio Accessories LLC
- 16 40. Screammers Costumers
- 17 41. Scünci International, Inc.
- 18 42. Sea World, Inc.
- 19 43. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 20 44. Shop Bloc Inc.
- 21 45. Simply You
- 22 46. Six Flags Theme Parks, Inc.
- 23 47. Sonsi, Inc.
- 24 48. Spirit Halloween Superstores, LLC
- 25 49. Toscana Accessories Inc.
- 26 50. Unbeatable Sale.Com Inc.
- 27 51. U.S. Jewelry House, Ltd.
- 28