



1 reasonable warning pursuant to Proposition 65.

2 1.3 Defendant is a limited liability company that manufactures, distributes and/or sells  
3 Covered Products (as defined herein) that are sold in the State of California.

4 1.4 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")  
5 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
6 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that  
7 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
8 Consent Judgment as a full and final resolution of all claims which were or could have been raised  
9 in the Complaint based on the facts alleged therein with respect to Covered Products  
10 manufactured, distributed or sold by Defendant.

11 1.5 CEH and Defendant enter into this Consent Judgment as a full and final settlement  
12 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,  
13 arising out of the facts or conduct related to Defendant alleged therein. By execution of this  
14 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or  
15 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or  
16 demonstrating any violations of Proposition 65 relating to cadmium in jewelry. Nothing in this  
17 Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion  
18 of law, issue of law or violation of law, nor shall compliance with the Consent Judgment  
19 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of  
20 law, or violation of law. Defendant denies the material, factual and legal allegations in CEH's  
21 Complaint and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment  
22 shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in  
23 this or any other pending or future legal proceedings. This Consent Judgment is the product of  
24 negotiation and compromise and is accepted by the Parties solely for purposes of settling,  
25 compromising, and resolving issues disputed in this action.  
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1     **2.     DEFINITIONS**

2             2.1     The term “Cadmium Limit” means a concentration of 0.01 percent (100 parts per  
3 million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any material  
4 used in a Covered Product.

5             2.2     The term “Covered Product” means jewelry, including but not limited to necklaces,  
6 whether sold individually or as part of a set with a dress or other piece of clothing.

7             2.3     The term “Effective Date” means the date of entry of this Consent Judgment.

8     **3.     INJUNCTIVE RELIEF**

9             3.1     **Reformulation of Covered Products.** Defendant shall comply with the following  
10 requirements to achieve expeditious reformulation of the Covered Products to reduce or eliminate  
11 exposures to cadmium arising from the Covered Products:

12                 3.1.1     **Specification Compliance Date.** To the extent it has not already done so,  
13 no more than 30 days after the Effective Date, Defendant shall provide the Cadmium Limit to its  
14 vendors of Covered Products and shall instruct each vendor to expeditiously provide Covered  
15 Products that do not exceed the Cadmium Limit.

16                 3.1.2     **Reformulation Date.** As of the Effective Date, Defendant shall not  
17 manufacture, purchase, import, supply, sell or offer to sell any Covered Product that will be sold  
18 or offered for sale to California consumers that exceeds the Cadmium Limit.

19             3.2     **Market Withdrawal of Covered Products.** To the extent not already done, on or  
20 before the Effective Date, Defendant shall have: (i) ceased shipping Covered Products that are  
21 sold with the following specific products (the “Recall Products”):

- 22             •     Beautees Big Girls’ 3/4 Sleeve All Over Lace Dress in Red, SKU No. 8-85872-77624-2,  
23                 Style # V55903043K, ASIN: B01LW81EKU;
- 24             •     Beautees 2 Piece Mesh Skirt Dress with Vest Mint Black, SKU 8-8587281212-4; and
- 25             •     Knit Works 3-pc. Legging Set-Big Kid Girls, SKU 8-8587283215-3, Style #: JCP1379K
- 26             •     Beautees Big Girls’ 3/4 Sleeve Lace Dress in Light Blue, Factory ID # NT007, PO#  
27                 44496; Ross SKU No. 400161965949,

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1 to stores and/or customers in California, (ii) withdrawn the Recall Products from the market in  
2 California, and (iii) if the Recall Products were not withdrawn from sale in California prior to the  
3 Effective Date, sent instructions to any of its stores and/or customers that offer the Recall Products  
4 for sale in California to cease offering such Recall Products for sale and to either return all Recall  
5 Products to Defendant for destruction, or to directly destroy the Recall Products. Any destruction  
6 of the Recall Products shall be in compliance with all applicable laws. KWDZ shall maintain  
7 electronic or written records demonstrating its compliance with its obligations under this Section  
8 and provide those to CEH with a report of the number of Recall Products returned or destroyed  
9 within ninety days of the Effective Date.

#### 10 **4. ENFORCEMENT**

11 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an  
12 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
13 Judgment. Any action to enforce alleged violations of this Consent Judgment with respect to the  
14 Cadmium Limit by Defendant shall be brought exclusively pursuant to this Section 4.

#### 15 **4.2 Enforcement of Materials Violation.**

16 **4.2.1 Notice of Violation.** In the event that, at any time following the Effective  
17 Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by  
18 Defendant that CEH believes in good faith exceed the Cadmium Limit, CEH may issue a Notice  
19 of Violation pursuant to this Section.

#### 20 **4.2.2 Service of Notice of Violation and Supporting Documentation.**

21 **4.2.2.1** The Notice of Violation shall be sent to the person(s) identified in  
22 Exhibit A to receive notices for Defendant, and must be served within 75 days of the date the  
23 Covered Product at issue was purchased or otherwise acquired by CEH, provided, however, that:  
24 (i) CEH may have up to an additional 45 days to provide Defendant with the test data required by  
25 Section 4.2.2.3 below if it has not yet obtained it from its laboratory; and (ii) CEH may serve a  
26 subsequent Notice of Violation to a supplier of a Covered Product identified in a previous Notice  
27 of Violation so long as: (a) the identity of the supplier cannot be discerned from the labeling of the  
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1 Covered Product; and (b) the Notice of Violation to the supplier is served within 75 days of the  
2 date the supplier is identified in writing to CEH by Defendant.

3 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each  
4 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the  
5 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the  
6 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and  
7 supporting documentation sufficient for validation of the test results, including any laboratory  
8 reports, quality assurance reports and quality control reports associated with testing of the Covered  
9 Products. Such Notice of Violation shall be based upon total acid digest test data from an  
10 independent laboratory. Wipe, swipe, and swab testing are not sufficient to support a Notice of  
11 Violation.

12 4.2.3 **Notice of Election of Response.** No more than 30 days after service of a  
13 Notice of Violation, Defendant shall provide written notice to CEH whether it elects to contest the  
14 allegations contained in a Notice of Violation (“Notice of Election”). Failure to provide a Notice  
15 of Election within 30 days of service of a Notice of Violation shall be deemed an election to  
16 contest the Notice of Violation.

17 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
18 include all then-available documentary evidence regarding the alleged violation, including all test  
19 data, if any. If Defendant or CEH later acquires additional test or other data regarding the alleged  
20 violation, it shall notify the other party and promptly provide all such data or information to the  
21 party.

22 4.2.4 **Meet and Confer.** If a Notice of Violation is contested, CEH and  
23 Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of serving a  
24 Notice of Election contesting a Notice of Violation, and if no enforcement motion or application  
25 has been filed by CEH pursuant to Section 4.1, Defendant may withdraw the original Notice of  
26 Election contesting the violation and serve a new Notice of Election conceding the violation,  
27 provided however that Defendant shall pay \$5,000 in addition to any payment required under  
28 Section 4.2.7. At any time, CEH may withdraw a Notice of Violation, in which case for purposes

1 of this Section 4 the result shall be as if CEH never issued any such Notice of Violation. If no  
2 informal resolution of a Notice of Violation results within 30 days of a Notice of Election to  
3 contest, CEH may file an enforcement motion or application pursuant to Section 4.1. In any such  
4 proceeding, CEH may seek whatever fines, costs, penalties attorneys' fees or remedies are  
5 provided by law for failure to comply with the Consent Judgment.

6           **4.2.5 Non-Contested Matters.** If Defendant elects not to contest the  
7 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6  
8 and shall make any payments required by Section 4.2.7.

9           **4.2.6 Corrective Action in Non-Contested Matters.** If Defendant elects not to  
10 contest the allegation, it shall include in its Notice of Election a detailed description with  
11 supporting documentation of the corrective action that it has undertaken or proposes to undertake  
12 to address the alleged violation. Any such correction shall, at a minimum, provide reasonable  
13 assurance that the Covered Product will no longer be offered for sale in California. Corrective  
14 action must include instructions to Defendant's stores and/or its customers that offer the Covered  
15 Product for sale to consumers to cease offering the Covered Product(s) identified in the Notice of  
16 Violation for sale in California as soon as practicable. The Notice of Election shall also include  
17 the name, address, telephone number, and other contact information, of Defendant's supplier(s) of  
18 each Covered Product identified in the Notice of Violation. Defendant shall make available to  
19 CEH for inspection and/or copying records and correspondence regarding the corrective action. If  
20 there is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section  
21 4.2.4 before seeking any remedy in court.

22           **4.2.7 Payments in Non-Contested Matters.** In addition to the corrective  
23 action, Defendant shall be required to make a payment as reimbursement for costs for  
24 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse  
25 attorneys' fees and costs incurred in connection with these activities, as specified below:

26           **4.2.7.1** If Defendant serves a Notice of Election not to contest the  
27 allegations in the instant Notice of Violation, it shall be required to make a payment of \$10,000.  
28 This payment shall, however, be reduced to \$5,000 if Defendant produces with its Notice of

1 Election test data showing that the Covered Product that is the subject of the Notice of Violation  
2 did not exceed the Cadmium Limit. For purposes of this Section 4.2.7.1 only, "test data" shall  
3 mean total cadmium by acid digest performed by an accredited laboratory on the same Covered  
4 Product that is the subject of the Notice of Violation. For purposes of this Section, the "same  
5 Covered Product" must be a Covered Product that has a label attached that demonstrates that the  
6 Covered Product was produced at the same factory and on the same production date as that  
7 indicated on the label of the Covered Product tested by CEH that supports the Notice of Violation.

8 4.2.7.2 The payment shall be made by check payable to the Lexington Law  
9 Group and shall be paid within 15 days of service of a Notice of Election triggering a payment.

10 4.2.8 **Repeat Violations.** If Defendant has received three or more Notices of  
11 Violation that were not successfully contested or withdrawn in any 12-month period then, at  
12 CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies  
13 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such  
14 relief, CEH shall meet and confer with Defendant for a period not to exceed 30 days (unless  
15 extended by mutual agreement) to determine if the parties can agree on measures Defendant can  
16 undertake to prevent future violations.

## 17 **5. PAYMENTS**

18 5.1 **Payments by Defendant.** On or before five (5) days after the entry of this Consent  
19 Judgment, Defendant shall pay the total sum of \$140,000 as a settlement payment ("Settlement  
20 Payment") as further set forth in this Section.

21 5.2 **Allocation of Payments.** The total Settlement Payment shall be paid in five (5)  
22 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
23 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be  
24 paid by Defendant in the amount of \$100 for each day the full payment is not received after the  
25 applicable payment due date set forth in Section 5.1. The late fees required under this Section  
26 shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding  
27 brought pursuant to Section 4 of this Consent Judgment. The Settlement Payment paid by  
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1 products that are marketed to youth in California. CEH shall obtain and maintain adequate records  
2 to document that ASPs are spent on these activities and CEH agrees to provide such  
3 documentation to the Attorney General within thirty days of any request from the Attorney  
4 General. The payment pursuant to this Section shall be made payable to the Center for  
5 Environmental Health and associated with taxpayer identification number 94-3251981. This  
6 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
7 94117.

8 5.2.2 Defendant shall pay \$106,950 as a reimbursement of a portion of CEH's  
9 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in  
10 two separate checks as follows: (a) \$89,600 payable to the Lexington Law Group and associated  
11 with taxpayer identification number 94-3317175; and (b) \$17,350 payable to the Center For  
12 Environmental Health and associated with taxpayer identification number 94-3251981. Both of  
13 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
14 CA 94117.

15 5.2.3 To summarize, Defendant shall deliver checks made out to the payees and  
16 in the amounts set forth below:

17 Payee	Type	Amount	Deliver To
18 OEHHA	Penalty	\$14,175	OEHHA per Section 5.2.1
19 Center For Environmental Health	Penalty	\$4,725	LLG
20 Center For Environmental Health	ASP	\$14,150	LLG
21 Lexington Law Group	Fee and Cost	\$89,600	LLG
22 Center For Environmental Health	Fee and Cost	\$17,350	LLG

## 23 24 6. MODIFICATION AND DISPUTE RESOLUTION

25 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
26 express written agreement of the Parties with the approval of the Court, or by an order of this  
27 Court upon motion and in accordance with law.

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1           6.2    **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
3 modify the Consent Judgment.

4    **7.    CLAIMS COVERED AND RELEASE**

5           7.1    This Consent Judgment is a full, final, and binding resolution between CEH and  
6 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
7 sister companies and their successors and assigns ("Defendant Releasees"), and all entities to  
8 whom they distribute or sell Covered Products including, but not limited to, distributors,  
9 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream  
10 Defendant Releasees"), of any violation of Proposition 65 that have been or could have been  
11 asserted in the public interest against Defendant, Defendant Releasees, and Downstream  
12 Defendant Releasees, regarding the failure to warn about exposure to cadmium arising in  
13 connection with Covered Products manufactured, distributed, or sold by Defendant prior to the  
14 Effective Date.

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

22           7.3    Compliance with the terms of this Consent Judgment by Defendant and the  
23 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant  
24 Releasees and the Downstream Defendant Releasees with respect to any alleged failure to warn  
25 about cadmium in Covered Products manufactured, distributed or sold by Defendant after the  
26 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 Defendant.** The person for Defendant to receive Notice  
3 pursuant to this Consent Judgment shall be:

4                           Laura P. Worsinger  
5                           Dykema  
6                           333 South Grand Avenue, Suite 2100  
7                           Los Angeles, California 90071  
8                           [lworsinger@dykema.com](mailto:lworsinger@dykema.com)

9           8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
10 this Consent Judgment shall be:

11                           Eric S. Somers  
12                           Lexington Law Group  
13                           503 Divisadero Street  
14                           San Francisco, CA 94117  
15                           [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

16           8.2 Any Party may modify the person and address to whom the notice is to be sent by  
17 sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19           9.1 This Consent Judgment shall become effective on the Effective Date, provided  
20 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
21 Defendant shall support approval of such Motion.

22           9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
23 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

24 **10. GOVERNING LAW AND CONSTRUCTION**

25           10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California.

27 **11. ENTIRE AGREEMENT**

28           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

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

11 **12. RETENTION OF JURISDICTION**

12 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify  
13 the Consent Judgment.

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

15 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
16 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
17 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

19 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
20 against any other entity on terms that are different than those contained in this Consent Judgment.

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1 **15. EXECUTION IN COUNTERPARTS**

2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile, which taken together shall be deemed to constitute one document.

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

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8 Dated: 5/4/10

  
\_\_\_\_\_  
Judge of the Superior Court of the State of California

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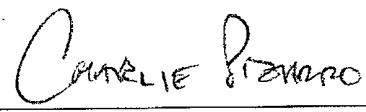
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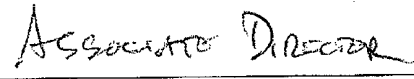
Dated: October 27, 2017

**CENTER FOR ENVIRONMENTAL HEALTH**





Printed Name



Title

Dated: October \_\_, 2017

**KWDZ MANUFACTURING, LLC**

Printed Name

Title

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Dated: October \_\_, 2017

**CENTER FOR ENVIRONMENTAL HEALTH**

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Dated: ~~October~~ \_\_, 2017  
*NOVEMBER 2, 2017*

**KWDZ MANUFACTURING, LLC**

*Vera R Campbell*  
\_\_\_\_\_

*VERA R CAMPBELL*  
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Title