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CENTER FOR ENVIRONMENTAL HEALTH

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General,

Plaintiffs,

v.

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, *et al.*,

Defendants.

And Related and Consolidated Cases.

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 WORLD OF JEANS & TOPS DBA TILLY'S

Complaint Filed: June 23, 2004
Trial Date: None

1. **Introduction.**

a. This Stipulated Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and World of Jeans & Tops, dba Tilly's, a California corporation ("Tilly's"), to settle certain claims asserted by CEH against Tilly's 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").

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

c. On July 12, 2006, the Court consolidated the *Nadri* Action with three previously filed cases that had already been consolidated under *People v. Burlington Coat Factory Warehouse Corp., et al.*, Alameda County Superior Court Case No. RG 04-162075 (the "Lead Case").

d. 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 Tilly's regarding the presence of lead in jewelry manufactured, distributed or sold by Tilly's.

e. On February 16, 2007, CEH amended the complaint in the *Nadri* Action to name Tilly's as a defendant.

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

g. CEH and Tilly's desire to resolve this matter on substantially identical injunctive terms as provided in Sections 2, 3, and 4 of the Global Consent Judgment. In addition,

[1] In order to minimize the size of Exhibit 1, the attached Amended Consent 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).

CEH and Tilly's have agreed to additional injunctive relief in the form of the recall of specific lead-containing jewelry.

2. **Jurisdiction and Venue.** For purposes of this Consent Judgment only, CEH and Tilly's stipulate that this Court has jurisdiction over the allegations of violations contained in the complaint and personal jurisdiction over Tilly's as to the acts alleged in the complaint, 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.

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

a. **Recall of Specific Leaded Jewelry.** On or before June 30, 2007, Tilly's shall recall the Covered Products identified below from its distribution facilities and retail outlets and return such Covered Products to the supplier of the Covered Product for destruction. On or before July 31, 2007, Tilly's shall provide CEH with documentation regarding the recall including documentation the number of pieces recalled and returned to the supplier for destruction. The Covered Products subject to recall under this Section are:

Skull Ring with Rhinestone: SKU No. 11390114001

Filagre Ring: SKU No. 11608118901

Pearl/Rhinstone Bracelet Set: SKU No. 11905515001

Graduated Plastic Bead Necklace: SKU No. 11374110001

FAD M MTL Chain W/Skull Pendant: SKU No. 11663590101

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

i. The term "Settling Defendant" means CEH Defendants and any Person that was a defendant party to the Global 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 Health & Safety Code § 25214.3(d).

c. Section 3.1. The last sentence of Section 3.1 in Exhibit 1 to this Consent Judgment is modified as follows:

i. Each Settling Defendant shall provide the requirements of this Consent Judgment to its Suppliers of Covered Products no later than July 31, 2007, and shall request each Supplier to use best efforts to provide compliant product as soon as commercially practicable.

d. Section 5. Section 5 in Exhibit 1 to this Consent Judgment is modified as follows:

i. Within seven days of entry of this Consent Judgment, Tilly's shall pay a total of $47,000 as a settlement payment. This total shall be paid in three separate checks delivered to the offices of the Lexington Law Group, LLP and made payable and allocated as follows:

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

(2) Tilly's shall pay the sum of $15,000 as payment to CEH in lieu of penalty pursuant to Health & Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b). This payment in lieu of penalty check shall be made payable to the Center For Environmental Health. 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.

(3) Tilly's shall pay the sum of $31,000 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.

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

f. Notices. The persons for Tilly's to receive Notices pursuant to Sections 4.2.2.2, Section 8 and Exhibit F in Exhibit 1 to this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

Betsy McDaniel
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center
Suite 1700
San Francisco, CA 94111

and

Bill Langsdorf
Senior Vice President and Chief Financial Officer
Tilly's
10 Whatney
Irvine, CA 92618

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

IT IS SO STIPULATED.

CENTER FOR ENVIRONMENTAL HEALTH

By: _____

Printed Name: CHARLIE PIZZARRO

Title: ACTING EXEC. DIR.

WORLD OF JEANS & TOPS dba TILLY'S

By: _____

Printed Name: _____

Title: _____

JUDGMENT SO RENDERED.

_____, 2007

_____
JUDGE OF THE SUPERIOR COURT

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

IT IS SO STIPULATED.

CENTER FOR ENVIRONMENTAL HEALTH

By: _____

Printed Name: _____

Title: _____

WORLD OF JEANS & TOPS dba TILLY'S

By: William Langsdorf

Printed Name: WILLIAM LANGSDORF

Title: SVP/CFO

JUDGMENT SO RENDERED.

_____, 2007

_____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

ENDORSED
FILED
ALAMEDA COUNTY

JUN 15 2006

CLERK OF THE SUPERIOR COURT
By HOLLIE M. ADAMIC
Deputy

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, Defendants. AND RELATED CONSOLIDATED CASES.	Case No. RG 04-162075 (Consolidated with RG 04-162037, RG 04-169511) [~~PROPOSED~~] AMENDED CONSENT JUDGMENT

This Amended Consent Judgment ("Consent Judgment") supercedes the Consent Judgment entered in these consolidated cases on February 21, 2006, and is entered by the Court pursuant to the Attorney General's Motion to Amend Consent Judgment, filed on May 19, 2006. The Amended Consent Judgment reflects the addition of seventeen parties as Add-On Defendants, the substitution of a party, two minor modifications to the standards for Children's Jewelry, and the clarification of testing protocols in Exhibit D. The amended provisions appear in Sections 2.1, 3.1, 3.3.4, 3.3.5, and 5.2, and Exhibits A, C, D, and F. Exhibits G and H are new.

DOCUMENT PREPARED ON RECYCLED PAPER

1. INTRODUCTION

1.1 On June 23, 2004, plaintiffs the Attorney General of the State of California, on behalf of the People of the State of California ("People"), and the Center for Environmental Health ("CEH"), filed complaints for civil penalties and injunctive relief in this Court. On August 10, 2004, plaintiff As You Sow ("AYS") filed a similar complaint. The complaints allege that the defendants violated the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") and the Unfair Competition Law by selling jewelry that contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, without providing a clear and reasonable warnings that use of the jewelry would result in exposure to lead.

1.2 On August 27, 2004, the People amended their complaint to substitute the true name of a "Doe" defendant and dismissed a defendant. The following defendants were named and appeared in the People's amended complaint: Burlington Coat Factory Warehouse Corporation; CBI Distributing Corp; Claire's Boutiques, Inc.; Express, LLC; Federated Department Stores, Inc.; J. C. Penney Corporation, Inc.; Kmart Corporation; Macy's West, Inc.; Mervyn's; Nordstrom, Inc; Ross Stores, Inc.; Sears, Roebuck and Company; Target Corporation; and Toys "R" Us, Inc. On January 25, 2006, the People amended their complaint to add the following defendants Adina Inc.; Arden Jewelry Manufacturing Company, Inc.; Ballet Jewels L.L.C.; Bernardo Manufacturing; Buy-Rite Costume Jewelry, Inc. and Buy-Rite Designs, Inc.; Carol Dauplaise Ltd.; Carol for Eva Graham, Inc.; Carole Inc.; Retail Brand Alliance, Inc. d/b/a Carolee; Catherine Stein Designs, Inc.; Crimzon Rose Accessories, Inc.; Danecraft, Inc.; Erica Lyons; FAD Treasures; F.A.F, Inc.; Fashion Accents, Inc.; Fiesta Jewelry, Inc.; Finesse Novelty Corp., d/b/a Accessory Solutions, Ambiance Accessory, and Jewelry Sales; Gigi Accessories; Habitat, Inc.; JJamz, Inc.; K&M Associates, L.P.; Kenilworth Creations; Kerissa Creations; Key Item Sales, Inc.; Liz Claiborne, Inc.; Haskell Jewels, LTD; MJM Jewelry Corp., d/b/a Berry Jewelry Company; Orion Fashions, Inc.; Rainbow Sales Incorporated; Jewelry Fashions, Inc.; Scorpio Accessories, LLC; Shalom International Corp.; Stephan & Co.; Tanya Creations, Inc.; TSI Holding Company (but see *infra*, Section 1.2.2); Vetta Jewelry, Inc.; and Victoria + Co. LTD ("Initial Settling Vendors"). In addition, on January 25, 2006, the People amended their complaint

to add as named defendants the entities listed on Exhibit A as "Affiliate Settling Defendants." Wal-Mart Stores, Inc. ("Wal-Mart") also was named in the People's complaint, but it is not a party to this Consent Judgment. (But see *infra*, Section 1.2.4.)

1.2.1 Pursuant to the Stipulation for Entry of Judgment and Order entered on February 21, 2006, the following companies have opted to become Add-On Defendants: Allison Reed Group, d/b/a P&B Manufacturing/J. Roth Enterprises; Barry-Owens, Inc.; Cathedral Art Metal Company, Inc.; Cookie Lee, Inc.; Fada International Corporation; Greenbrier International, Inc., a wholly-owned subsidiary of Dollar Tree Stores, Inc.; Jonnette Jewelry Company; Lee Mode International Inc.; Linda & Jay Keane, d/b/a L&J Accessories, Inc.; QVC, Inc.; Reebok International LTD; Rogers Sports Management; Saks, Incorporated; Sequin, LLC; The Gap, Inc.; Uncas Manufacturing Company; Vine Products Manufacturing Company ("Add-On Defendants"). An executed Notice of Intent to Opt In for each Add-On Defendant is attached hereto as Exhibit G. The People's complaint is hereby deemed amended to include the Add-On Defendants as defendants.

1.2.2 TSI Holding Company was an Initial Settling Vendor under the Consent Judgment that the Court approved on February 21, 2006. However, the People subsequently learned that the entity that should have been named in the complaint and the Consent Judgment is Roman Company, a wholly-owned subsidiary of TSI Holding Company. Therefore, the People's complaint is hereby deemed amended to name Roman Company; TSI Holding Company is hereby dismissed from *People v. Burlington Coat Factory Warehouse Corp. et al* (Case No. RG04162075) without prejudice; and the Consent Judgment and exhibits are hereby amended to replace TSI Holding Company with Roman Company as an Initial Settling Vendor. An executed signature page by Roman Company is attached as Exhibit H.

1.2.3 With the exception of Wal-Mart, the defendants named in the People's complaint as amended, which were not dismissed, are referred to herein as "Attorney General Defendants."

1.2.4 On April 20, 2006, pursuant to a stipulation between the People, CEH, and Wal-Mart, the Court entered a separate judgment against Wal-Mart. The Wal-Mart judgment

incorporates the terms of the Consent Judgment entered on February 21, 2006 and provides that Wal-Mart shall be treated as an Initial Settling Defendant, as that term is used therein.

1.3 On October 15, 2004, CEH filed its First Amended Complaint. Since that date, CEH has further amended its First Amended Complaint to substitute the true name of several "Doe" defendants and dismissed several other defendants. The following defendants were named and appeared in CEH's amended complaint: AIJJ Enterprises, Inc.; American Eagle Outfitters, Inc.; Aeropostale, Inc.; Burlington Coat Factory Warehouse Corporation; CBI Distributing Corp.; Claire's Boutiques, Inc.; Cost Plus, Inc.; Federated Department Stores, Inc.; Forever 21, Inc.; Forever 21 Retail, Inc.; Hot Topic, Inc.; Hub Distributing, Inc.; J.C. Penney Corporation, Inc.; Joe Boxer Company, LLC; Kmart Corporation; Kohl's Department Stores, Inc.; Kohl's Corporation; Lane Bryant, Inc.; Lerner New York, Inc.; Limited Too Store Planning, Inc.; Longs Drug Stores California, Inc.; Macy's West, Inc.; Mervyn's, LLC; Monogram International, Inc.; Nordstrom, Inc.; Rainbow Apparel of America, Inc.; Rainbow Apparel Distribution Center Corp.; Sears Roebuck and Co.; Styles For Less, Inc.; Target Corporation; The Buckle, Inc.; The May Department Stores, Inc.; The New 5-7-9 And Beyond, Inc.; Walt Disney World Co. (erroneously sued and served herein as Disney Consumer Products International, Inc. Disneyland International, and Walt Disney Company); Walgreen Co.; The Wet Seal, Inc.; The Wet Seal Retail, Inc.; Too, Inc.; and Zumiez, Inc. The following defendants that also were named in CEH's amended complaint are not parties to this Consent Judgment: Cornerstone Apparel, Inc.; Jordache Enterprises, Inc.; Royal Items, Inc.; The Gerson Company; Wal-Mart Stores, Inc. and Windsong Allegiance Group, LLC ("Non-Settling Defendants"). With the exception of the Non-Settling Defendants, the defendants named in CEH's complaint or any amendment thereto, that have not been dismissed, are referred to herein as "CEH Defendants."

1.4 The cause of action against the following CEH Defendants was limited to alleged violations of the Unfair Competition Law: Burlington Coat Factory Warehouse Corporation; CBI Distributing Corp; Claire's Boutiques, Inc.; Federated Department Stores, Inc.; J. C. Penney Company, Inc.; Kmart Corporation; Macy's West, Inc.; Mervyn's, LLC; Nordstrom, Inc; Sears, Roebuck and Company; and Target Corporation..

1.5 The following defendants were named and appeared in the complaint by AYS: Gottschalks, Inc.; Group USA Apparel, Inc.; and Charlotte Russe, Inc. The defendants named in AYS's complaint or any amendment thereto, that have not been dismissed, are referred to herein as "AYS Defendants."

1.6 The amended complaints filed by the Attorney General and CEH and the complaint filed by AYS are collectively called the "Complaints."

1.7 On November 8, 2004, the Court ordered that the cases be consolidated for pre-trial purposes. The parties hereby stipulate that the cases now shall be consolidated for purposes of entry of this Consent Judgment.

1.8 The People, CEH, and AYS ("Plaintiffs") and the Attorney General Defendants, CEH Defendants, and AYS Defendants, and any Add-On Defendants as defined in Section 2.9 added to the People's Complaint pursuant to the Stipulation for Entry of Judgment (collectively "Settling Defendants") are Parties, and each is a Party to this Consent Judgment.

1.9 Each Settling Defendant is a corporation or other business entity that employs 10 or more persons, or employed 10 or more persons at some time relevant to the allegations of the complaint, and which manufactures, distributes and/or sells Covered Products in the State of California or has done so in the past.

1.10 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaints and personal jurisdiction over each Settling Defendant as to the acts alleged in the Complaints, 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 Complaints based on the facts alleged therein.

1.11 The People, CEH, AYS, and Settling Defendants enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Complaints, or which could have been raised in the Complaints, arising out of the facts or conduct 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, the Unfair Competition Act or any other statutory, common law or equitable requirements relating to chromium, lead and/or nickel 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.

2. DEFINITIONS

2.1 The term "Person" shall have the same meaning as that term is defined in California Health & Safety Code section 25249.11, subdivision (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, or (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 the Settling Defendant exclusively offers 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 the Settling Defendant offers 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 to a Settling Defendant or to another entity that offers Covered Products that are or will be offered for retail sale in California. For purposes of Section 3 only, a Settling Defendant shall not be considered a Supplier with respect to any Covered Products it sells to another Settling Defendant that is its parent or subsidiary, or with which it shares a common parent.

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 "Shipping Compliance Date" means (a) August 1, 2007 for all Covered Products other than Children's Products; and (b) February 1, 2007 for all Children's Products.

2.8 The term "Final Compliance Date" means (a) March 1, 2008 for all Covered Products other than Children's Products; and (b) September 1, 2007 for all Children's Products.

2.9 The term "Initial Settling Defendants" means those Settling Defendants that were named in one or more of the amended complaints filed contemporaneously herewith. The term

"Initial Retailer Settling Defendants" means those Initial Settling Defendants who are not Initial Settling Vendors. The term "Add-On Settling Defendants" means those Settling Defendants that join in the Consent Judgment pursuant to the process set forth in the Stipulation for Entry of Judgment. Exhibit A to this Consent Judgment identifies each of the Initial Retailer Settling Defendants, Initial Settling Vendors, and Add-On Settling Defendants that are parties to this Consent Judgment.

3. INJUNCTIVE RELIEF

3.1 Reformulation of Covered Products. After the Shipping Compliance Date, a Settling Defendant that is a Supplier shall not ship Covered Products to a third party 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. After the Final Compliance Date, no Settling Defendant shall: (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. Each Settling Defendant shall provide the requirements of this Consent Judgment to its Suppliers of Covered Products no later than June 30, 2006, and shall request each Supplier to use best efforts to provide compliant product as soon as commercially practicable.

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 and in Exhibit B.

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 C. For Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in California, and for products sold or offered for retail sale in California by a Settling Defendant 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 C.

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 shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in California, and for products sold or offered for retail sale in California

by a Settling Defendant 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;

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.

4. ENFORCEMENT

4.1 **General Enforcement Provisions.** The Attorney General, CEH, or AYS 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 Section 3 of this Consent Judgment shall be brought exclusively pursuant to this Section 4.

4.1.2 The Attorney General may enforce the provisions of this Consent Judgment as to any Settling Defendant.

4.1.3 Subject to Section 4.1.4, CEH and AYS may each enforce the provisions of this Consent Judgment as to the CEH Defendants and AYS Defendants, respectively.

4.1.4 No action to enforce this Consent Judgment may be brought by CEH or AYS unless the Attorney General either joins in such action or provides written non-objection to the proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of Section 4.2.3. The Attorney General agrees to provide either a written objection or written non-objection to a proposed enforcement proceeding within 15 days of receipt of a written request for such a response from CEH or AYS, provided that the Attorney General may extend such 15 day response time by a single extension of an additional 15 days by writing to the requesting party. The fact that the Attorney General provides a written non-objection shall not be construed as endorsement of or concurrence in an enforcement action. Any written non-objection shall be

admissible in court only if a Settling Defendant challenges the right of CEH or AYS to enforce this Consent Judgment for failure to obtain the written non-objection.

4.2 Enforcement of Materials Violation.

4.2.1 Notice of Violation. In the event that, at any time following the Compliance Date, the Attorney General, CEH, or AYS ("Notifying Person") identifies one or more Covered Products that the Notifying Person believes in good faith do not comply with Section 3 of this Consent Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section

4.2.2 Service of Notice of Violation and Supporting Documentation.

4.2.2.1 The Notice of Violation shall be served on any Settling Defendant(s) that the Notifying Person knows offered the Covered Product for retail sale in California. The Notice of Violation shall also be served on any Settling Defendant that is a Supplier of the Covered Products identified by Brand Names listed on Exhibit E for the Covered Product(s) in question.

4.2.2.2 The Notice of Violation shall be sent to the person(s) identified in Exhibit F to receive notices for such Settling Defendant(s), and must be served within 45 days of the date the alleged violation(s) was or were observed.

4.2.2.3 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 D. Wipe, swipe, and swab testing are not sufficient to support a Notice of Violation.

4.2.2.4 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 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 Settling 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 a Settling Defendant or 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 D.

4.2.3.2 If a Notice of Violation is not contested, the Notice of Election shall include a description of the Settling 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 Settling Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation, and any other Settling Defendant to whom it sold any Covered Product(s) 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 all affected Settling Defendants 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 Settling 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, CEH, and AYS 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 Settling 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.** A Settling Defendant that elects not to contest the allegation 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 Settling Defendant's stores and/or its customers that offer the Covered Product for sale to consumers to cease offering the Covered Product(s) identified in the Notice of Violation for sale in California as soon as practicable. The Settling 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 Settling Defendant shall be required to make a contribution to the Proposition 65 Jewelry Testing Fund as specified below:

4.2.7.1 If the Settling 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 Settling 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 Settling Defendant shall make a required contribution in the amount of $2,500.00 for each Supplier from whom it purchased the Covered Product(s) identified in any

Notices of Violation served within a 30-day period. A Settling Defendant retailer is not required to make any payment pursuant to this Section for a Notice of Violation that is served less than six months after the Final Compliance Date.

4.2.7.3 If the Settling 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 Settling Defendant shall make a required contribution in the amount of $7,500.00 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 A Settling Defendant's liability for required contributions shall be limited as follows:

4.2.7.5.1 A Settling Defendant that is 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 more than one Settling Defendant has manufactured, sold, or distributed a Covered Product identified in a Notice of Violation, only one required contribution may be assessed against all Settling Defendants potentially liable therefor 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 A Settling 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. A Settling

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 a Settling 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 the Settling 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 liability of a Settling Defendant that elects not to contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

5. PAYMENTS

5.1 **Payments by Initial Settling Defendants.** Within fifteen days of the Effective Date: (i) each Initial Settling Defendant or group of Initial Settling Defendants identified by a separate number on Exhibit A shall pay the sum of $25,000; and (ii) each Affiliate Settling Defendant listed on Exhibit A shall pay the sum of $10,000, for an aggregate payment of $1,875,000. The settlement payment shall be by check made payable to the Lexington Law Group, LLP Attorney Client Trust Account. The funds paid by the Initial Settling Defendants shall be aggregated and distributed as follows:

5.1.1 The sum of $250,000 shall be paid to the Proposition 65 Jewelry Testing Fund, to be used for the purpose of obtaining and testing of Covered Products, and for the purpose of preparing and compiling the information and documentation to support a Notice of Violation, pursuant to sections 4.2.2.3 and 4.2.2.4.

5.1.2 The sum of $246,853 as payment to private Plaintiffs in lieu of penalty pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b), to be distributed as follows:

5.1.2.1 The sum of $186,511 to CEH. CEH shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.1.2.2 The sum of $60,342 to AYS. AYS shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. AYS shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.1.3 As reimbursement of Plaintiffs' attorney's fees and investigation costs, as follows:

5.1.3.1 The sum of $383,993 to the Office of California Attorney General.

5.1.3.2 The sum of $811,870 to CEH.

5.1.3.3 The sum of $ 82,284 to AYS.

5.1.4 The amount of $100,000 as a civil penalty pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b). The civil penalty shall be distributed entirely from settlement proceeds paid for by the Initial Settling Vendors, however this allocation shall not change the amount paid by each Settling Defendant under Section 5.1. The $25,000 portion of the $100,000 penalty allocated pursuant to Health and Safety Code Section 25192(a)(2) shall be divided as follows: $13,250 to CEH; $9,500 to the Office of the California Attorney General; and $2,250 to AYS.

5.1.5 All funds paid to the Attorney General pursuant to Sections 5.1.3.1, 5.2.1.3.3, and 5.2.1.4 shall be placed in an interest-bearing special Deposit Fund established by the Attorney General. Those funds, including any interest derived therefrom, shall be used by the Attorney General, until all funds are exhausted, for the costs and expenses associated with the enforcement and implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), including investigations, enforcement actions, other litigation or activities as determined by the Attorney General to be reasonably necessary to carry out his duties and authority under Proposition 65. Such funding may be used for the costs of the Attorney General's investigation, filing fees, and other court costs, payment to expert witnesses and technical consultants, purchase of equipment, travel, purchase of written materials, laboratory testing, sample collection, or any other cost associated with the Attorney General's duties or authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this Section, and

any interest derived therefrom, shall solely and exclusively augment the budget of the Attorney General's Office and in no manner shall supplant or cause any reduction of any portion of the Attorney General's budget.

5.2 **Payments by Add-On Defendants.** Within 45 days of the Effective Date, each Add-On Settling Defendant shall pay the sum of $40,000. The settlement payment shall be made by two checks consisting of one check in the amount of $17,500 to Defendants' Liaison Counsel, payable to the Fulbright & Jaworski L.L.P. Client Trust Account, and one check in the amount of $22,500 payable to the Lexington Law Group, LLP Attorney Client Trust Account. If the Add-On Settling Defendant is identified in Section 1.3 as a "Non-Settling Defendant," then it shall pay an additional $5,000, by adding $2,500 to the payment to Defendants' Liaison Counsel and $2,500 to the payment to the Lexington Law Group, LLP Attorney Client Trust Account.

5.2.1 The funds paid by the Add-On Settling Defendants to Lexington Law Group, LLP Attorney Client Trust Account, and any excess funds remitted by Defendants Liaison Counsel pursuant to Section 5.2.2.4, shall be aggregated and distributed as follows:

5.2.1.1 The amount of $5,000 shall be paid by each Add-On Settling Defendant as a civil penalty pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b). The $1,250 portion of each $5,000 penalty payment allocated pursuant to Health and Safety Code Section 25192(a)(2) shall be divided as follows: $662 to CEH; $475 to the Office of the California Attorney General; and $113 to AYS.

5.2.1.2 The amount of $1,500 shall be paid by each Add-On Settling Defendant to the Proposition 65 Jewelry Testing Fund, to be used for the purpose of obtaining and testing of Covered Products, and for the purpose of preparing and compiling the information and documentation to support a Notice of Violation, pursuant to sections 4.2.2.3 and 4.2.2.4.

5.2.1.3 As payment to private Plaintiffs in lieu of penalty pursuant to Health and Safety Code section 25249.7(b), and California Code of Regulations, title 11, section 3202(b), to be distributed as follows:

5.2.1.3.1 The sum of $95,200 to CEH. CEH shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.2.1.3.2 The sum of $13,600 to AYS. AYS shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. AYS shall submit a proposal to the Attorney General for use of the funds, approval of which shall not be unreasonably withheld.

5.2.1.3.3 The sum of $27,200 to the Office of the California Attorney General. The California Attorney General shall use such funds for the purpose of obtaining experts and consultants, and for other costs associated with the investigation and prosecution of other actions under Proposition 65.

5.2.1.4 As reimbursement of Plaintiffs' attorney's fees and investigation costs, as follows:

5.2.1.4.1 The sum of $74,256 to the Office of California Attorney General.

5.2.1.4.2 The sum of $54,672 to CEH.

5.2.1.4.3 The sum of $7,072 to AYS.

5.2.2 The funds paid by the Add-On Settling Defendants to Defendants' Liaison Counsel shall be aggregated and distributed to the Initial Settling Defendants for reimbursement of Settlement-Related Costs that have inured to the benefit of all Settling Defendants. The funds received by Initial Settling Defendants pursuant to this Section comprise a small percentage of the Initial Settling Defendants' actual Settlement Related Costs. The Attorney General has reviewed these Settlement Related Costs and applied the guidelines contained in 22 California Code of Regulations section 3201, subdivisions (d) and (e), and determined that they are reasonable.

Distribution of funds for reimbursement of Settlement Related Costs shall be made pursuant to the following:

5.2.2.1 Distribution of funds under this Section shall be apportioned $137,683 to the Initial Settling Vendors and $159,817 to the Initial Retailer Settling Defendants.

5.2.2.2 The Settlement Related Costs that qualify for reimbursement pursuant to this section include the following:

5.2.2.2.1 No more than $93,492 for sums paid to the mediator who presided over negotiations leading to this Consent Judgment;

5.2.2.2.2 No more than $479,737 for sums paid for experts in toxicology, metallurgy and testing necessary for the development of compliance standards;

5.2.2.2.3 No more than $492,500 for sums paid for legal counsel who participated in the mediation leading to this Consent Judgment. These sums shall be subject to the following limitations:

(a) $7,500 to each Initial Settling Vendor

(b) $10,000 to each Initial Retailer Settling Defendant whose counsel participated in the Retailers' Mediation Committee, as identified on Exhibit A.

(c) $2,500 to each other Initial Retailer Settling Defendant.

5.2.2.3 The funds identified Sections 5.2.2.2.1 and 5.2.2.2.2 shall be distributed to each Initial Settling Vendor and each Initial Retailer Settling Defendant per capita, or in such other manner as the Initial Settling Vendors and/or Initial Retailer Settling Defendants shall agree among themselves, provided that no Initial Settling Defendant may recover payments in excess of its actual Settlement Related Costs.

5.2.2.4 Within 15 days after receiving the last add-on payments, and no later than 45 days after notice of entry of the Consent Judgment, Defendants' Liaison Counsel shall remit to Lexington Law Group, LLP Attorney Client Trust Account any funds collected pursuant to Section 5.2.2 that exceed the cap of $1,065,729. Such excess funds shall be apportioned among the plaintiffs pursuant to Section 5.2.1.

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 to Reflect Add-On Defendants.** The Attorney General and Defendants' Liaison Counsel may jointly file with the Court an amended Consent Judgment that incorporates any modifications to Sections 1.2 and 5.2 and Exhibits A, E, and F reflecting the incorporation of Add-On Defendants to this Consent Judgment pursuant to the Stipulation for Entry of Judgment. The amended Consent Judgment shall be filed and served on all Parties. If no Party objects within 15 days of service thereof, the Court will enter the Amended Consent Judgment and this Consent Judgment will be deemed so amended.

6.3 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation is adopted that addresses the lead content of Covered Products sold in California, any Party shall be entitled to request that the court modify this Consent Judgment for good cause shown.

6.4 **Reopeners.** The Parties may seek to reopen the requirements of Section 3 as to Covered Products other than Children's Products as follows:

6.4.1 **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. The Attorney General, or AYS or 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, the

Attorney General, AYS, or CEH obtain 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.

6.4.2 **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.

6.4.3 **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:

6.4.3.1 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.

6.4.3.2 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.

6.5 **Extension of Shipping Compliance Date.** A Settling Defendant that is a Supplier may request an extension of any Shipping Compliance Date applicable to a Covered Product under Section 3 if the Supplier can demonstrate to the Attorney General that it cannot comply with the Shipping Compliance Date despite all commercially reasonable efforts to comply. Any extension provided pursuant to this Section shall be conditioned upon a showing that any retailers to whom the Supplier will sell the Covered Product will be able to comply with the applicable Final Compliance Date(s), and all such retailers shall be considered affected Parties under Section 6.6.

6.6 **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.

7. CLAIMS COVERED AND RELEASE

7.1 This Consent Judgment is a full, final, and binding resolution between the People, CEH, AYS, and Settling Defendants, their parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns ("Defendant Releasees"), and all entities to whom they distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65, Business & Professions Code sections 17200 et seq., or any other statutory or common law claims that have been or could have been asserted in the public interest or on behalf of the general public against Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure to chromium, lead, and nickel arising in connection with Covered Products manufactured, distributed, or sold by Settling Defendants prior to the Effective Date, or any claim based on the facts or conduct alleged in the Complaint, or facts similar to those alleged, whether based on actions committed by Settling Defendants, Defendant Releasees, or Downstream Defendant Releasees. Compliance with the terms of this Consent Judgment by Settling Defendants and Defendant Releasees, resolves any issue from the Effective Date into the future concerning compliance by Settling Defendants, Defendant Releasees and Downstream Defendant Releasees regarding failure to warn about exposure to chromium, lead, and nickel arising in connection with Covered Products manufactured, distributed or sold by Settling Defendants after the Effective Date. This Section shall not apply to any Supplier that is not a Settling Defendant unless such Supplier is a parent, subsidiary, or sister company of a Settling Defendant.

7.2 The People, CEH, and AYS, for themselves and acting on behalf of the public interest pursuant to Health and Safety Code § 25249.7(d) and the general public pursuant to Business and Professions Code § 17204, release, waive, and forever discharge any and all claims against each Settling Defendant, Defendant Releasee, and Downstream Defendant Releasee arising from any violation of Proposition 65, Business & Professions Code sections 17200 et seq., or any other statutory or common law claims that have been or could have been asserted in the public interest or on behalf of the general public regarding the failure to warn about exposure to

chromium, lead, and nickel arising in connection with Covered Products manufactured, distributed or sold by Settling Defendants prior to or after the Effective Date, or any claim based on the facts or conduct alleged in the Complaint, or facts similar to those alleged. This Section shall not apply to any Supplier that is not a Settling Defendant unless such Supplier is a parent, subsidiary, or sister company of a Settling Defendant.

7.3 A Covered Product sold by a Related Company identified on Exhibit A that complies with the standards set forth in Section 3.2 shall be deemed to be sold in compliance with the warning requirement of Proposition 65 for chromium, lead, and nickel.

7.4 Nothing in this Section 7 shall release, or in any way affect any rights that any Settling Defendant might have against any other party, whether or not that party is a Settling Defendant.

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 Exhibit F. 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 upon entry by the Court (the "Effective Date").

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.

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 was subject to revision and modification by the Parties and 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 section 1654.

11. ATTORNEY'S 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 attorney's 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, 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 attorney's 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. EXECUTION IN COUNTERPARTS

15.1 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: , 2006	**BILL LOCKYER** **ATTORNEY GENERAL** By _____ EDWARD G. WEIL SUPERVISING DEPUTY ATTORNEY GENERAL
Dated: , 2006	**CENTER FOR ENVIRONMENTAL HEALTH** By _____

In accordance with the terms of the Consent Judgment entered on February 21, 2006, as amended on this date pursuant to the People's Motion to Modify Consent Judgment,

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: JUN 1 5 2006

ROBERT FREEDMAN
Hon.
Judge of the Superior Court of the State of California

EXHIBIT B (CLASS 1, 2, AND 3 COMPONENTS AND BODY PIERCING JEWELRY)

CLASS 1 COMPONENTS

Stainless and surgical steels

Karat gold

Sterling silver

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

Natural and cultured pearls.

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

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.

Elastic, fabric, ribbon, rope, and string with no intentional lead and not otherwise listed as a Class 2 component.

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.

Adhesives

CLASS 2 COMPONENTS

COMPONENT	LEAD CONTENT LIMITS
Metal substrates that are electroplated	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 C. For Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in

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	California, and for products sold or offered for retail sale in California by a Settling Defendant 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 C.
Unplated metal not defined as Class 1 Components.	1.5%
Metal (plated and unplated) used in Children's Products	0.06% (600 ppm)
Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones, polyvinyl chloride (PVC))	0.06%, (600 ppm). For Covered Products shipped by a Settling Defendant that is a Supplier after December 31, 2008 to a third party for retail sale in California, and for products sold or offered for retail sale in California by a Settling Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead by weight
Dyes and Surface Coatings	0.06% (600 ppm)
Printing inks or ceramic glazes used in Children's Products	0.06% (600 ppm)
Glass or crystal decorative components used in Children's Products	Total weight no more than 1.0 gram, excluding glass or crystal decorative components that contain less than 0.02 percent (200 parts per million) lead and have no

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	intentionally added lead.

CLASS 3 COMPONENTS

Class 3 Components shall contain no more than 0.06% lead.

Class 3 Components used in Children's Products shall contain no more than 0.02% lead.

BODY PIERCING JEWELRY

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

- Surgical Implant Stainless Steel
- Surgical Implant grades of Titanium
- Niobium (Nb)
- Solid 14 karat or higher white or yellow nickel-free gold
- Solid platinum
- A dense low porosity plastic such as Tygon or PTFE with no intentionally added lead

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EXHIBIT C (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 D (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

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	samples. Weigh the scrapings. A minimum of 50 mg of scraped 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 D (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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