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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
10

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.*,)

18 Defendants.)

19 And Related and Consolidated Cases.)
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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 PAYLESS SHOESOURCE, INC.**

Complaint Filed: June 23, 2004
Trial Date: None

1 **1. Introduction.**

2 **a.** This Stipulated Consent Judgment is entered into by the Center For
3 Environmental Health (“CEH”), a California non-profit corporation, and Payless Shoesource,
4 Inc. (“Payless”), a Delaware corporation, to settle certain disputed claims as 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.*, Alameda County Superior Court Case No. RG 06-269531 (the “*Nadri*
7 *Action*”) by CEH against Payless (the “Parties”).

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

9 **c.** On June 23, 2006, CEH provided a “Notice of Violation of Proposition
10 65” to the California Attorney General, the District Attorneys of every county in California, the
11 City Attorneys of every California city with a population greater than 750,000, and to Payless
12 regarding the presence of lead in jewelry manufactured, distributed or sold by Payless.

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.*, Alameda County Superior Court Case No. RG 04-162075 (the
16 “Lead Case”).

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

19 **f.** On June 15, 2006, upon due notice, the Court entered an Amended
20 Consent Judgment in the three original consolidated cases, under the Lead Case, against a group
21 of different defendants, a true and correct copy of which is attached hereto as Exhibit 1 (the
22 “Global Consent Judgment”)¹.

23 **g.** Payless has provided CEH with substantial documentation regarding its
24 efforts to sell only no or low-lead jewelry on a national basis that dates back to 2004, including a
25 body of sample lead test results for jewelry sold by Payless.

26 _____
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 h. CEH and Payless desire to resolve this matter on substantially identical
2 injunctive terms as provided in Sections 2, 3, and 4 of the Global Consent Judgment.

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

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

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

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

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

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

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

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

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

1 i. Each Settling Defendant shall provide the requirements of this
2 Consent Judgment to its Suppliers of Covered Products no later than March 15, 2007, and shall
3 request each Supplier to use best efforts to provide compliant product as soon as commercially
4 practicable.

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

8 f. **Section 3.2.2.3.** Section 3.2.2.3 in Exhibit 1 to this Consent Judgment sets
9 forth a date after which plastic or rubber containing no more than 0.02 percent (200 ppm) lead by
10 weight shall be considered a Class 2 Component. That date is hereby changed from August 31,
11 2009 to August 1, 2008.

12 g. **Section 3.3.2.** Section 3.3.2 in Exhibit 1 to this Consent Judgment
13 addresses the use of non-metallic materials in Children's Products and is modified as follows:

14 i. Non-metallic materials that are Class 2 Components other than
15 plastic or rubber containing more than 0.02 percent (200 ppm) lead by weight.

16 h. **Section 5.** Section 5 in Exhibit 1 to this Consent Judgment is modified as
17 follows:

18 i. Within seven calendar days of entry of this Stipulated Consent
19 Judgment, Payless shall pay the sum of \$37,500 as a settlement payment. The settlement
20 payment shall be by check made payable to the Lexington Law Group, LLP Attorney Client Trust
21 Account. The funds paid by Payless shall be distributed as follows:

22 (1) The sum of \$12,000 as payment to CEH in lieu of penalty
23 pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title
24 11, section 3202(b). CEH will use such funds to continue its work educating and protecting
25 people from exposures to toxic chemicals, including heavy metals. In addition, CEH may use a
26 portion of such funds to monitor compliance with the reformulation requirements of this and
27 other similar Consent Judgments, to purchase and test jewelry, and to prepare and compile the
28 information and documentation necessary to support a Notice of Violation.

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

4 (3) The sum of \$24,500 as payment to the Lexington Law
5 Group, LLP for reimbursement of CEH's reasonable attorneys' fees and investigation costs.

6 i. **Section 7.** The references to the "People" and "Business and Professions
7 Code Section 17200 *et seq.*" in Section 7 of Exhibit 1 to this Consent Judgment are modified
8 such that they are of no force or effect.

9 j. **Notices.** The person for Payless to receive Notices pursuant to Sections
10 4.2.2.2, Section 8 and Exhibit F in Exhibit 1 to this Consent Judgment, until and unless modified
11 pursuant to Section 8, shall be:

12 William Tarrantino
13 Morrison & Foerster
14 425 Market Street
15 San Francisco, CA 94105-2482

16 k. **References to the People and AYS.** All references to the People, AYS,
17 and AYS Defendants in Exhibit 1 to this Consent Judgment are to have no force or effect.

18 4. **Finding Under Health & Safety Code § 25214.3(d).** The Court finds that the
19 injunctive terms of this Consent Judgment are "substantially identical terms as provided in

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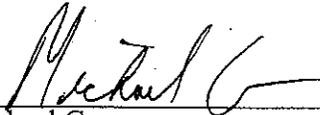
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1 Sections 2, 3, and 4 of the amended consent judgment," as those terms are used in Health &
2 Safety Code § 25214.3(d).

3
4 **IT IS SO STIPULATED.**

5 CENTER FOR ENVIRONMENTAL HEALTH

6
7 By: 
8 Michael Green
9 Executive Director

10
11 PAYLESS SHOESOURCE, INC.

12
13 By: _____

14 Printed Name: _____

15
16 Title: _____

17 **JUDGMENT SO RENDERED.**

18
19 _____, 2007

20 _____
21 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).

3
4 **IT IS SO STIPULATED.**

5 CENTER FOR ENVIRONMENTAL HEALTH

6
7
8 By: Michael Green
9 Executive Director

10
11 PAYLESS SHOESOURCE, INC.

12
13 By: *Douglas G. Boessen*

14 Printed Name: Douglas G. Boessen

15
16 Title: Vice President - Controller

17 **JUDGMENT SO RENDERED.**

18
19 _____, 2007

20 _____
21 JUDGE OF THE SUPERIOR COURT

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