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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
UNLIMITED JURISDICTION

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

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Peninsula Beauty Supply, Inc. (“Defendant”), to settle certain claims asserted by CEH against Defendant as set forth in the operative 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, *People v. Burlington Coat*

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

2 1.3 On February 21, 2006, upon noticed motion, the Court entered a Consent Judgment  
3 against a group of other defendants in the consolidated actions (the “Master Consent Judgment”).

4 1.4 On June 15, 2006, upon noticed motion, the Court amended the Master Consent  
5 Judgment by entering an Amended Consent Judgment in the consolidated actions (the “Amended  
6 Master Consent Judgment”).

7 1.5 On February 12, 2007, CEH provided a “Notice of Violation of Proposition 65” to  
8 the California Attorney General, the District Attorneys of every county in California, the City  
9 Attorneys of every California city with a population greater than 750,000, and to Defendant  
10 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

11 1.6 On July 19, 2007, the Complaint in the *Nadri* Action was amended to name  
12 Defendant as a party.

13 1.7 Defendant is a corporation that employs 10 or more persons, and which  
14 manufactures, distributes and/or sells Covered Products in the State of California.

15 1.8 For purposes of this Consent Judgment only, CEH and Defendant (the “Parties”)  
16 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
17 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that  
18 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
19 Consent Judgment as a full and final resolution of all claims which were or could have been raised  
20 in the Complaint based on the facts alleged therein with respect to Covered Products  
21 manufactured, distributed, and/or sold by Defendant.

22 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement  
23 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,  
24 arising out of the facts or conduct related to Defendant alleged therein. By execution of this  
25 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or  
26 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or  
27 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable  
28 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be

1 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of  
2 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission  
3 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies  
4 the material, factual and legal allegations in CEH's Complaint and expressly denies any wrong  
5 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
6 remedy, argument or defense the Parties may have in this or any other pending or future legal  
7 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
8 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
9 disputed in this action.

## 10 **2. DEFINITIONS**

11 2.1 The term "Covered Product" means (a) the following ornaments worn by a person:  
12 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories,  
13 earring, necklace, pin, ring and Body Piercing Jewelry; or (b) any bead, chain, link, pendant, or  
14 other component of such an ornament.

15 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

## 16 **3. INJUNCTIVE RELIEF**

17 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall  
18 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product  
19 that contains:

20 3.1.1 Any component not covered under Sections 3.1.2 or 3.1.3, or that is made  
21 of any material not covered under Sections 3.1.2 or 3.1.3, that is more than 0.02 percent (200 parts  
22 per million ("ppm")) Lead by weight;

23 3.1.2 Any metal component, or is made of any metallic material, that is more  
24 than 0.03 percent (300 ppm) Lead by weight; and

25 3.1.3 Any Paint or Surface Coating that is more than 0.009 percent Lead by  
26 weight (90 ppm). For purposes of this Consent Judgment, "Paint or Surface Coating" shall carry  
27 the same meaning as "Paint or other similar surface coating" under 16 C.F.R. §1303.2(b)(1)  
28 ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,

1 with or without a suspension of finely divided coloring matter, which changes to a solid film when  
2 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This  
3 term does not include printing inks or those materials which actually become a part of the  
4 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
5 the substrate, such as by electroplating or ceramic glazing.”).

6           **3.2 Market Withdrawal of Covered Products.** On or before the Effective Date,  
7 Defendant shall cease shipping the “Recall Covered Products” identified in Section 3.2.1 herein to  
8 stores and/or customers in California, and Defendant shall withdraw the Recall Covered Products  
9 from the market in California, and, at a minimum, send instructions to any of its stores and/or  
10 customers that offer the Recall Covered Products for sale in California to cease offering such  
11 Recall Covered Products for sale and to either return all Recall Covered Products to Defendant for  
12 destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall  
13 Covered Products shall be in compliance with all applicable laws. Defendant shall keep and make  
14 available to CEH for inspection and copying records and correspondence regarding the market  
15 withdrawal and destruction of the Recall Covered Products. If there is a dispute over the  
16 corrective action, the Parties shall meet and confer before seeking any remedy in court

17           **3.2.1** The Recalled Covered Products are the following:

- 18           • Jodi Cosm. Medium Rhinestone Hair Clip, Item No. HAC011077, as  
19           identified in CEH’s pre-suit Notice of Violation to Defendant;
- 20           • Intuition by Smoothies Gem Round Floral Hair Clip, SKU No. 7-81580-  
21           00665-0;
- 22           • Updu Girl Breanna Belle Butterfly Hair Clip by 21<sup>st</sup> Century Girl, Inc.,  
23           Item No. HAC001624;
- 24           • Arabella Ring with Crystals, Item No. JEL002029;
- 25           • Smoothies Tube Bobby Pins, SKU No. 7-81580-00360-4;
- 26           • Two’s Company Brights Headband, Item Nos. 2036764 and 2036799;
- 27           • Escape From Paris Small Drop Earrings, Item No. 2036157;

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- Medusa’s Heirlooms Pony Tail Trap in Black, Item No. 2036085;
- Medusa’s Heirlooms Headband with Pearls, Item No. 2037877;
- Escape From Paris Bracelet with Black Cord, Item No. 2036165; and
- Ficare Blond Hair Clip, Item No. 2035741.

**4. ENFORCEMENT**

4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action, motion or order to show cause before the Superior Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment. Should the Party seeking to enforce prevail on any motion or application under this section, such Party shall be entitled to recover its reasonable attorneys’ fees and costs associated with such motion, order to show cause or procedure from the other Party.

**5. PAYMENTS**

5.1 **Payments From Defendant.** On or before July 15, 2010, Defendant shall pay the total sum of \$30,000 as a settlement payment.

5.2 **Allocation of Payments.** The total settlement amount for Defendant 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 Defendant shall pay the sum of \$1,000 as a 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 penalty check shall be made payable to the Center For Environmental Health.

5.2.2 Defendant shall pay the sum of \$9,500 as payment to CEH in lieu of penalty pursuant to 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

1 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
2 to monitor compliance with the reformulation requirements of this and other similar Consent  
3 Judgments, to purchase and test jewelry, and to prepare and compile the information and  
4 documentation necessary to support a Notice of Violation. In addition, as part of its Community  
5 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants  
6 to grassroots environmental justice groups working to educate and protect people from exposures  
7 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at  
8 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the  
9 Center For Environmental Health.

10                   5.2.3     Defendant shall pay the sum of \$19,500 as reimbursement of reasonable  
11 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable  
12 to the Lexington Law Group.

## 13     **6.     MODIFICATION AND DISPUTE RESOLUTION**

14             6.1     **Modification.** This Consent Judgment may be modified from time to time by  
15 express written agreement of the Parties, with the approval of the Court, or by an order of this  
16 Court upon motion and in accordance with law.

17             6.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
18 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
19 modify the Consent Judgment.

## 20     **7.     CLAIMS COVERED AND RELEASE**

21             7.1     This Consent Judgment is a full, final, and binding resolution between CEH and  
22 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
23 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other  
24 than those listed on Exhibit A of this Consent Judgment to whom they distribute or sell Covered  
25 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
26 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of  
27 Proposition 65 or any other statutory or common law claims that have been or could have been  
28 asserted in the public interest against Defendant, Defendant Releasees, and Downstream

1 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection  
2 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

3 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and  
4 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against  
5 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
6 of Proposition 65 or any other statutory or common law claims that have been or could have been  
7 asserted in the public interest regarding the failure to warn about exposure to lead arising in  
8 connection with Covered Products manufactured, distributed or sold by Defendant prior to the  
9 Effective Date.

10 7.3 Compliance with the terms of this Consent Judgment by Defendant and the  
11 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant  
12 Releasees and their Downstream Defendant Releasees with respect to any alleged failure to warn  
13 about lead in Covered Products manufactured, distributed or sold by Defendant after the Effective  
14 Date.

15 **8. PROVISION OF NOTICE**

16 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the  
17 notice shall be sent by certified mail and electronic mail as follows:

18 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices  
19 pursuant to this Consent Judgment shall be:

20 Charles S. Bronitsky  
21 Rice & Bronitsky  
22 350 Cambridge Ave., Suite 225  
23 Palo Alto, CA 94306  
24 cbronitsky@ricebronitsky.com

25 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
26 this Consent Judgment shall be:

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

1           8.2     Any Party may modify the person and address to whom the notice is to be sent by  
2 sending the other Party notice by certified mail and/or other verifiable form of written  
3 communication.

4           **9.     COURT APPROVAL**

5           9.1     This Consent Judgment shall become effective on the Effective Date, provided  
6 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
7 Defendant shall support approval of such Motion.

8           9.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
9 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

10          **10.    GOVERNING LAW AND CONSTRUCTION**

11          10.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
12 California.

13          **11.    ATTORNEYS' FEES**

14          11.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
15 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
16 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
17 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
18 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

19          11.2    Notwithstanding Section 11.1, a Party who prevails in a contested enforcement  
20 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of  
21 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
22 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
23 provision shall not be construed as altering any procedural or substantive requirements for  
24 obtaining such an award.

25          11.3    Nothing in this Section 11 shall preclude a Party from seeking an award of  
26 sanctions pursuant to law.

27          **12.    ENTIRE AGREEMENT**

28          12.1    This Consent Judgment contains the sole and entire agreement and understanding



1 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
2 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
3 and therein. There are no warranties, representations, or other agreements between the Parties  
4 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
5 other than those specifically referred to in this Consent Judgment have been made by any Party  
6 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
7 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
8 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
9 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
10 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
11 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
12 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
13 whether or not similar, nor shall such waiver constitute a continuing waiver.

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

17 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
20 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

21 **15. NO EFFECT ON OTHER SETTLEMENTS**


22 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
23 against an entity that is not Defendant on terms that are different than those contained in this  
24 Consent Judgment.

25 **16. EXECUTION IN COUNTERPARTS**

26 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
27 means of facsimile, which taken together shall be deemed to constitute one document.  
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IT IS SO STIPULATED:

Dated: May <u>20</u> , 2010	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>
	
	_____ CHARLIE PIZARRO
	Printed Name
	_____ ASSOCIATE DIRECTOR
	Title

Dated: May __, 2010	<b>PENINSULA BEAUTY SUPPLY, INC.</b>
	_____
	_____ Printed Name
	Title

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

Dated: \_\_\_\_\_  
Honorable Robert B. Freedman  
Judge of the Superior Court of the State of California

1 IT IS SO STIPULATED:

2 Dated: May \_\_, 2010

CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

12 Dated: May 20, 2010

PENINSULA BEAUTY SUPPLY, INC.

*[Handwritten Signature]*

Lori S. Silverstein

Printed Name

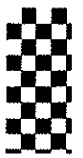
President / CEO -

Title

24 IT IS SO ORDERED, ADJUDGED,  
25 AND DECREED

26 Dated:

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



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**EXHIBIT A**  
**(LIST OF ENTITIES NOT SUBJECT**  
**TO DOWNSTREAM DEFENDANT RELEASE)**

1. Albertson’s LLC; Albertson’s, Inc.; New Albertson’s, Inc.
2. AZ3, Inc.
3. Banana Republic, LLC
4. Barnes & Noble, Inc.
5. BCBG Max Azria Group, Inc.
6. Big A Drug Stores, Inc.
7. Candela Sales Company, Inc.
8. Forum Novelties, Inc.
9. Georgiou Studio, Inc.
10. I Love Bracelets, Inc.
11. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
12. Jacadi USA, Inc.
13. Legoland California LLC
14. Lisa Kline, Inc.
15. Long Rap, Inc.
16. Marin Beauty Company
17. Max Rave, LLC
18. Rite Aid Corporation
19. Rubie’s Costume Company, Inc.
20. Safeway, Inc.
21. Scünci International, Inc.
22. Sea World, Inc.
23. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
24. Six Flags Theme Parks, Inc.