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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

VICKY HAMILTON, an individual,	)	Case No.
	)	
Plaintiff,	)	Assigned For All Purposes To The
	)	Honorable
v.	)	
	)	<b>CONSENT JUDGMENT</b>
HOT TOPIC, INC., et al.,	)	<b>[PROPOSED]</b>
	)	
Defendants.	)	
	)	
	)	
	)	

19     **1. INTRODUCTION**

20           1.1     On or about February 9, 2006, Plaintiff Vicky Hamilton (“Ms. Hamilton” or  
21     “Plaintiff”) served defendant Hot Topic, Inc. (“Hot Topic”) with a 60-Day “Notice of Violation  
22     of Proposition 65,” alleging that Hot Topic© and/or RAW© brand facial, skin and hair treatment  
23     consumer products (“Hot Topic Products”) expose users to lead without first providing clear and  
24     reasonable warning, in violation of California Health & Safety Code § 25249.5 et seq.  
25     (“Proposition 65”). On the same date, Plaintiff served a notice letter pursuant to the California  
26     Consumer Legal Remedies Act (“CLRA” – Civil Code § 1750 et seq.), alleging that the Hot  
27     Topic Products do not disclose the presence of lead or the potential adverse health effect risks  
28     posed by exposure to lead in the Products, in violation of the CLRA.

1           1.1.1 Plaintiff Vicky Hamilton ("Plaintiff" or "Ms. Hamilton") is a natural  
2 person and a resident of Los Angeles County.

3           1.1.2 Defendant American International Industries is a California Partnership  
4 whose headquarters is located at 2220 Gaspar Avenue, Los Angeles, California 90040.

5           1.1.3 Defendant Beauty 21 Cosmetics, Inc. is a California corporation whose  
6 headquarters is located at 8676 Rochester Avenue, Rancho Cucamonga, CA 91730.

7           1.1.4 Defendant Shalom International Corp. is a New Jersey corporation whose  
8 headquarters is located at 39 West 37<sup>th</sup> Street, 8<sup>th</sup> Floor, New York, NY 10018.

9           1.2 On May 24, 2006, Plaintiff filed a Complaint against Hot Topic and Doe  
10 Defendants 1 through 100, in the Los Angeles Superior Court, No. BC 352903. The Complaint  
11 alleged violations of Proposition 65, the CLRA, Business & Professions Code §§ 17200 et seq.  
12 and 17500 et seq., and Civil Code §§ 1709 and 1710, against defendant Hot Topic with regard to  
13 its sale of the Hot Topic Products.

14           1.3 On September 27, 2006, Plaintiff sent 60-day Notices of Violation to defendants  
15 American International Industries; Beauty 21 Cosmetics, Inc.; and Shalom International  
16 Corporation (hereinafter "Vendor Defendants"), alleging that the Vendor Defendants violated  
17 Proposition 65 by failing to provide clear and reasonable warning before exposing users to lead in  
18 the Hot Topic Products. On November 8, 2006, Plaintiff named the Vendor Defendants as DOE  
19 defendants 1 through 3, filing the fictitious name amendments on January 11, 2007.

20           1.4 On April 13, 2007, Plaintiff sent 60-day Notices of Violation to the Vendor  
21 Defendants, alleging that the Vendor Defendants violated Proposition 65 by failing to provide  
22 clear and reasonable warning before exposing users to lead in cosmetics, including facial, skin  
23 and hair treatment consumer products ("Covered Products").

24           1.5 Each Vendor Defendant is a business that employs 10 or more persons, and that  
25 manufactures, distributes, and/or sells Covered Products in the State of California.

26           1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
27 has jurisdiction over Vendor Defendants as to the allegations contained in the Complaint, that  
28

1 venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter and  
2 enforce the provisions of this Consent Judgment.

3 1.7 The Parties enter into this agreement to settle certain disputed claims as alleged in  
4 the complaint, and to avoid prolonged and costly litigation. By executing and complying with  
5 this agreement, neither Party admits any facts or conclusions of law including, but not limited to,  
6 any facts or conclusions of law regarding any violations of Proposition 65 (Health & Safety Code  
7 §25249.5 *et seq.*), the California Legal Remedies Act ("CLRA" – Civil Code § 1750 *et seq.*), the  
8 Unlawful Competition Law ("UCL" – Bus. & Prof. Code § 17200 *et seq.*), the False Advertising  
9 Law ("FAL" – Bus. & Prof. Code § 17500 *et seq.*), Civil Code §§ 1709 and 1710, or any other  
10 statutory, common law or equitable claim or requirement relating to or arising from the sale of the  
11 Covered Products in California.

12 **2. INJUNCTIVE RELIEF**

13 2.1 Vendor Defendants shall implement the following lead reduction commitments as  
14 to Covered Products that they introduce into the stream of commerce beginning 90 days after  
15 entry of this Consent Judgment.

16 2.1.1 The Covered Products shall have no lead as an intentionally added  
17 constituent;

18 2.1.2 Vendor Defendants shall reduce their current specification for lead in the  
19 Covered Products to a maximum of 7.5 micrograms per gram (parts per million by mass, or  
20 "ppm").

21 2.1.3 Vendor Defendants may comply with the requirements of Section 2.1.2 by  
22 obtaining one of the following before the Vendor Defendant introduces a Covered Product into  
23 the stream of commerce:

24 (a) A test report from an accredited laboratory showing that the  
25 finished Covered Product contains no more than 7.5 ppm lead, using a test method of  
26 sufficient sensitivity to establish a limit of quantification of less than 7.5 ppm lead; or

27 (b) A certification from the contract manufacturer that states that the  
28 contract manufacturer (i) has obtained certificates of analysis for each ingredient in the

1 Covered Product exceeding 1% by weight that contains no more than 7.5 ppm lead, using  
2 a test method of sufficient sensitivity to establish a limit of quantification of less than 7.5  
3 ppm lead; and (ii) will produce such certificates of analysis for inspection upon Vendor  
4 Defendant's reasonable request.

5 **3. PAYMENTS**

6 3.1 The Vendor Defendants shall each pay the sum of \$46,000 as a settlement  
7 payment, for a total payment of \$138,000.00 ("Settlement Amount"), to the Plaintiff, and shall  
8 each make that payment to the Client Trust Account of the Carrick Law Group P.C., by wire  
9 transfer, certified or bank check in immediately available funds. This total Settlement Amount  
10 shall be due and payable within five (5) calendar days after the date of notice of entry of this  
11 Consent Judgment. This settlement amount shall be disbursed promptly thereafter by the Carrick  
12 Law Group P.C., as follows:

13 3.1.1 To Plaintiff, the sum of \$70,000 as an "in lieu of damages and restitution"  
14 payment pursuant to the CLRA, UCL, FAL and Civil Code §1709 and 1710;

15 3.1.2 To Plaintiff, the sum of \$7,663.40 as an "in lieu of penalties" payment  
16 pursuant to Proposition 65.

17 3.1.3 To Carrick Law Group, P.C., the sum of \$15,695.96 in costs and  
18 \$44,641.17 in attorneys' fees.

19 **4. CLAIMS COVERED AND RELEASE**

20 4.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff  
21 and Vendor Defendants and their parents, shareholders, divisions, subdivisions, subsidiaries,  
22 partners, sister companies and their successors and assigns ("Defendant Releasees"), and all  
23 entities to whom they distribute or sell Covered Products, including but not limited to distributors,  
24 wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but  
25 not limited to Hot Topic ("Downstream Defendant Releasees"), of any actual and potential claims  
26 that were or could have been brought by Plaintiff regarding lead in Covered Products, including  
27 any and all alleged violations of the California Consumer Legal Remedies Act, Unlawful  
28 Competition Law, False Advertising Law, Civil Code §§ 1709 and 1710, Civil Code §§ 1709 and

1 1710, Proposition 65 (Health & Safety Code § 25249.5 *et seq.*), or any other law that was or  
2 could have been asserted by Plaintiff arising from or related to Covered Products manufactured,  
3 distributed, or sold by Vendor Defendants through the date of entry of this Consent Judgment, or  
4 any claim based on the facts or conduct alleged in the Complaint, or facts similar to those alleged,  
5 whether based on actions committed by Vendor Defendants, Defendant Releasees, or  
6 Downstream Defendant Releasees (hereinafter "Claims"); however, Plaintiff cannot and  
7 expressly does not release any other claims, including specifically and without limitation any  
8 personal injury or directly related claims, that could be brought by any other individual or  
9 organization. *Vendor Defendants hereby release Ms. Hamilton from and against any claims*  
10 *arising out of Plaintiffs' filing or prosecution of this action. Each Party respectively waives any*  
11 *right to appeal or other review of this Consent Judgment, except as expressly provided in this*  
12 *Consent Judgment.*

13 4.2 Compliance with the terms of this Consent Judgment by Vendor Defendants and  
14 Defendant Releasees, resolves any issue from the date of entry of this Consent Judgment into the  
15 future concerning compliance by Vendor Defendants, Defendant Releasees and Downstream  
16 Defendant Releasees regarding failure to warn about the presence of, or exposure to, lead in  
17 connection with Covered Products manufactured, distributed or sold by Vendor Defendants after  
18 the date of entry of this Consent Judgment.

19 4.3 Plaintiff for herself, and to the extent she is authorized to act on behalf of the  
20 public interest pursuant to Health and Safety Code § 25249.7(d), releases, waives, and forever  
21 discharges any and all Claims against Settling Defendants, Defendant Releasees, and  
22 Downstream Defendant Releasees. In furtherance of the foregoing, as to alleged exposures to  
23 Covered Products, plaintiff hereby waives any and all rights and benefits which she now has, or  
24 in the future may have, conferred upon her individually with respect to the Claims by virtue of the  
25 provisions of section 1542 of the California Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
28 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,

1 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
2 DEBTOR.

3 *Plaintiff understands and acknowledges that the significance and consequence of this*  
4 *waiver of California Civil Code section 1542 is that even if plaintiff suffers future damages*  
5 *arising out of or resulting from, or related directly or indirectly to, in whole or in part, the*  
6 *Covered Products, including but not limited to any exposure to, or failure to warn with respect to*  
7 *exposure to, lead or lead compounds from Covered Products, plaintiff will not be able to make*  
8 *any claim for those damages against Vendor Defendants, Defendant Releasees, or Downstream*  
9 *Defendant Releasees. Furthermore, plaintiff acknowledges that she intends these consequences*  
10 *for any such Claims as may exist as of the date of this release but which plaintiff does not know*  
11 *exist, and which, if known, would materially affect her decision to enter into this Consent*  
12 *Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,*  
13 *error, negligence, or any other cause.*

14 4.4 Except as specifically provided in this Consent Judgment, each Party shall bear its  
15 own attorney's fees and costs incurred in connection with the 60-day Notices of Violation and  
16 Plaintiff's complaint.

17 4.5 Plaintiff and all Defendants covenant and agree that with regard to those matters  
18 that Plaintiff has herein released and that are described above, neither Ms. Hamilton, Hot Topic or  
19 any Vendor Defendant will ever institute a lawsuit or administrative proceedings against the  
20 other, nor shall Ms. Hamilton, Hot Topic or any Vendor Defendant assert any claim of any nature  
21 against any person or entity hereby released, with regard to any such matters which have been  
22 released. However, nothing in this paragraph shall be interpreted to preclude enforcement of this  
23 Consent Judgment pursuant to Section 6 below.

24 **5. ENTRY OF CONSENT JUDGMENT**

25 5.1 Upon the expiration of 60 days following the service of the 60-day notices  
26 identified in Section 1.4, and on condition that no public prosecutor has at that time commenced a  
27 Proposition 65 enforcement action over alleged exposure to lead in one or more of the Covered  
28 Products, the Parties request that the Court promptly enter this Consent Judgment. Should any

1 such enforcement action be filed, this Consent Judgment shall be voidable as to any of the Vendor  
2 Defendants and, if so voided, shall be subject to Section 5.3 below.

3 5.2 Upon entry of the Consent Judgment, the Parties waive their respective rights to a  
4 hearing or trial on the allegations of the complaint, and the complaint shall be dismissed with  
5 prejudice as against defendant Hot Topic, Inc.

6 5.3 If this Consent Judgment is not approved by the Court, it shall be of no further  
7 force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for  
8 any purpose.

9 5.4 *This Court shall retain jurisdiction of this matter to implement this Consent*  
10 *Judgment.*

11 **6. ENFORCEMENT OF JUDGMENT**

12 6.1 Any Party may, by noticed motion or order to show cause before the Superior  
13 Court of Los Angeles, enforce this Consent Judgment. To enforce this Consent Judgment, any  
14 Party must first give written notice of any violation of this Consent Judgment alleged to have  
15 occurred to the Party alleged to be in violation. The Parties shall meet and confer in good faith  
16 and attempt to resolve the alleged violation. If a resolution is not reached within thirty (30) days  
17 of the date of the notice, the aggrieved Party may move the Court to hear and resolve the dispute.  
18 The prevailing Party in any proceeding brought to enforce this Consent Judgment shall be entitled  
19 to recover from the other Party the prevailing Party's reasonable attorneys' fees and costs  
20 incurred in the investigation and prosecution of such an enforcement proceeding.

21 **7. GOVERNING LAW AND CONSTRUCTION**

22 7.1 This agreement shall be governed by the laws of the State of California.

23 7.2 The Parties, including their counsel, have participated in the preparation of this  
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties as  
25 achieved through formal mediation. This Consent Judgment was subject to revision and  
26 modification by the Parties and has been accepted and approved as to its final form by all Parties  
27 and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment  
28 shall not be interpreted against any Party as a result of the manner of the preparation of this

1 Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of  
2 construction providing that ambiguities are to be resolved against the drafting Party should not be  
3 employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby  
4 waive California Civil Code section 1654.

5 **8. MODIFICATION OF CONSENT JUDGMENT**

6 8.1 This Consent Judgment may be modified or terminated upon written agreement of  
7 the Parties, with approval of the Court, or upon noticed motion for good cause shown. Any Party  
8 seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all  
9 affected Parties prior to filing a motion to modify the Consent Judgment.

10 **9. ENTIRE AGREEMENT**

11 9.1 The Parties declare and represent that no promise, inducement or other agreement  
12 has been made conferring any benefit upon any Party except those contained herein and that this  
13 agreement contains the entire agreement pertaining to the subject matter hereof. This agreement  
14 supersedes any prior or contemporaneous negotiations, representations, agreements and  
15 understandings of the Parties with respect to such matters, whether written or oral. Parol  
16 evidence shall be inadmissible to show agreement by, between, or among the Parties to any term  
17 or condition contrary to or in addition to the terms and conditions contained in this Consent  
18 Judgment. The Parties acknowledge that each has not relied on any promise, representation or  
19 warranty, expressed or implied, not contained in this agreement.

20 **10. APPLICATION OF CONSENT JUDGMENT**

21 10.1 This Consent Judgment shall apply to and be binding upon the parties hereto, their  
22 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

23 10.2 This Consent Judgment shall not apply to Covered Products manufactured,  
24 distributed, or sold by Vendor Defendants for use outside of California.

25 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7.**

26 11.1 Plaintiff shall comply with the reporting requirements referred to in Health and  
27 Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations  
28

1 sections 3000-3008), and shall move for approval of this consent judgment pursuant to the terms  
2 thereof.

3 **12. PROVISION OF NOTICE**

4 All correspondence and notices required by this Consent Judgment to Plaintiff shall be  
5 sent as follows:

6 With a copy to:  
7 Roger Lane Carrick, Esq.  
8 The Carrick Law Group, P.C.  
9 350 S. Grand Avenue, Suite 2930  
10 Los Angeles, CA 90071-3406  
11 Tel: (213) 346-7930  
12 Fax: (213) 346-7931  
13 E-mail: roger@carricklawgroup.com

14 All correspondence and notices required by this Consent Judgment to Vendor Defendants  
15 shall be sent as follows:

16 To defendant American International

17 Theresa Cooper  
18 American International Industries  
19 2220 Gaspar Avenue  
20 Los Angeles, CA 90040

21 With a copy to:  
22 Jeffrey B. Margulies, Esq.  
23 Fulbright & Jaworski L.L.P.  
24 555 S. Flower Street, 41<sup>st</sup> Floor  
25 Los Angeles, California 90071  
26 Tel: (213) 892-8986  
27 Fax: (213) 892-9494  
28 E-mail: jmargulies@fulbright.com

To defendant Beauty 21 Cosmetics, Inc.

Chelsea Trinh  
8676 Rochester Avenue  
Rancho Cucamonga, CA 91730

With a copy to:  
Jeffrey B. Margulies, Esq.  
Fulbright & Jaworski L.L.P.  
555 S. Flower Street, 41<sup>st</sup> Floor  
Los Angeles, California 90071  
Tel: (213) 892-8986  
Fax: (213) 892-9494  
E-mail: jmargulies@fulbright.com

To defendant Shalom International Corp.

Patricia Petenko  
1050 Amboy Avenue  
Perth Amboy, NJ 08861

With a copy to:  
Jeffrey B. Margulies, Esq.  
Fulbright & Jaworski L.L.P.  
555 S. Flower Street, 41<sup>st</sup> Floor  
Los Angeles, California 90071  
Tel: (213) 892-8986  
Fax: (213) 892-9494  
E-mail: jmargulies@fulbright.com

1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 This Consent Judgment may be executed in counterparts and by means of  
3 facsimile, which taken together shall be deemed to constitute one document.

4 **14. AUTHORIZATION**

5 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
7 execute the Consent Judgment on behalf of the party represented and legally bind that party. The  
8 undersigned have read, understand, and agree to all of the terms and conditions of this Consent  
9 Judgment.

10  
11 Date: April 30, 2007

VICKY HAMILTON

12  
13 By: *Vicky Hamilton*  
14 Name: Vicky Hamilton  
15 Title: an Individual \_\_\_\_\_

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1 Date: April 30, 2007

AMERICAN INTERNATIONAL, A CALIFORNIA  
CORPORATION GENERAL PARTNERSHIP

3  
4 By:   
5 Name: Theresa Cooper  
6 Title: Senior Vice President

7 Date: April \_\_, 2007

BEAUTY 21 COSMETICS, INC.

8 By: \_\_\_\_\_  
9 Name: \_\_\_\_\_  
10 Title: \_\_\_\_\_

11 Date: April \_\_, 2007

SHALOM INTERNATIONAL CORP.

12 By: \_\_\_\_\_  
13 Name: \_\_\_\_\_  
14 Title: \_\_\_\_\_

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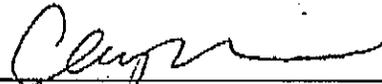
Date: April \_\_, 2007

AMERICAN INTERNATIONAL, A CALIFORNIA CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: April 27, 2007

BEAUTY 21 COSMETICS, INC.

By:   
Name: Chate Trinh  
Title: director

Date: April \_\_, 2007

SHALOM INTERNATIONAL CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1 Date: April \_\_, 2007

AMERICAN INTERNATIONAL, A CALIFORNIA CORPORATION

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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6 Date: April \_\_, 2007

BEAUTY 21 COSMETICS, INC.

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

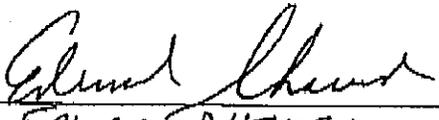
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10 Date: April 27, 2007

SHALOM INTERNATIONAL CORP.

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By: 

Name: EDWARD J HOWELL

Title: CFO/VP

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1 **FINDINGS AND ORDER**

2 1. The Court finds that the reduction in Lead specifications in no warnings required  
3 in Section 2 of the stipulated Consent Judgment in this matter regarding the sale of certain  
4 products by defendants American International Industries; Beauty 21 Cosmetics, Inc.; and  
5 Shalom International Corporation comply with the provisions of Health & Safety Code  
6 §§25249.5-25249.13.

7 2. In the stipulated Consent Judgment in this matter, the Parties' agreement in  
8 Section 3 of the Consent Judgment that no civil penalties are warranted is in accord with the  
9 criteria set forth in Health & Safety Code §25249.7(b) (2), in that payments totaling \$7,663.40 in  
10 financial relief in the form of "in lieu of damages or penalties" are to be made by the Vendor  
11 Defendants collectively to Plaintiff Vicky Hamilton. The Court finds that Ms. Hamilton has  
12 committed to use this financial relief in conformity with Proposition 65's overall goals.

13 3. In the stipulated Consent Judgment in this matter, the Court finds that Ms.  
14 Hamilton's attorney fees and costs to Carrick Law Group, P.C., in the amount of \$15,695.96 in  
15 costs and \$44,641.17 in attorneys' fees are reasonable, having been incurred for the entire matter,  
16 of which Proposition 65 issues represented only a portion of the overall issues.

17 4. In light of the findings made above, and based upon the Court's review of the  
18 proposed stipulated Consent Judgment executed among the Parties, the Court finds that this  
19 Consent Judgment is just, and serves and will serve the public interest

20 5. The Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this  
21 Court.

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

23  
24 DATED: \_\_\_\_\_

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26 \_\_\_\_\_  
27 JUDGE OF THE SUPERIOR COURT