SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General, et al., Plaintiffs, vs. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, et al, Defendant. AND RELATED CONSOLIDATED CASES.	Case No. RG 04-162075 (Consolidated with RG 04-162037, RG 04-169511) [PROPOSED] CONSENT JUDGMENT AS TO URBAN OUTFITTERS, INC. AND URBAN OUTFITTERS WEST LLC

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and Urban Outfitters, Inc. and Urban Outfitters West LLC (collectively, "Defendants"), to settle certain claims asserted by CEH against Defendants as set forth in the complaint in the matter entitled *Center for Environmental Health v. Nadri, Inc., et al.*, Alameda County Superior Court Case No. RG 06-269531 (the "*Nadri* Action").

1.2 On May 12, 2006, CEH filed the original complaint in the *Nadri* Action, which was later consolidated with three other actions including the lead case entitled *People v. Burlington*

Coat Factory et al. (Alameda Superior Court Case No. RG 04-162075).

1.3 On February 21, 2006, upon noticed motion, the Court entered a Consent Judgment against a group of other defendants in the consolidated actions (the "Master Consent Judgment").

1.4 On June 15, 2006, upon noticed motion, the Court amended the Master Consent Judgment by entering an Amended Consent Judgment in the consolidated actions (the "Amended Master Consent Judgment").

1.5 On October 20, 2006, CEH provided a "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to both Urban Outfitters, Inc. and Urban Outfitters West LLC regarding the presence of lead in jewelry manufactured, distributed or sold by Defendants.

1.6 On or about April 7, 2009, CEH provided a "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to both Urban Outfitters, Inc. and Urban Outfitters West LLC regarding the presence of lead in vinyl and faux leather wallets, handbags, purses, clutches and totes manufactured, distributed or sold by Defendants.

1.7 On February 16, 2007, the Complaint in the *Nadri* Action was amended to name additional defendants, including Urban Outfitters, Inc. and Urban Outfitters West LLC.

1.8 Urban Outfitters, Inc. is a corporation, and Urban Outfitters West LLC is a limited liability company, both of which employ ten or more persons, and which manufacture, distribute and/or sell Covered Products in the State of California.

1.9 For purposes of this Consent Judgment only, CEH and Defendants (the "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised

in the Complaint based on the facts alleged therein with respect to Covered Products and/or Recall Products manufactured, distributed, and/or sold by Defendants.

1.10 CEH and Defendants enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Complaint, or which could have been raised in the Complaint, arising out of the facts or conduct related to Defendants alleged therein. By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to lead in jewelry. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in this action.

1.11 CEH and Defendants intend, and the Court finds, that the injunctive terms contained in Sections 2, 3.1 through 3.4, and 4 of this Consent Judgment are "substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent judgment," as those terms are used in California Health & Safety Code §25214.3(d).

2. DEFINITIONS

2.1 The term "Person" shall have the same meaning as that term is defined in California Health & Safety Code §25249.11(a).

2.2 The term "Covered Products" means (a) the following ornaments worn by a person: an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring, necklace, pin, ring and Body Piercing Jewelry and (b) any bead, chain, link, pendant, or other component of such an ornament.

2.3 The term "Body Piercing Jewelry" means any part of a Covered Product that is manufactured or sold for placement in new piercings and/or mucous membranes, and does not include those parts of Covered Products not placed within new piercings and/or mucous membranes.

2.4 The term "Children's Products" means Covered Products that are made for, marketed for use by, or marketed to, Children.

2.4.1 For purposes of this Consent Judgment, the term "Children" means children aged 6 and younger.

2.4.2 A Covered Product is made for, marketed for use by, or marketed to Children if it is either:

2.4.2.1 Represented in its packaging, display, or advertising, as appropriate for use by Children; or

2.4.2.2 Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by Children; or

2.4.2.3 Sized for Children and not intended for use by adults.

2.4.2.4 Sold in

2.4.2.4.1 a vending machine; or

2.4.2.4.2 a retail store, catalogue, or online website, in which Defendants exclusively offer for sale products that are packaged, displayed, or advertised as appropriate for use by Children; or

2.4.2.4.3 those discrete portions of a retail store, catalogue, or online website, in which Defendants offer for sale products that are packaged, displayed, or advertised as appropriate for use by Children.

2.5 The term "Supplier" means a Person that directly supplies Covered Products that are or will be offered for retail sale in California to Defendants.

2.6 Any time a measurement of lead content is referred to in this Consent Judgment by a percentage, it means percent lead by weight.

2.7 The term "Effective Date" means the date this Consent Judgment is entered by the Court.

3. INJUNCTIVE RELIEF

3.1 **Reformulation of Covered Products.** Subject to the Additional Injunctive Relief agreed to by Defendants as defined and set forth in Section 3.5, after the Effective Date, Defendants shall not: (1) manufacture; (ii) ship; or (iii) sell or offer for sale Covered Products for retail sale in California unless the Covered Product complies with Section 3.2 or, for Children's Products, Section 3.3 or, for Body Piercing Jewelry, Section 3.4 of this Consent Judgment. Defendants shall provide the requirements of this Consent Judgment to its Suppliers of Covered Products no later than the Effective Date.

3.2 **General Reformulation Requirements.** Covered Products that are not Children's Products or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3 Components, or any combination thereof, as these terms are defined below.

3.2.1 A "Class 1 Component" is the portion of a Covered Product that contains one or more of the following materials:

3.2.1.1 Stainless and surgical steels.

3.2.1.2 Karat gold.

3.2.1.3 Sterling silver.

3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium ("platinum group metals").

3.2.1.5 Natural and cultured pearls.

3.2.1.6 Glass, ceramic, and crystal decorative components (e.g., cat's eye, cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

3.2.1.7 Any gemstone that is cut and polished for ornamental purposes except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

3.2.1.8 Elastic, fabric, ribbon, rope, and string with no intentionally-added lead and not otherwise listed as a Class 2 component.

3.2.1.9 Natural decorative materials (e.g., amber, bone, coral, feathers, fur, horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add lead.

3.2.1.10 Adhesives.

3.2.2 A "Class 2 Component" is the portion of a Covered Product that contains one or more of the following materials:

3.2.2.1 Metal alloys with less than 10 percent lead by weight ("88 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit A. For Covered Products sold or offered for retail sale in California by Defendants after August 31, 2009, this standard shall be metal alloys with less than 6 percent lead by weight ("92 metal") that are electroplated with suitable under and finish coats and that are plated utilizing the Best Management Practices described in Exhibit A.

3.2.2.2 Unplated metal containing less than 1.5 percent lead that is not defined as a Class 1 Component.

3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For Covered Products sold or offered for retail sale in California by Defendants after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead by weight.

3.2.2.4 Dyes and Surface Coatings containing less than 0.06 percent (600 parts per million) lead. For purposes of this Consent Judgment, "Surface Coating" shall carry the same meaning as "Paint or other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.").

3.2.3 A "Class 3 Component" is any part of a Covered Product that is not a Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600 parts per million) lead.

3.3 **Children's Products**. Children's Products shall be made entirely from:

3.3.1 Non-metallic materials that are Class 1 Components other than glass or crystal decorative components;

3.3.2 Non-metallic materials that are Class 2 Components;

3.3.3 Metallic materials that are either Class 1 Components or contain less than 0.06 percent (600 parts per million) lead;

3.3.4 Glass or crystal decorative components that weigh in total no more than 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02 percent (200 parts per million) lead and have no intentionally added lead.

3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600 parts per million) lead;

3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per million) lead; or

3.3.7 Any combination thereof.

3.4 **Body Piercing Jewelry.** Body Piercing Jewelry shall be made of one of the following materials:

3.4.1 Surgical Implant Stainless Steel

3.4.2 Surgical Implant grades of Titanium

3.4.3 Niobium (Nb)

3.4.4 Solid 14 karat or higher white or yellow nickel-free gold

3.4.5 Solid platinum

3.4.6 A dense low porosity plastic such as Tygon or PTFE with no intentionally added lead.

3.5 **Additional Injunctive Relief.** Defendants have agreed to comply with the following additional injunctive relief requirements which are hereby ordered by the Court:

3.5.1 **Market Withdrawal.** The "Jewelry Recall Products" are defined as the following Covered Products which were identified by CEH as non-exclusive exemplar products in the 60-Day Notices of Violation sent by CEH to Defendants or in other correspondence from CEH to Defendants:

- Hinged Feather Bracelet (SKU No. 14917728 163 21323)
- Skul Ring (SKU No. 16305287 12668869 MDS 1)

The "Handbag Recall Products" are defined as the following vinyl and faux leather wallets, handbags, purses, clutches and totes manufactured, distributed or sold by Defendants which were identified by CEH as non-exclusive exemplar products in the 60-Day Notices of Violation sent by CEH to Defendants or in other correspondence from CEH to Defendants:

- Foldover Hinge Kisslock Wallet (Retail No. 14452528)
- Turquoise Faux Leather Clutch (Retail No. 15740202)
- Urban Outfitters Diamond Quilted Gold Wallet (Retail No. 14179857)
- Kimchi Blue Beige Large Leather Purse with Brown Trim and Blue Lining (Retail No. 15576937)

The Jewelry Recall Products and the Handbag Recall Products are collectively defined as the "Recall Products."

3.5.1.1 On the Effective Date, which will be more than sixty (60) days after the April 7, 2009 Notice was served on Defendants, the operative Complaint in this matter is hereby amended as to Defendants only to amend the definition of Products to include the specific Handbag Recall Products identified above. The definition of Products in the Complaint shall not include any vinyl and faux leather wallets, handbags, purses, clutches and totes not specifically identified as a Handbag Recall Product above.

3.5.1.2 As of the Effective Date, Defendants are hereby enjoined from selling any of the Recall Products in California. To the extent that Defendants have not already done so, as of the Effective Date, Defendants shall cease shipping or selling to stores and/or customers in California, and shall withdraw the Recall Products from the market in California, and, at a minimum, send instructions to any of its stores or websites that offer the Recall Products

for sale in California to cease offering such Recall Products for sale in California and to either return all the Recall Products to Defendants for destruction, or to directly destroy the Recall Products. Any destruction of such Recall Products shall be in compliance with all applicable laws. Defendants shall keep all records and correspondence regarding the market withdrawal and destruction of such Recall Products. Upon written request by CEH, Defendants shall make available to CEH for inspection and copying all records and correspondence regarding the market withdrawal and destruction of such Recall Products. If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in court.

4. ENFORCEMENT

4.1 **General Enforcement Provisions.** The Attorney General or CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment, subject to the following:

4.1.1 Any action to enforce the terms of Sections 3.1 to 3.4 of this Consent Judgment shall be brought exclusively pursuant to Section 4.2.

4.1.2 For purposes of this Section 4 only, the term "Defendants" includes a Person that was a party to the Amended Master Consent Judgment or to a consent judgment that contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent judgment," as those terms are used in California Health & Safety Code §25214.3(d).

4.2 **Enforcement of Materials Violation.**

4.2.1 **Notice of Violation.** In the event that, at any time following the Effective Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products that the Notifying Person believes in good faith do not comply with Section 3.1 through 3.4 of this Consent Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section 4.

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

4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in Section 6.4 to receive notices for Defendants, and must be served within 45 days of the date the

alleged violation(s) was or were observed. The Notice of Violation shall also be served on each Defendant as a Supplier of the Covered Products identified by Brand Names listed on Exhibit C to the Amended Master Consent Judgment for the Covered Product(s) in question.

4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered Product and supporting documentation sufficient for validation of the test results, including all laboratory reports, quality assurance reports and quality control reports associated with testing of the Covered Products. Such Notice of Violation shall be based upon test data that meets the criteria of Exhibit B. Wipe, swipe, and swab testing are not sufficient to support a Notice of Violation.

4.2.2.3 The Notifying Person shall promptly make available for inspection and/or copying upon request all supporting documentation related to the testing of the Covered Products and associated quality control samples, including chain of custody records, all laboratory logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all printouts from all analytical instruments relating to the testing of Covered Product samples and any and all calibration, quality assurance, and quality control tests performed or relied upon in conjunction with the testing of the Covered Products, obtained by or available to the Notifying Person that pertains to the Covered Product's alleged noncompliance with Section 3.1 through 3.4 and, if available, any exemplars of Covered Products tested.

4.2.3 **Notice of Election of Response.** No more than 30 days after receiving a Notice of Violation, the Defendant shall provide written notice to the Notifying Person whether it elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

4.2.3.1 If a Notice of Violation is contested the Notice of Election shall include all then-available documentary evidence regarding the alleged violation, including all test data, if any. If the Defendant or the Notifying Person later acquires additional test or other data regarding the alleged violation, it shall notify the other party and promptly provide all such data or

information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria of Exhibit B.

4.2.3.2 If a Notice of Violation is not contested, the Notice of Election shall include a description of the Defendant's corrective action pursuant to Section 4.2.6. The Notice of Election shall include the name, address, telephone number, and other contact information, of the Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation.

4.2.4 **Meet and Confer.** If a Notice of Violation is contested, the Notifying Person, the Attorney General, and the Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement action has been filed, the Defendant may withdraw the original Notice of Election contesting the violation and serve a new Notice of Election conceding the violation. If no informal resolution of a Notice of Violation results, the Notifying Person may by motion or order to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment. In any such proceeding, the Attorney General and CEH may seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

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

4.2.6 **Corrective Action in Non-Contested Matters.** If the Defendant elects not to contest the allegation, it shall include in its Notice of Election a detailed description of corrective action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified in the Notice of Violation for sale in California. Corrective action must include instructions to the Defendant's stores to cease offering the Covered Product(s) identified in the Notice of Violation for sale in California as soon as practicable. The Defendant shall make available to the Notifying Person for inspection and/or copying records and correspondence regarding the corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section 4.2.4 before seeking any remedy in court.

4.2.7 **Required Contributions to Proposition 65 Jewelry Testing Fund in Non-Contested Matters.** The Defendant shall be required to make a contribution to the Proposition 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as specified below:

4.2.7.1 If the Defendant serves a Notice of Election not to contest the allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not be required to make any contributions pursuant to this Section.

4.2.7.2 If the Defendant serves a Notice of Election not to contest the allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the Notice of Violation, the Defendant shall make a required contribution in the amount of $2,500 for each Supplier from whom it purchased the Covered Product(s) identified in any Notices of Violation served within a 30-day period.

4.2.7.3 If the Defendant withdraws a Notice of Election contesting the violation and serves a new Notice of Election not to contest the allegations in a Notice of Violation within 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the violations alleged in the Notice of Violation is filed, the Defendant shall make a required contribution in the amount of $7,500 for each Supplier from whom it purchased the Covered Product(s) identified in any Notices of Violation served within a 30-day period.

4.2.7.4 The contributions shall be paid within 15 days of service of a Notice of Election.

4.2.7.5 The Defendant's liability for required contributions shall be limited as follows:

4.2.7.5.1 The Defendant as a Supplier to one or more retailers shall be liable for one required contribution within any 30-day period, regardless of the number of retailers to whom the Covered Product is distributed.

4.2.7.5.2 If the Defendant has manufactured, sold, or distributed a Covered Product identified in a Notice of Violation,

only one required contribution may be assessed against the Defendant potentially liable therefore in any 30-day period, in the following order of priority: (1) Manufacturers; (2) Importers; (3) Distributors, and (4) Retailers.

4.2.7.5.3 The Defendant's monetary liability to make required contributions under Section 4.2.7.2 shall be limited to $5,000 for each 30-day period. The Defendant's monetary liability to make required contributions under Section 4.2.7.3 shall be limited to $15,000 for each 30-day period.

4.2.7.6 If the Defendant has paid either of the payments set forth in Sections 4.2.7.2 and 4.2.7.3 more than six times in any 18-month period, or more than three times in any 12-month period for Covered Products sold to that Defendant from the same Supplier then, at the Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

4.2.8 **Limitation on Liability.** The Defendant's liability when electing not to contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

5. PAYMENTS

5.1 **Payments From Defendants.** On or before August 14, 2009, Defendants shall pay the total sum of $105,000 as a settlement payment.

5.2 **Allocation of Payments.** The total settlement amount for Defendants shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as follows:

5.2.1 Defendants shall pay the sum of $1,000 as a civil penalty pursuant to California Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with California Health & Safety Code §25249.12. The $1,000 penalty check shall be made payable to the Center For Environmental Health.

5.2.2 Defendants shall pay the sum of $34,500 as payment to CEH in lieu of penalty pursuant to California Health & Safety Code §25249.7(b), and California Code of

Regulations, title 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such funds to monitor compliance with the reformulation requirements of this and other similar Consent Judgments, to purchase and test jewelry, and to prepare and compile the information and documentation necessary to support a Notice of Violation. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the Center For Environmental Health.

5.2.3 Defendants shall pay the sum of $69,500 as reimbursement of reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group, LLP.

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 **Modification.** This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

6.2 **Modification of Amended Master Consent Judgment.** Upon the entry of any order amending Sections 2, 3 or 4 of the Amended Master Consent Judgment, the corresponding terms of Sections 2, 3.1 through 3.4 or 4 of this Consent Judgment shall be deemed amended, so that the injunctive terms contained in Sections 2, 3.1 through 3.4 or 4 of this Consent Judgment remain "substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent judgment," as those terms are used in California Health & Safety Code §25214.3(d). Defendants' obligation to undertake additional injunctive relief under Section 3.5 of this Consent Judgment shall not be subject to amendment under this section, and may not be modified absent stipulation of the Parties or court order.

6.3 **Reopeners.** The Parties may seek to reopen the requirements of Section 3.1 through 3.4 as to Covered Products other than Children's Products as follows:

6.3.1 **Limited Reopener of Component Designation for Certain Components.** The Parties acknowledge that the materials described in Sections 3.2.1.8 and 3.2.1.9 are not generally known to contain or expose users to lead and, as such, have been designated as Class 1 Components. CEH, with the written non-opposition of the Attorney General, may seek to modify this Consent Judgment by seeking the re-designation of any material described in Sections 3.2.1.8 and 3.2.1.9 from Class 1 Component to a Class 2 Component with a lead standard for such material, if, subsequent to the Effective Date, CEH obtains information that demonstrates that such material contains lead and that the use of the material in any Covered Product exposes users of the Covered Product to lead in an amount greater than 0.5 micrograms per day.

6.3.2 **Reopener for Class 3 Components.** Any Party may seek to modify this Consent Judgment by seeking to designate a Class 3 Component as a Class 1 Component or as a Class 2 Component with a lead specification standard.

6.3.3 **Required Showing to Obtain Reopeners.** A reopener pursuant to Sections 6.4.1 or 6.4.2 shall be granted if the court finds the following:

6.3.3.1 A Class 3 Component shall be redesignated as a Class 1 Component if the moving party demonstrates that such material does not contain lead, or that the use of the material in any Covered Product does not expose users of the Covered Product to lead in an amount greater than 0.5 micrograms per day.

6.3.3.2 A Class 3 Component, and the materials described in Sections 3.2.1.8 and 3.2.1.9, shall be redesignated as a Class 2 Component with a lead specification standard if the moving party demonstrates that use of such material at or below the standard does not expose average users of the Covered Product to lead in an amount greater than 0.5 micrograms per day.

6.4 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

6.4.1 **Notice to Defendants.** The person for Defendants to receive Notices

pursuant to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

Anne Kearns
Krieg, Keller, Sloan, Reilley & Roman LLP
114 Sansome Street
Suite 400
San Francisco, CA 94104-3898
akearns@kksrr.com

with a copy to:
General Counsel
Urban Outfitters, Inc.
5000 South Broad Street
Philadelphia, PA 19112-1495

6.4.2 **Notice to Plaintiff.** The person for CEH to receive Notices pursuant to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

Eric S. Somers
Lexington Law Group
1627 Irving Street
San Francisco, California 94122
esomers@lexlawgroup.com

7. CLAIMS COVERED AND RELEASE

7.1 This Consent Judgment is a full, final, and binding resolution between CEH and Defendants and their parents, shareholders, officers, directors, employees, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns ("Defendant Releasees"), and all entities other than those listed on Exhibit C to this Consent Judgment to whom they distribute or sell Covered Products and Recall Products (collectively, the "Released Products"), including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted in the public interest against Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection with Released Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and

Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted in the public interest regarding the failure to warn about exposure to lead arising in connection with Released Products manufactured, distributed or sold by Defendants prior to the Effective Date.

7.3 Compliance with the terms of this Consent Judgment by Defendants and its Defendant Releasees shall constitute compliance with Proposition 65 by Defendants, their Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged failure to warn about lead in Covered Products manufactured, distributed or sold by Defendants after the Effective Date.

7.4 CEH represents that as of the date this Consent Judgment is executed by CEH, it does not know of any vinyl and faux leather wallets, handbags, purses, clutches and totes manufactured, distributed or sold by Defendants that contain lead at levels requiring a warning under Proposition 65 other than those specifically identified as Handbag Recall Products in Section 3.5.1. CEH and Defendants intend, and the Court finds, that nothing in this Section 7, the release contained herein, or any other part of this Consent Judgment shall apply to any vinyl and faux leather wallets, handbags, purses, clutches and totes manufactured, distributed or sold by Defendants other than those specifically identified as Handbag Recall Products in Section 3.5.1. Furthermore, it is the understanding of the Parties that should CEH identify in the future any vinyl and faux leather wallets, handbags, purses, clutches and totes manufactured, distributed or sold by Defendants that contain lead or any other Proposition 65 listed chemical and are being sold in violation of Proposition 65, that CEH may enforce Proposition 65 against Defendants as to such products and that nothing in this Consent Judgment shall act to bar or limit in any way such an enforcement action.

8. PROVISION OF NOTICE

8.1 When any party is entitled to receive any notice under this Consent Judgment, the notice shall be sent by certified mail and electronic mail to the Party(ies) identified in Section 6.4.

Any party may modify the person and address to whom the notice is to be sent by sending each other party notice by certified mail and/or other verifiable form of written communication.

9. COURT APPROVAL

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

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose. In addition, if this Consent Judgment is not entered by the Court, all money paid pursuant to Section 5 hereof shall be returned to Defendants.

10. GOVERNING LAW AND CONSTRUCTION

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

10.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code §1654.

11. ATTORNEYS' FEES

11.1 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs unless the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of Civil Procedure §1021.5 against a party that acted with substantial justification. The party seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this provision shall not be construed as altering any procedural or substantive requirements for obtaining such an award.

11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions pursuant to law.

12. ENTIRE AGREEMENT

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

14.1 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 to bind that party.

15. NO EFFECT ON OTHER SETTLEMENTS

15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not a Defendant on terms that are different than those contained in this Consent Judgment.

16. EXECUTION IN COUNTERPARTS

16.1 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.

IT IS SO STIPULATED:

Dated: ~~June~~ July 9, 2009	**CENTER FOR ENVIRONMENTAL HEALTH** By _____ Printed Name Michael Green Title Executive Director
Dated: June __, 2009	**URBAN OUTFITTERS, INC.** By _____ Printed Name _____ Title _____

15. NO EFFECT ON OTHER SETTLEMENTS

15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not a Defendant on terms that are different than those contained in this Consent Judgment.

16. EXECUTION IN COUNTERPARTS

16.1 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.

IT IS SO STIPULATED:

Dated: June__, 2009	**CENTER FOR ENVIRONMENTAL HEALTH** By _____ Printed Name _____ Title _____
Dated: ~~June~~ July 6, 2009	**URBAN OUTFITTERS, INC.** By _____ Printed Name Tedford C. Marlow Title President, Urban Outfitters Brand

Dated: ~~June~~ July 6, 2009	**URBAN OUTFITTERS WEST LLC** By _____ Printed Name Tedford C. Marlow Title President, Urban Outfitters Brand

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated:

_____
Honorable Robert B. Freedman
Judge of the Superior Court of the State of California

EXHIBIT A

(BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)

PRE-PLATING PROCEDURE

The pieces must be cleaned. Any polishing compound must be removed before plating by cleaning with aqueous cleaning solution or solvent and rinsed with water.

The pieces must be activated.

The pieces must be rinsed in clean water before plating.

PLATING BATH MAINTENANCE

The temperature of each plating bath must be controlled to the appropriate temperature in accordance with the recommendations of the equipment and plating chemical suppliers.

The nickel and nickel-substitute tanks must be agitated or aerated in accordance with the chemical suppliers' recommendations.

All baths must be filtered continuously during plating and filters changed at least than monthly.

pH must be measured each day of plating and adjusted within the chemical supplier's recommendations.

All plating employees must be trained on the use of the equipment in accordance with recommendation of equipment manufacturer and plating chemical suppliers.

The plating baths must be maintained in accordance with the plating chemical suppliers recommendations.

Plating tanks must be swept at least weekly.

Anodes must be inspected monthly in accordance with the anode supplier's recommendations.

Racks must be stripped at least annually.

The electrical equipment must be sized appropriately for each tank in accordance with equipment manufacturer's recommendations and calibrated annually.

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PLATING PROCEDURES

Substantial pieces such as pendants, drops, and rings without prongs or other such feature shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite, imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces can be treated to produce other finishes such as matt, oxidized, or smut black finishes.

Mechanical, functional (e.g., lobster claws, spacers, mechanical closures, connectors), or fine pieces such as prongs and fine chains may be plated to cover the exposed surface consistent with good manufacturing practices for appearance and function. Components that articulate closely together such as snake chain and tight hinges or that need to be manipulated into position will be plated to prevent binding, stiffness, and cracking of plating.

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EXHIBIT B

(TESTING PROTOCOLS)

The following test methods must be used to determine compliance with the lead standards set forth in this Consent Judgment. A material shall not meet the applicable lead standard if the mean lead level of: (1) one or two samples exceeds 300% of the component specification limit; (2) three samples exceeds 200% of the component specification limit; or (3) four or more samples exceeds the component specification limit.

Laboratory sample preparation protocols specific for testing the lead content of jewelry components are not readily available. The sample preparation method used in USEPA Method 3050B or Method 3051 shall be followed, as modified in the following table for use with jewelry samples. The laboratory should make every effort to assure that samples removed from jewelry pieces are representative of the component to be tested, and are free of contamination from extraneous dirt and material not related to the jewelry component to be tested. All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment. If components must be cut or scraped to obtain a sample, then metal snips, scissors, or other cutting tools used must be made of stainless steel and washed and rinsed before each use and between samples.

Samples should be digested in containers that are known to be free of lead using acids that are not contaminated by lead. Analytical Reagent grade digestion acids and reagent grade deionized water are required. Method Blanks, consisting of all reagents used in sample preparation handled, digested and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested. The results for the Method Blank shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

All jewelry components samples shall be prepared for testing in accordance with USEPA Method 3050B or 3051, with the following additional notes and exceptions:

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COMPONENT	NOTES AND EXCEPTIONS
Metals plated with suitable undercoats and finish coats	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.1% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Unplated metal and metal substrates not defined as Class 1 Components.	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.01% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Polyvinyl chloride (PVC)	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion, and should be chopped or comminuted prior to digestion. Digested samples may require dilution prior to analysis. 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.
Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones).	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion and should be chopped or comminuted prior to digestion. Plastic beads or stones should be crushed prior to digestion. Digested samples may require dilution prior to analysis. 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.
Coatings on Glass and Plastic Pearls.	The coating of glass or plastic beads should be scraped onto a surface free of dust, such as a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The razor blade or sharp instrument should be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples. Weigh the scrapings. A minimum of 50 mg of scraped

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	coating should be used for analysis. If less than 50 mg of scraped coating is obtained from an individual pearl, then multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount. The number of pearls used to make the composite must be noted. Avoid inclusion of the substrate pearl material in the scrapings. Digest the scrapings according to USEPA Method 3050B or 3051 or equivalent procedure for hot acid digestion in preparation for trace lead analysis. Dilute the digestate in the minimum volume practical for analysis. Analyze the digested sample according to specification of Exhibit C (approved, validated methodology for inductively-coupled plasma mass spectrometry). A reporting limit of 0.001% (10 ppm) in the coating must be obtained for the analysis. The sample result must be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, then the sample must be diluted and re-analyzed within the calibrated range of the instrument.
Dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, crystal	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.050 g, and should be chopped or comminuted prior to digestion. Digested samples may require dilution prior to analysis . 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.
Glass and crystal used in Children's Products (for weight)	The components should be free of any extraneous material such as adhesive before they are weighed. The scale used to weigh these components should be calibrated using NIST certified (S-class) weights of 1 and 2 grams immediately before the components are weighed. The calibration should be accurate to within 0.01 gram.

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EXHIBIT C

(LIST OF ENTITIES NOT SUBJECT TO DOWNSTREAM DEFENDANT RELEASE)

1. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
2. Amiee Lynn, Inc.
3. AZ3, Inc.
4. BCBG Max Azria Group, Inc.
5. Big A Drug Stores, Inc.
6. Conair Corporation
7. Cousin Corporation of America
8. Elite Distributing Company dba Edco
9. Forum Novelites, Inc.
10. Georgiou Studio, Inc.
11. Hayun Fashion Investments Corporation dba Planet Funk
12. H.E.R. Accessories, LLC
13. ICU Eyewear
14. I Love Bracelets, Inc.
15. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
16. Jacadi USA, Inc.
17. JOIA Accessories, Inc.
18. La-Kontra
19. Legoland California LLC
20. Lisa Kline, Inc.
21. Long Rap, Inc.
22. Marin Beauty Company
23. Max Rave, LLC
24. Peninsula Beauty Supply, Inc.

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25. Peter David, Inc.
26. Raley's
27. Rite Aid Corporation
28. Ruby's Costume Company, Inc.
29. Safeway Inc.
30. Scünci International, Inc.
31. Sea World, Inc.
32. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
33. Six Flags Theme Parks, Inc.
34. Venus Fashion Jewelry
35. Volume Distributors, Inc.
36. Whole Foods Market California, Inc.; Whole Foods Market, Inc.
37. Zoom Eyeworks, Inc.

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