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7 **Confidential Draft – For Settlement Discussion**
8 **Purposes Only – Subject to Evidence Code Section**
9 **1152 – 9/12/06 LLG - Subject to client review and**
approval

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN FRANCISCO**

12 CENTER FOR ENVIRONMENTAL HEALTH,))
13 a non-profit corporation,))
14 Plaintiff,))
15 vs.))

CASE NO. CGC 05-446289

CONSENT JUDGMENT RE:
BLUMENTHAL LANSING COMPANY
AND LEVCOR INTERNATIONAL

16 MICHAELS STORES, INC.; HIRSCHBERG))
SCHUTZ & CO.; CANDELA SALES))
17 COMPANY, INC.; JO-ANN STORES, INC.;))
NOVTEX CORPORATION; LEVCOR))
18 INTERNATIONAL, INC.; BLUMENTHAL))
LANSING COMPANY, LLC; HANCOCVK))
19 FABRICKS, INC.; ORIENTAL TRADING))
COMPANY, INC.; MARGOLA IMPORT))
20 CORPORATION; KERN INTERNATIONAL;))
SHERMAN SPECIALTY, INC. and Defendant))
21 DOES 11-200, inclusive,))
22 Defendants.))

1 **I. INTRODUCTION.**

2 1.1 On November 2, 2005, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco
4 County Superior Court, entitled *Center for Environmental Health v. Michaels Stores, Inc., et al.*,
5 San Francisco County Superior Court Case Number CGC-05-446289 (the “Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code
7 §25249.5 et seq. (“Proposition 65”).

8 1.2 Defendants Blumenthal Lansing Company, LLC (“Blumenthal”) and Levcor
9 International, Inc. (“Levcor”) are corporations that each employ 10 or more persons and distribute
10 and/or sell imitation pearl buttons and imitation pearl accessories (the “Products”), which CEH
11 alleges are made of materials containing lead and/or lead compounds, in the State of California.
12 Blumenthal and Levcor are referred to herein as Defendants. Defendants and CEH are referred to as
13 the Parties.

14 1.3 On or about March 28, 2005, CEH served Blumenthal and Levcor and the
15 appropriate public enforcement agencies with the requisite 60-day notice that Blumenthal and
16 Levcor were in violation of Proposition 65. On or about February 22, 2006, CEH filed “Doe”
17 amendments adding Blumenthal and Levcor as Defendants in this Action. CEH’s notice and the
18 Complaint in this Action allege that Defendants expose individuals who use or otherwise handle
19 the Products to lead and/or lead compounds (referred to interchangeably herein as “Lead”),
20 chemicals known to the State of California to cause cancer, birth defects and other reproductive
21 harm, without first providing clear and reasonable warning to such persons regarding the
22 carcinogenicity and reproductive toxicity of Lead. The notice and Complaint allege that
23 Defendants’ conduct violates Health & Safety Code §25249.6, the warning provision of
24 Proposition 65.

25 1.4 For the purposes of this Consent Judgment only, the parties stipulate that this
26 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
27 personal jurisdiction over Defendants as to the acts alleged in CEH’s Complaint, that venue is
28 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent

1 Judgment as a full and final resolution of all claims which were or could have been raised in the
2 Complaint based on the facts alleged therein as to all Products sold by Defendants prior to the date
3 of entry of this Consent Judgment.

4 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of
5 certain disputed claims between the Parties as alleged in the Complaint. By executing this
6 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties'
7 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
8 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
9 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
10 conclusion of law, issue of law, or violation of law. This Consent Judgment is the product of
11 negotiation and compromise and is accepted by the parties, for purposes of settling, compromising
12 and resolving issues disputed in this action, including future compliance by Defendants with Section
13 2 of this Consent Judgment and shall not be used for any other purpose, or in any other matter.

14 **2. COMPLIANCE - REFORMULATION**

15 **2.1 Lead Reformulation.** Except as set forth in Section 2.3.1, after October 1,
16 2006 (the "Compliance Date") Defendants shall not manufacture, distribute, ship, or sell, or cause to
17 be manufactured, distributed, or sold, any Product that contains Lead in concentrations that exceed
18 200 parts per million ("ppm") or is comprised of any material that contains Lead in concentrations
19 that exceed 200 ppm.

20 **2.2 Certification of Reformulation Level From Suppliers.** No later than
21 October 31, 2006 and no less than annually thereafter, Defendants shall obtain written certification
22 with corresponding test results (i.e., purchase order certification and periodic laboratory reports)
23 from each of their suppliers of the Products certifying that neither the Products nor any materials of
24 which the Products are comprised contain Lead concentrations exceeding 200 ppm.

25 **2.3 Testing By Defendants.** In order to help ensure compliance with the
26 requirements of Section 2.1, Defendants shall conduct testing to confirm that the Products contain
27 less than 200 ppm Lead. Testing pursuant to this section shall be conducted pursuant to the testing
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1 protocol attached hereto as Exhibit A (the "Test Protocol"). The results of all testing performed
2 pursuant to this section shall be retained for a period of three years from the date of the test and shall
3 be made available to CEH upon reasonable request. Testing under this Section 2.3 need only be
4 performed by one Defendant in the chain of distribution for a particular Product, and such testing
5 may be performed at any accredited laboratory located in the United States and selected by either a
6 Defendant or a supplier of the Product. Defendants shall test five randomly selected Products from
7 each delivered shipment of each of the Products. Testing under this Section 2.3 shall be performed
8 for a minimum of three years and until such time as such Defendant has accumulated two
9 consecutive years of test results that consistently meet the 200 ppm Lead standard without a single
10 failed test result.

11 **2.3.1 Products That Exceed 200 ppm Pursuant to Defendant's**

12 **Testing.** If the results of the testing required pursuant to section 2.3 shows levels of lead
13 exceeding 200 ppm but less than 600 ppm for a Product or any component thereof, Defendants may
14 not sell any of those Products unless the following warning is affixed to the Product or its immediate
15 packaging:

16 **WARNING:** This product contains lead, a chemical known to the
17 State of California to cause birth defects or other reproductive harm.
18 Wash hands after handling.

19 The warning statement shall be prominent and displayed with such conspicuousness, as compared
20 with other words, statements, or designs as to render it likely to be read and understood by an
21 ordinary individual prior to purchase. If the results of the testing required pursuant to section 2.3
22 shows levels of lead exceeding 600 ppm for a Product or any component thereof, Defendants shall
23 return all of the Products that were purchased under the particular purchase order to the supplier with
24 a letter explaining that such Products do not comply with the supplier's certification. In addition,
25 Defendants shall increase the number of units tested to ten randomly selected Products from each
26 delivered shipment of each of the Products from such supplier for the two shipments purchased
27 immediately following a Product test exceeding 600 ppm. Should the testing of Products purchased
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1 from a particular supplier demonstrate Lead levels exceeding 600 ppm more than twice, Defendants
2 shall cease purchasing Products from such supplier for a period of at least two years.

3 **2.4 Confirmatory Testing by CEH.** CEH may conduct periodic testing
4 of the Products. Any such testing will be conducted pursuant to the Test Protocol at an
5 independent laboratory. In the event that CEH's testing demonstrates Lead levels in excess of
6 200 ppm for one or more Products, CEH shall inform the Defendant at issue of the violation(s),
7 including information sufficient to permit the Defendant to identify the Product(s). That
8 Defendant shall, within 10 days following such notice, provide CEH, at the address listed in
9 section 13, with any labeling, its supplier certification, and testing information demonstrating its
10 compliance with sections 2.2 and 2.3 of this Consent Judgment. That Defendant shall then increase
11 the amount of testing performed on the Products supplied by the supplier of the Product(s) for which
12 CEH demonstrates a test with Lead levels exceeding 200 ppm to ten randomly selected Products
13 from each delivered shipment from each purchase order of each of the Products from such supplier
14 for the two purchase orders following a Product test exceeding 200 ppm. CEH will meet and confer
15 with Defendants regarding such test results and if the parties are unable to resolve the dispute in a
16 mutually satisfactory manner, Defendants shall also be liable for stipulated payments in lieu of
17 penalties for Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm
18 as set forth below. Defendants shall make these payments in addition to reimbursement of
19 reasonable investigation, testing and legal fees and costs related to the violation. Such payments
20 shall be made to CEH and used for the purposes described in section 4.1. The stipulated payments in
21 lieu of penalties and other remedies provided for herein are in addition to any other remedies
22 available to enforce the terms of this Consent Judgment. Should CEH test any of the Products that
23 have a warning pursuant to Section 2.3.1 hereof, the Lead level for such Products tested under this
24 Section 2.4 shall be 600 ppm instead of 200 ppm.

25 **2.4.1 No Stipulated Penalty Assuming Compliance with Sections**
26 **2.2 and 2.3.** Assuming Defendants provide CEH with information demonstrating that they
27 complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same purchase
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1 order as those with tests showing Lead levels exceeding 200 ppm (or 600 ppm for Products sold with
2 the warning pursuant to Section 2.3.1 hereof), there shall be no stipulated penalty.

3 **2.4.2 Stipulated Penalty Assuming Non-Compliance With**

4 **Sections 2.2 and 2.3.** Assuming Defendants fail to provide CEH with information demonstrating
5 that they complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same
6 purchase order as those with tests showing Lead levels exceeding 200 ppm (or 600 ppm for Products
7 sold with the warning pursuant to Section 2.3.1 hereof), the stipulated penalty
8 shall be as follows for each unit of Product for which CEH produces a test result with Lead levels
9 exceeding 200 ppm (or 600 ppm for Products sold with the warning pursuant to Section 2.3.1
10 hereof):

- 11 Third Occurrence: \$2,000
- 12 Fourth Occurrence: \$5,000
- 13 Fifth Occurrence: \$10,000
- 14 Thereafter: \$20,000

15 Notwithstanding the foregoing, the stipulated penalty provisions of this Section 2.4.2 shall not apply
16 to Products that Defendants attempted to recall prior to the Compliance Date but which were not
17 either destroyed or returned to Defendants as provided in Defendants' recall letter.

18 **2.4.3 Recall of Products Testing in Excess of 600 ppm Lead.**

19 Should CEH's testing demonstrate that a Product contains Lead levels in excess of 600 ppm
20 ("Recall Product"), the Defendant whose Product is at issue shall send a recall letter in the form
21 attached hereto as Exhibit B to all distribution facilities and retail outlets that may have received
22 the Products that were purchased in the same purchase order as any Recall Product informing
23 them that they must pull the items from public distribution and send them back to Defendant.
24 Defendant shall destroy all such Products and send certification to CEH that it has completed this
25 process. Such certification shall indicate how many units of the Products were returned via the
26 Recall.

1 **3. SETTLEMENT PAYMENTS**

2 **3.1 Monetary Payment in Lieu of Penalty:** \$12,750 shall be paid to CEH in
3 lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment shall be made
4 by check payable to Center for Environmental Health. CEH shall use such funds to continue its
5 work protecting people from exposures to toxic chemicals.

6 **3.2 Attorneys' Fees and Costs:** \$25,000 shall be used to reimburse CEH and its
7 attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs
8 incurred as a result of investigating, bringing this matter to Defendants' attention, litigating and
9 negotiating a settlement in the public interest. This payment shall be made by check payable to
10 Lexington Law Group, LLP.

11 **3.3 Timing of Payments.** The payments required under this section shall be
12 delivered to the address set forth in section 13 below within 10 days of entry of this Consent
13 Judgment by the Court. Any failure by Defendants to comply with the payment terms herein
14 shall be subject to a stipulated late fee in the amount of \$100 for each day after the delivery date
15 the payment is received. The late fees required under this section shall be recoverable, together
16 with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to section 6 of
17 this Consent Judgment.

18 **4. MODIFICATION OF CONSENT JUDGMENT**

19 **4.1** This Consent Judgment may be modified by written agreement of CEH
20 and Defendants, or upon motion of CEH or Defendants as provided by law.

21 **5. ENFORCEMENT OF CONSENT JUDGMENT**

22 **5.1** CEH may, by motion or application for an order to show cause before the
23 Superior Court of the County of San Francisco, enforce the terms and conditions contained in
24 this Consent Judgment. Should CEH prevail on any motion or application under this section,
25 CEH shall be entitled to recover its reasonable attorneys' fees and costs associated with such
26 motion or application.

27 **6. APPLICATION OF CONSENT JUDGMENT**

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11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment.

12. PROVISION OF NOTICE

12.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:

Eric S. Somers
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For Defendants:

Nancy J. Rich
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661-3693

13. COURT APPROVAL

13.1 If this Consent Judgment is not approved by the Court, it shall be of no further force or effect. The Parties agree to support a Motion for Approval of this Consent Judgment.

14. EXECUTION AND COUNTERPARTS

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

15. AUTHORIZATION

15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

1 **AGREED TO:**

2 Dated: ^{October} September 11, 2006

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director

7 Dated: September __, 2006

BLUMENTHAL LANSING COMPANY, LLC

Signature

Printed Name

Title

17 Dated: September __, 2006

LEVCOR INTERNATIONAL, INC.

Signature

Printed Name

Title

1 **AGREED TO:**

2 Dated: September __, 2006

CENTER FOR ENVIRONMENTAL HEALTH

3
4 _____
5 Michael Green, Executive Director

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7 ^{OCT 10}
Dated: ~~September~~ __, 2006

BLUMENTHAL LANSING COMPANY, LLC

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9 _____
10 *Edward F. Cooke*

Signature

11 EDWARD F. COOKE

12 _____
Printed Name

13 PRESIDENT

14 _____
Title

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16 ^{OCT 10}
17 Dated: ~~September~~ __, 2006

LEVCOR INTERNATIONAL, INC.

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19 _____
20 *Edward F. Cooke*

Signature

21 EDWARD F. COOKE

22 _____
Printed Name

23 V.P.

24 _____
Title

1 **EXHIBIT A**

2 **Test Protocol**

3 The following protocol shall be applied to a representative sample of the imitation pearl
4 product itself as well as any coating on the product.

- 5 1. Cut 5 small, discreet portions of the material to be analyzed.
- 6 2. Metal snips, scissors, or other cutting tools used must be made of stainless steel and
7 washed and rinsed before each use and between samples.
- 8 3. Sample size should be a minimum of 0.05 g using microwave digestion
- 9 4. Combine the portions into a composite sample.
- 10 5. Samples should be digested in containers that are known to be free of lead using acids
11 that are not contaminated by lead. Analytical Reagent grade digestion acids and reagent grade
12 deionized water are required.

13 6. Method Blanks, consisting of all reagents used in sample preparation handled,
14 digested and made to volume in the same exact manner and in the same container type as samples,
15 shall be tested with each group of 20 or fewer samples tested.

16 The results for the Method Blank shall be reported with each group of sample results, and shall be
17 below the stated reporting limit for sample results to be considered valid.

18 7. Prepare the sample for analysis using microwave digestion or electrothermal
19 digestion. If electrothermal digestion is used, it should be done under USEPA Method 3050B.
20 Microwave digestion protocols from the following two methods may be used provided that the
21 samples are completely digested:

- 22 a. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in
23 Foods)
- 24 b. USEPA Method 3050B or 3051
- 25 8. Analyze the sample for total Lead (Pb) content using Inductively Coupled Plasma
26 Mass Spectrometry (ICP-MS), Atomic Emission Spectrometry (ICP-AES), or Atomic Absorption
27 Spectrometry, using standard operating procedures.

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9. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.

10. Lead content shall be expressed in parts per million (ppm).

1 EXHIBIT B
2 Letter of Instruction re Recall Notice

3 [Defendant Letterhead]

4 IMPORTANT LEGAL NOTICE

5 Date: []

6 Subject: **Recall of Imitation “Pearls” and Imitation “Pearl” Products Pursuant to California**
7 **Proposition 65 Judgment**

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10 This letter is to advise you that imitation pearl buttons and imitation pearl accessories (the
11 “Products”) identified on the attachment to this letter allegedly expose users to lead, a chemical
12 known to the State of California to cause birth defects and other reproductive harm.

13 Although suppliers of the Products have already begun reformulating them to remove
14 amounts of lead in excess of that allowed under Proposition 65, the imitation “pearl” items listed on
15 the attachment to this letter are likely to contain higher levels of lead and may no longer legally be
16 sold.

17 Please pull the imitation “pearl” items listed on the attached from public distribution
18 immediately and contact us concerning arrangements for their return or destruction. If needed, we
19 will then ensure that you are provided with replacement Products that can be legally.

20 Should you have any questions or concerns about this matter, please do not hesitate to
21 contact [] at [] by phone, or by mail at the above address.