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ALAMEDA COUNTY

DEC 13 2019

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
v.)
)
ROSS STORES, INC., *et al.*,)
)
Defendants.)

Case No. RG 18-923611

**[PROPOSED] CONSENT
JUDGMENT AS TO NINA
FOOTWEAR CORP.**

1. INTRODUCTION

1.1 This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a California non-profit corporation (“CEH”) and Defendant Nina Footwear Corp. (“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. Ross Stores, Inc., et al.*, Alameda County Superior Court Case No. RG 18-923611.

1.2 On September 18, 2018, CEH served a Notice of Violation under Proposition 65 alleging that Defendant violated Proposition 65 (California Health & Safety Code § 25249.5, *et seq.*) by exposing persons to cadmium contained in jewelry without first providing a clear and

1 reasonable warning pursuant to Proposition 65.

2 1.3 On October 5, 2018, CEH filed the operative First Amended Complaint based on
3 the allegations in the Notice.

4 1.4 On December 14, 2018, Defendant was named as a defendant in the First Amended
5 Complaint.

6 1.5 Defendant is a corporation that manufactures, distributes and/or sells Covered
7 Products (as defined herein) that are sold in the State of California.

8 1.6 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
9 stipulate that this Court has jurisdiction over the allegations of violations contained in the
10 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
11 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
12 Consent Judgment as a full and final resolution of all claims which were or could have been raised
13 in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed or sold by Defendant.

15 1.7 CEH and Defendant enter into this Consent Judgment as a full and final settlement
16 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
17 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
18 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
19 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
20 demonstrating any violations of Proposition 65 relating to cadmium in jewelry. Nothing in this
21 Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion
22 of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
23 constitute or be construed as an admission¹ by the Parties of any fact, conclusion of law, issue of
24 law, or violation of law. Defendant denies the material, factual and legal allegations in CEH's
25 Complaint and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment
26 shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in
27 this or any other pending or future legal proceedings. This Consent Judgment is the product of
28 negotiation and compromise and is accepted by the Parties solely for purposes of settling,

1 compromising, and resolving issues disputed in this action.

2 **2. DEFINITIONS**

3 2.1 The term "Cadmium Limit" means a concentration of 0.01 percent (100 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.

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

8 2.3 The term "Effective Date" means the date of entry of this Consent Judgment.

9 **3. INJUNCTIVE RELIEF**

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

13 3.1.1 **Specification Compliance Date.** To the extent it has not already done
14 so, no more than 30 days after the Effective Date, Defendant shall provide the Cadmium Limit to
15 each of its suppliers of Covered Products and Covered Product components and shall instruct each
16 such supplier to only deliver Covered Products and Covered Product components that are below
17 the Cadmium Limit.

18 3.1.2 **Reformulation Date.** As of the Effective Date, Defendant shall not
19 manufacture, purchase, import, supply, sell or offer for sale in California, subject to Section 7
20 below, any Covered Product that: (i) exceeds the Cadmium Limit; or (ii) contains a component
21 that exceeds the Cadmium Limit.

22 3.2 **Market Withdrawal of Covered Products.** To the extent not already done, on or
23 before the Effective Date, Defendant shall have ceased shipping the Nina Silver Necklace with
24 Crystal Bib, Nordstrom Rack SKU No. 639268030315 ("Recall Products") to stores and/or
25 customers in California, and sent instructions to any of its stores and/or customers that offer the
26 Recall Products for sale in California to cease offering the Recall Products for sale and to either
27 return all Recall Products to Defendant for destruction, or to directly destroy the Recall
28 Products. Any destruction of the Recall Products shall be in compliance with all applicable laws.

1 Defendant shall maintain electronic or written records demonstrating its compliance with its
2 obligations under this Section and provide those to CEH with a report of the number of Recall
3 Products returned or destroyed within ninety days of the Effective Date.

4 **4. ENFORCEMENT**

5 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
6 order to show cause before this Court, enforce the terms and conditions contained in this Consent
7 Judgment. Any action to enforce alleged violations of this Consent Judgment with respect to the
8 Cadmium Limit by Defendant shall be brought exclusively pursuant to this Section 4.

9 4.2 **Enforcement of Material Violation.**

10 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
11 Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by
12 Defendant in violation of Section 3.1, not subject to the releases in Section 7, and that CEH
13 believes in good faith exceed the Cadmium Limit, CEH may issue a Notice of Violation pursuant
14 to this Section.

15 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

16 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
17 Section 8 to receive notices for Defendant, and must be served within 75 days of the date the
18 Covered Product at issue was purchased or otherwise acquired by CEH, provided, however, that:
19 (i) CEH may have up to an additional 45 days to provide Defendant with the test data required by
20 Section 4.2.2.3 below if it has not yet obtained it from its laboratory; and (ii) CEH may serve a
21 subsequent Notice of Violation to a supplier of a Covered Product identified in a previous Notice
22 of Violation so long as: (a) the identity of the supplier cannot be discerned from the labeling of the
23 Covered Product; and (b) the Notice of Violation to the supplier is served within 75 days of the
24 date the supplier is identified in writing to CEH by Defendant.

25 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
26 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the
27 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the
28 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and

1 supporting documentation sufficient for validation of the test results. Such Notice of Violation
2 shall be based upon total acid digest test data from an independent laboratory. Wipe, swipe, and
3 swab testing are not sufficient to support a Notice of Violation.

4 **4.2.3 Notice of Election of Response.** No more than 45 days after service of a
5 Notice of Violation, Defendant shall provide written notice to CEH whether it elects to contest the
6 allegations contained in a Notice of Violation (“Notice of Election”). Failure to provide a Notice
7 of Election within 45 days of service of a Notice of Violation shall be deemed an election to
8 contest the Notice of Violation.

9 **4.2.3.1** If a Notice of Violation is contested, the Notice of Election shall
10 include all then-available documentary evidence regarding the alleged violation, including all test
11 data, if any. If Defendant or CEH later acquires additional test or other data regarding the alleged
12 violation, it shall notify the other party and promptly provide all such data or information to the
13 party.

14 **4.2.4 Meet and Confer.** If a Notice of Violation is contested, CEH and
15 Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of serving a
16 Notice of Election contesting a Notice of Violation, and if no enforcement motion or application
17 has been filed by CEH pursuant to Section 4.1, Defendant may withdraw the original Notice of
18 Election contesting the violation and serve a new Notice of Election conceding the violation,
19 provided however that Defendant shall pay \$4,000 in addition to any payment required under
20 Section 4.2.7. At any time, CEH may withdraw a Notice of Violation, in which case for purposes
21 of this Section 4 the result shall be as if CEH never issued any such Notice of Violation. If no
22 informal resolution of a Notice of Violation results within 45 days of a Notice of Election to
23 contest, CEH may file an enforcement motion or application pursuant to Section 4.1. In any such
24 proceeding, CEH may seek whatever fines, costs, penalties attorneys’ fees or remedies are
25 provided by law for failure to comply with the Consent Judgment.

26 **4.2.5 Non-Contested Matters.** If Defendant elects not to contest the
27 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
28 and shall make any payments required by Section 4.2.7.

1 **4.2.6 Corrective Action in Non-Contested Matters.** If Defendant elects not to
2 contest the allegation, it shall include in its Notice of Election a detailed description with
3 supporting documentation of the corrective action that it has undertaken or proposes to undertake
4 to address the alleged violation. Any such correction shall, at a minimum, provide reasonable
5 assurance that the Covered Product will no longer be offered for sale in California. Corrective
6 action must include instructions to Defendant's customers that offer the Covered Product for sale
7 to consumers to cease offering the Covered Product(s) identified in the Notice of Violation for sale
8 in California as soon as practicable. The Notice of Election shall also include the name, address,
9 telephone number, and other contact information, of Defendant's supplier(s) of each Covered
10 Product or Covered Product component identified in the Notice of Violation. Defendant shall
11 make available to CEH for inspection and copying records and correspondence regarding the
12 corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer
13 pursuant to Section 4.2.4 before seeking any remedy in court.

14 **4.2.7 Payments in Non-Contested Matters.** In addition to the corrective
15 action, Defendant shall be required to make a payment as reimbursement for costs for
16 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
17 attorneys' fees and costs incurred in connection with these activities, as specified below:

18 **4.2.7.1** If Defendant serves a Notice of Election not to contest the
19 allegations in the instant Notice of Violation, it shall be required to make a payment of \$5,000.
20 This payment shall, however, be reduced to \$2,500 if Defendant produces with its Notice of
21 Election test data showing that the Covered Product that is the subject of the Notice of Violation
22 did not exceed the Cadmium Limit. For purposes of this Section 4.2.7.1 only, "test data" shall
23 mean total cadmium by acid digest performed by an accredited laboratory on the same Covered
24 Product that is the subject of the Notice of Violation. For purposes of this Section, the "same
25 Covered Product" must be a Covered Product that was produced at the same factory and on the
26 same production date as that indicated on the label of the Covered Product tested by CEH that
27 supports the Notice of Violation.

28 **4.2.7.2** The payment shall be made by check payable to the Lexington Law

1 Group and shall be paid within 15 days of service of a Notice of Election triggering a payment.

2 **4.2.8 Repeat Violations.** If Defendant has received three or more Notices of
3 Violation that were not successfully contested or withdrawn in any rolling 12-month period then,
4 at CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies
5 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
6 relief, CEH shall meet and confer with Defendant for a period not to exceed 30 days (unless
7 extended by mutual agreement) to determine if the parties can agree on measures Defendant can
8 undertake to prevent future violations.

9 **5. PAYMENTS**

10 **5.1 Payments by Defendant.** On or before five (5) days after the entry of this Consent
11 Judgment, Defendant shall pay the total sum of \$47,500 as a settlement payment ("Settlement
12 Payment") as further set forth in this Section.

13 **5.2 Allocation of Payments.** The total Settlement Payment shall be paid in five (5)
14 separate checks in the amounts specified below and delivered as set forth below. Any failure by
15 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be
16 paid by Defendant in the amount of \$100 for each day the full payment is not received after the
17 applicable payment due date set forth in Section 5.1. The late fees required under this Section
18 shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding
19 brought pursuant to Section 4 of this Consent Judgment. The Settlement Payment paid by
20 Defendant shall be allocated as set forth below between the following categories and made
21 payable as follows:

22 **5.2.1** Defendant shall pay \$6,384 as a civil penalty ("Civil Penalty") pursuant
23 to Health & Safety Code § 25249.7(b). The Civil Penalty payment shall be apportioned in
24 accordance with Health & Safety Code §25249.12 (25% to CEH and 75% to the State of
25 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly,
26 Defendant shall pay the OEHHA portion of the Civil Penalty payment for \$4,789 by check made
27 payable to OEHHA and associated with taxpayer identification number 68-0284486. This
28 payment shall be delivered as follows:

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For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

Defendant shall pay the CEH portion of the Civil Penalty payment for \$1,595 by check made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 Defendant shall pay \$4,788 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics and Youth Fund and use them to support CEH programs and activities that seek to educate the public about cadmium and other toxic chemicals in consumer products that are marketed to youth, work with industries that market products to youth to reduce exposure to cadmium and other toxic chemicals, and thereby reduce the public health impacts and risks of exposure to cadmium and other toxic chemicals in consumer products that are marketed to youth in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 5.2.3 Defendant shall pay \$36,328 as a reimbursement of a portion of CEH's
2 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in
3 two separate checks as follows: (a) \$30,542 payable to the Lexington Law Group and associated
4 with taxpayer identification number 94-3317175; and (b) \$5,786 payable to the Center For
5 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
6 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
7 CA 94117.

8 5.2.4 To summarize, Defendant shall deliver checks made out to the payees
9 and in the amounts set forth below:

10 Payee	Type	Amount	Deliver To
11 OEHHA	Penalty	\$4,789	OEHHA per Section 5.2.1
12 Center For Environmental Health	Penalty	\$1,595	LLG
13 Center For Environmental Health	ASP	\$4,788	LLG
14 Lexington Law Group	Fee and Cost	\$30,542	LLG
15 Center For Environmental Health	Fee and Cost	\$5,786	LLG

16
17 5.2.5 Notwithstanding the provisions of the Enforcement of Judgments Law
18 and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully
19 with its payment obligations under this Section 5, in addition to any other enforcement mechanism
20 available to CEH, CEH may seek an order requiring Settling Defendant to submit to a debtor's
21 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to
22 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding
23 Settling Defendant in contempt of Court.

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.
28

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 terms¹ 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 David M. Metres
5 Barg Coffin Lewis & Trapp, LLP
6 600 Montgomery Street, Suite 525
7 San Francisco, CA 94111
8 dmetres@bargcoffin.com

9 Robert Reilly
10 Nina Footwear Corp.
11 200 Park Avenue South
12 New York, NY 10003
13 sudasin@ninashoes.com

14 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
15 this Consent Judgment shall be:

16 Eric S. Somers
17 Lexington Law Group
18 503 Divisadero Street
19 San Francisco, CA 94117
20 esomers@lexlawgroup.com

21 8.2 Any Party may modify the person and address to whom the notice is to be sent by
22 sending the other Party notice by first class and electronic mail.

23 **9. COURT APPROVAL**

24 9.1 This Consent Judgment shall become effective on the Effective Date, provided
25 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
26 Defendant shall support approval of such Motion.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
28 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **11. ENTIRE AGREEMENT**

5 11.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
8 and therein. There are no warranties, representations, or other agreements between the Parties
9 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
10 other than those specifically referred to in this Consent Judgment have been made by any Party
11 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
12 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
13 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
14 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
15 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
16 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
17 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
18 whether or not similar, nor shall such waiver constitute a continuing waiver.

19 **12. RETENTION OF JURISDICTION**

20 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
21 the Consent Judgment.

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

23 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

27 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
28 against any other entity on terms that are different than those contained in this Consent Judgment.

1 15. SUCCESSORS AND ASSIGNS

2 This Consent Judgment shall apply to and be binding upon CEH and Settling Defendant,
3 and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any
4 of them.

5 16. EXECUTION IN COUNTERPARTS

6 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile, which taken together shall be deemed to constitute one document.

8 IT IS SO ORDERED, ADJUDGED,
9 AND DECREED

10 Dated:

Michael Y. Smith
Judge of the Superior Court of the State of California

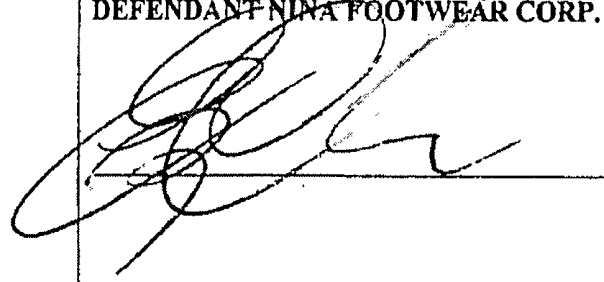
13 IT IS SO STIPULATED:

<p>14 Dated: <u>9/27</u>, 2019</p>	<p>15 CENTER FOR ENVIRONMENTAL HEALTH</p> <p>16 <i>Michael Green</i></p> <p>17 _____</p> <p>18 Michael Green</p> <p>19 _____</p> <p>20 Printed Name</p> <p>21 CEO</p> <p>22 _____</p> <p>23 Title</p>
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Dated: Sept. 18, 2019

DEFENDANT NINA FOOTWEAR CORP.



Printed Name EZRA DABAH

Title C.E.O.