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6 CENTER FOR ENVIRONMENTAL HEALTH

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

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11
12 PEOPLE OF THE STATE OF CALIFORNIA,)
13 ex rel. BILL LOCKYER, Attorney General,)

14 Plaintiffs,)

15 v.)

16 BURLINGTON COAT FACTORY)
17 WAREHOUSE CORPORATION, et. al.,)
Defendants.)

Lead Case No. RG 04-162075

(Consolidated with Case Nos. RG 04-
162037, RG 04-169511 and RG 06-
269531)

**STIPULATED CONSENT JUDGMENT
AS TO BENJAMIN INTERNATIONAL,
INC.**

Complaint Filed: June 23, 2004
Trial Date: None

18 And Related and Consolidated Cases)
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1 **1. Introduction.**

2 **a.** This Stipulated Consent Judgment is entered into by the Center For
3 Environmental Health, a California non-profit corporation (“CEH”) and Benjamin International,
4 Inc. (“Benjamin”), pursuant to a settlement of certain disputed claims set forth in the First
5 Amended Complaint filed by CEH in the matter entitled *Center for Environmental Health v.*
6 *Nadri, Inc., et al.*, A.C.S.C. Case No. RG 06-269531 (the “Nadri Action”) by CEH against
7 Benjamin (the “Parties”) .

8 **b.** On April 24, 2006, CEH provided a “Notice of Violation of Proposition
9 65” to the California Attorney General, the District Attorneys of every county in California, the
10 City Attorneys of every California city with a population greater than 750,000, and to Benjamin
11 regarding the presence of lead in jewelry manufactured, distributed or sold by Benjamin.

12 **c.** On May 12, 2006, CEH filed the original Complaint in the Nadri Action.

13 **d.** On July 12, 2006, the Court consolidated the Nadri Action with three
14 previously filed cases that had already been consolidated under *People v. Burlington Coat*
15 *Factory Warehouse Corp., et al.*, lead Case No. RG 04-162075.

16 **e.** On September 21, 2006, CEH filed the First Amended Complaint in the
17 Nadri Action naming Benjamin and others as defendants.

18 **f.** On June 15, 2006, upon due notice, the Court entered an Amended
19 Consent Judgment in the three original consolidated cases, under the lead case *People v.*
20 *Burlington Coat Factory Warehouse Corp., et al.*, A.C.S.C. Case No. RG 04-162075, against a
21 group of different defendants, a true and correct copy of which is attached hereto as Exhibit 1
22 (the “Global Consent Judgment”)¹.

23 **g.** CEH and Benjamin desire to resolve this matter on substantially identical
24 injunctive terms as provided in Sections 2, 3, and 4 of the Global Consent Judgment.

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27 ¹ In order to minimize the size of Exhibit 1, the attached Amended Consent
28 Judgment does not include certain signature pages or Exhibit A (list of initial defendants),
Exhibit E (brand names from initial defendants), Exhibit F (initial defendant notice list), Exhibit
G (copies of Notices of Intent to Opt In) and Exhibit H (Roman Company signature page).

1 **2. Jurisdiction and Venue.** For purposes of this Consent Judgment only, the
2 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the
3 First Amended Complaint and personal jurisdiction over Benjamin as to the acts alleged in the
4 First Amended Complaint, venue is proper in the County of Alameda, and that this Court has
5 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
6 or could have been raised in the First Amended Complaint based on the facts alleged therein.

7 **3. Judgment Terms.** Judgment shall be entered against Benjamin in this
8 consolidated action pursuant to the terms of this Consent Judgment which adopts the provisions
9 set forth in the attached Exhibit 1 as if Benjamin was a CEH Defendant and a Settling Defendant
10 as such terms are defined in Exhibit 1, subject to the following modifications.

11 **a. Section 1.8.** Section 1.8 in Exhibit 1 to this Consent Judgment is
12 modified as follows:

13 i. The term “Settling Defendant” means CEH Defendants and any
14 Person that was a defendant party to the Global Consent Judgment or to a consent judgment that
15 contained “identical or substantially identical terms as provided in Sections 2, 3, and 4 of the
16 amended consent judgment,” as those terms are used in Health & Safety Code § 25214.3(d).

17 **b. Section 2.7.** Section 2.7 in Exhibit 1 to this Consent Judgment is
18 modified as follows:

19 i. The term “Shipping Compliance Date” means (a) May 1, 2007 for
20 all Covered Products other than Children’s Products and (b) February 1, 2007 for all Children’s
21 Products.

22 **c. Section 2.8.** Section 2.8 in Exhibit 1 to this Consent Judgment is
23 modified as follows:

24 i. The term Final Compliance Date means May 1, 2007.

25 **d. Section 3.1.** The last sentence of Section 3.1 in Exhibit 1 to this Consent
26 Judgment is modified as follows:

27 i. Each Settling Defendant shall provide the requirements of this
28 Consent Judgment to its Suppliers of Covered Products no later than January 31, 2007, and shall

1 request each Supplier to use best efforts to provide compliant product as soon as commercially
2 practicable.

3 **e. Section 3.2.2.1.** Section 3.2.2.1 in Exhibit 1 to this Consent Judgment sets
4 forth a date after which metal alloys with less than 6 percent lead by weight shall considered
5 Class 2 Components. That date is hereby changed from August 31, 2009 to May 1, 2007.

6 **f. Section 3.2.2.3.** Section 3.2.2.3 in Exhibit 1 to this Consent Judgment sets
7 forth a date after which plastic or rubber containing no more than 0.02 percent (200 ppm) lead by
8 weight shall be considered a Class 2 Component. That date is hereby changed from August 31,
9 2009 to May 1, 2007.

10 **g. Section 5.** Section 5 in Exhibit 1 to this Consent Judgment is modified as
11 follows:

12 i. Within seven calendar days of entry of this Stipulated Consent
13 Judgment, Benjamin shall pay the sum of \$40,000 as a settlement payment. The settlement
14 payment shall be by check made payable to the Lexington Law Group, LLP Attorney Client
15 Trust Account. The funds paid by Benjamin shall be distributed as follows:

16 (1) The sum of \$12,700 as payment to CEH in lieu of penalty
17 pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title
18 11, section 3202(b). CEH will use such funds to continue its work educating and protecting
19 people from exposures to toxic chemicals, including heavy metals. In addition, CEH intends to
20 use a portion of such funds to monitor compliance with the reformulation requirements of this
21 and other similar Consent Judgments, to purchase and test jewelry, and to prepare and compile
22 the information and documentation necessary to support a Notice of Violation.

23 (2) The sum of \$1,000 as a civil penalty pursuant to Health &
24 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
25 Safety Code §25249.12.

26 (3) The sum of \$26,300 as reimbursement of CEH's reasonable
27 attorneys' fees and investigation costs.

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1 Sections 2, 3, and 4 of the amended consent judgment," as those terms are used in Health &
2 Safety Code § 25214.3(d).

4 **IT IS SO STIPULATED.**

CENTER FOR ENVIRONMENTAL HEALTH

By: 
As signed ~~Michael Green~~ CHARLIE PIZARRO
Executive Director

BENJAMIN INTERNATIONAL, INC.

By: _____

Printed Name: _____

Title: _____

17 **JUDGMENT SO RENDERED.**

19 _____, 2007

JUDGE OF THE SUPERIOR COURT

1 Sections 2, 3, and 4 of the amended consent judgment," as those terms are used in Health &
2 Safety Code § 25214.3(d).

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4 **IT IS SO STIPULATED.**

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CENTER FOR ENVIRONMENTAL HEALTH

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By: _____
Michael Green
Executive Director

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BENJAMIN INTERNATIONAL, INC.

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By:  _____

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Printed Name: MARTIN TUNIS

14

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Title: PRESIDENT

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17 **JUDGMENT SO RENDERED.**

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19 _____, 2007

JUDGE OF THE SUPERIOR COURT

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