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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.,)	
Plaintiffs,)	(Consolidated with RG 04-162037, RG 04-
)	-169511)
vs.)	[PROPOSED] CONSENT JUDGMENT
)	AS TO SAVE MART SUPERMARKETS
BURLINGTON COAT FACTORY)	
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 Save Mart Supermarkets ("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 entitled *People v. Burlington Coat Factory et al.* (Alameda Superior Court Case No. RG 04-162075).

1 1.3 On February 21, 2006, upon noticed motion, the Court entered a Consent Judgment
2 against a group of other defendants in the consolidated actions (the "Master Consent Judgment").

3 1.4 On June 15, 2006, upon noticed motion, the Court amended the Master Consent
4 Judgment by entering an Amended Consent Judgment in the consolidated actions (the "Amended
5 Master Consent Judgment").

6 1.5 On April 27, 2007, CEH provided a "Notice of Violation of Proposition 65" to the
7 California Attorney General, the District Attorneys of every county in California, the City
8 Attorneys of every California city with a population greater than 750,000, and to Defendant
9 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

10 1.6 On July 19, 2007, the Complaint in the *Nadri* Action was amended to name
11 additional defendants as parties, including Defendant.

12 1.7 Defendant is a corporation that employs 10 or more persons, and which
13 manufactures, distributes and/or sells Covered Products in the State of California.

14 1.8 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
15 stipulate that this Court has jurisdiction over the allegations of violations contained in the
16 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
17 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
18 Consent Judgment as a full and final resolution of all claims which were or could have been raised
19 in the Complaint based on the facts alleged therein with respect to Covered Products
20 manufactured, distributed, and/or sold by Defendant.

21 1.9 CEH and Defendant enter into this Consent Judgment as a full and final settlement
22 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
23 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
24 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
25 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
26 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
27 requirements relating to lead in jewelry. Nothing in this Consent Judgment shall be construed as
28 an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor

1 shall compliance with the Consent Judgment constitute or be construed as an admission by the
2 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
3 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may
4 have in this or any other or future legal proceedings. This Consent Judgment is the product of
5 negotiation and compromise and is accepted by the Parties for purposes of settling, compromising,
6 and resolving issues disputed in this action.

7 1.10 CEH and Defendant intend, and the Court finds, that the injunctive terms contained
8 in Sections 2, 3.1 through 3.4, and 4 of this Consent Judgment are “substantially identical terms as
9 provided in Sections 2, 3 and 4 of the amended consent judgment,” as those terms are used in
10 Health & Safety Code §25214.3(d).

11 **2. DEFINITIONS**

12 2.1 The term “Person” shall have the same meaning as that term is defined in
13 California Health & Safety Code §25249.11(a).

14 2.2 The term “Covered Products” means (a) the following ornaments worn by a person:
15 an anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring,
16 necklace, pin, ring, and Body Piercing Jewelry, or (b) any bead, chain, link, pendant, or other
17 component of such an ornament.

18 2.3 The term “Body Piercing Jewelry” means any part of a Covered Product that is
19 manufactured or sold for placement in new piercings and/or mucous membranes, and does not
20 include those parts of Covered Products not placed within new piercings and/or mucous
21 membranes.

22 2.4 The term “Children’s Products” means Covered Products that are made for,
23 marketed for use by, or marketed to, Children.

24 2.4.1 For purposes of this Consent Judgment, the term “Children” means
25 children aged 6 and younger.

26 2.4.2 A Covered Product is made for, marketed for use by, or marketed to
27 Children if it is either:

28 2.4.2.1 Represented in its packaging, display, or advertising, as appropriate

1 for use by Children; or

2 2.4.2.2 Sold in conjunction with, attached to, or packaged together with
3 other products that are packaged, displayed, or advertised as appropriate for use by Children; or

4 2.4.2.3 Sized for Children and not intended for use by adults.

5 2.4.2.4 Sold in

6 2.4.2.4.1 a vending machine; or

7 2.4.2.4.2 a retail store, catalogue, or online website, in which

8 Defendant exclusively offers for sale products that are packaged,
9 displayed, or advertised as appropriate for use by Children; or

10 2.4.2.4.3 those discrete portions of a retail store, catalogue, or
11 online website, in which Defendant offers for sale products that are
12 packaged, displayed, or advertised as appropriate for use by
13 Children.

14 2.5 The term "Supplier" means a Person that directly supplies Covered Products that
15 are or will be offered for retail sale in California to Defendant.

16 2.6 Any time a measurement of lead content is referred to in this Consent Judgment by
17 a percentage, it means percent lead by weight.

18 2.7 The term "Effective Date" means the date this Consent Judgment is entered by the
19 Court.

20 **3. INJUNCTIVE RELIEF**

21 3.1 **Reformulation of Covered Products.** Subject to the Additional Injunctive Relief
22 agreed to by Defendant and described in Section 3.5, after the Effective Date, Defendant shall not:
23 (i) manufacture; (ii) ship; or (iii) sell or offer for sale Covered Products for retail sale in California
24 unless the Covered Product complies with Section 3.2 or, for Children's Products, Section 3.3 or,
25 for Body Piercing Jewelry, Section 3.4 of this Consent Judgment. Defendant shall provide the
26 requirements of this Consent Judgment to its Suppliers of Covered Products no later than the
27 Effective Date.

28 3.2 **Reformulation Requirements.** Covered Products that are not Children's Products

1 or Body Piercing Jewelry, shall be made entirely from Class 1, Class 2, and Class 3 Components,
2 or any combination thereof, as these terms are defined below.

3 3.2.1 A "Class 1 Component" is the portion of a Covered Product that contains
4 one or more of the following materials:

5 3.2.1.1 Stainless and surgical steels.

6 3.2.1.2 Karat gold.

7 3.2.1.3 Sterling silver.

8 3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium
9 ("platinum group metals").

10 3.2.1.5 Natural and cultured pearls.

11 3.2.1.6 Glass, ceramic, and crystal decorative components (e.g., cat's eye,
12 cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

13 3.2.1.7 Any gemstone that is cut and polished for ornamental purposes
14 except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
15 phosgenite, samarskite, vanadinite, and wulfenite.

16 3.2.1.8 Elastic, fabric, ribbon, rope, and string with no intentionally-added
17 lead and not otherwise listed as a Class 2 component.

18 3.2.1.9 Natural decorative materials (e.g., amber, bone, coral, feathers, fur,
19 horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add
20 lead.

21 3.2.1.10 Adhesives.

22 3.2.2 A "Class 2 Component" is the portion of a Covered Product that contains
23 one or more of the following materials:

24 3.2.2.1 Metal alloys with less than 10 percent lead by weight ("88 metal")
25 that are electroplated with suitable under and finish coats and that are plated utilizing the Best
26 Management Practices described in Exhibit B. For Covered Products shipped by Defendant as a
27 Supplier after December 31, 2008, to a third party for retail sale in California, and for Covered
28 Products sold or offered for retail sale in California by Defendant after August 31, 2009, this

1 standard shall be metal alloys with less than 6 percent lead by weight (“92 metal”) that are
2 electroplated with suitable under and finish coats and that are plated utilizing the Best
3 Management Practices described in Exhibit B.

4 3.2.2.2 Unplated metal containing less than 1.5 percent lead that is not
5 defined as a Class 1 Component.

6 3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and
7 polyvinyl chloride (PVC)) containing less than 0.06 percent (600 parts per million) lead. For
8 Covered Products shipped by Defendant as a Supplier after December 31, 2008, to a third party for
9 retail sale in California, and for Covered Products sold or offered for retail sale in California by
10 Defendant after August 31, 2009, this standard shall be no more than 0.02 percent (200 ppm) lead
11 by weight

12 3.2.2.4 Dyes and Surface Coatings containing less than 0.06 percent (600
13 parts per million) lead. For purposes of this Consent Judgment, “Surface Coating” shall carry the
14 same meaning as “Paint or other similar surface coating” under 16 CFR §1303.2(b)(1) (“Paint and
15 other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without
16 a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is
17 applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not
18 include printing inks or those materials which actually become a part of the substrate, such as the
19 pigment in a plastic article, or those materials which are actually bonded to the substrate, such as
20 by electroplating or ceramic glazing.”).

21 3.2.3 A “Class 3 Component” is any part of a Covered Product that is not a
22 Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent (600
23 parts per million) lead.

24 3.3 **Children’s Products.** Children’s Products shall be made entirely from:

25 3.3.1 Non-metallic materials that are Class 1 Components other than glass or
26 crystal decorative components;

27 3.3.2 Non-metallic materials that are Class 2 Components;

28 3.3.3 Metallic materials that are either Class 1 Components or contain less than

1 0.06 percent (600 parts per million) lead;

2 3.3.4 Glass or crystal decorative components that weigh in total no more than
3 1.0 gram, excluding any such glass or crystal decorative components that contain less than 0.02
4 percent (200 parts per million) lead and have no intentionally added lead.

5 3.3.5 Printing inks or ceramic glazes that contain less than 0.06 percent (600
6 parts per million) lead;

7 3.3.6 Class 3 Components that contain less than 0.02 percent (200 parts per
8 million) lead; or

9 3.3.7 Any combination thereof.

10 3.4 **Body Piercing Jewelry.** Body Piercing Jewelry shall be made of one of the
11 following materials:

12 3.4.1 Surgical Implant Stainless Steel

13 3.4.2 Surgical Implant grades of Titanium

14 3.4.3 Niobium (Nb)

15 3.4.4 Solid 14 karat or higher white or yellow nickel-free gold

16 3.4.5 Solid platinum

17 3.4.6 A dense low porosity plastic such as Tygon or PTFE with no intentionally
18 added lead.

19 3.5 **Additional Injunctive Relief.** Defendant shall comply with the following
20 additional injunctive relief in addition to that set forth in Sections 3.1 through 3.4:

21 3.5.1 **National Application of Reformulation Standards.** All Covered
22 Products manufactured, distributed, shipped or sold by Defendant within the United States shall
23 comply with the lead content requirements as set forth in Sections 3.2, 3.3, and 3.4 of this Consent
24 Judgment.

25 3.5.2 **Market Withdrawal of Covered Products.** On or before the Effective
26 Date, Defendant shall cease shipping the Expressions Metal and CZ Hair Clips, Manufacturer ID
27 No. 0-24576-77109-6, that was identified in the 60 Day Notice of Violation sent by CEH to
28 Defendant, to stores and/or customers in California, and Defendant shall withdraw such Covered

1 Product from the market in California, and, at a minimum, send instructions to any of its stores
2 and/or customers that offer such Covered Product for sale in California to cease offering such
3 Covered Product for sale in California and to either return all such Covered Products to Defendant
4 for destruction, or to directly destroy such Covered Product. Any destruction of such Covered
5 Product shall be in compliance with all applicable laws. Defendant shall keep and make available
6 to CEH for inspection and copying records and correspondence regarding the market withdrawal
7 and destruction of such Covered Products. If there is a dispute over the corrective action, the
8 Parties shall meet and confer before seeking any remedy in court.

9 **3.5.3 Supplier and Employee Training.** Within thirty days of the Effective
10 Date, Defendant shall retain a third party consulting or law firm to develop and implement the
11 following training programs: (1) a training seminar to be provided by such third party consulting
12 firm for its management level-employees that are responsible for acquisition and testing of
13 Covered Products on the requirements of this Consent Judgment, and (2) a training seminar to be
14 provided either by such third party consulting or law firm or by Defendant for its Suppliers of
15 Covered Products, to train and educate the Suppliers on the requirements of this Consent
16 Judgment. These seminars shall include training on compliance through reformulation with
17 confirmatory testing. The training seminar for employees and the materials used for the Supplier
18 training seminar must be approved in advance by Plaintiff. The training seminars may be live or
19 web-based.

20 **4. ENFORCEMENT**

21 **4.1 General Enforcement Provisions.** The Attorney General or CEH may, by motion
22 or application for an order to show cause before this Court, enforce the terms and conditions
23 contained in this Consent Judgment, subject to the following:

24 **4.1.1** Any action to enforce the terms of Section 3 of this Consent Judgment
25 shall be brought exclusively pursuant to this Section 4.

26 **4.1.2** No action to enforce this Consent Judgment may be brought by CEH
27 unless the Attorney General either joins in such action or provides written non-objection to the
28 proposed enforcement proceedings at the conclusion of the meet-and-confer requirement of

1 Section 4.2.4. The Attorney General agrees to provide either a written objection or written non-
2 objection to a proposed enforcement proceeding within 15 days of receipt of a written request for
3 such a response from CEH, provided that the Attorney General may extend such 15 day response
4 time by a single extension of an additional 15 days by writing to the requesting party. The fact
5 that the Attorney General provides a written non-objection shall not be construed as endorsement
6 of or concurrence in an enforcement action. Any written non-objection shall be admissible in
7 court only if Defendant challenges the right of CEH to enforce this Consent Judgment for failure
8 to obtain the written non-objection.

9 4.1.3 For purposes of this Section 4 only, the term "Defendant" includes a
10 Person that was a party to the Amended Master Consent Judgment or to a consent judgment that
11 contained "identical or substantially identical terms as provided in Sections 2, 3 and 4 of the
12 amended consent judgment," as those terms are used in Health & Safety Code §25214.3(d).

13 **4.2 Enforcement of Materials Violation.**

14 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
15 Date, the Attorney General or CEH ("Notifying Person") identifies one or more Covered Products
16 that the Notifying Person believes in good faith do not comply with Section 3 of this Consent
17 Judgment, the Notifying Person may issue a Notice of Violation pursuant to this Section 4.

18 **4.2.2 Service of Notice of Violation and Supporting Documentation.**

19 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
20 Section 6.5 to receive notices for Defendant, and must be served within 45 days of the date the
21 alleged violation(s) was or were observed. The Notice of Violation shall also be served on
22 Defendant as a Supplier of the Covered Products identified by Brand Names listed on Exhibit E to
23 the Amended Master Consent Judgment for the Covered Product(s) in question.

24 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
25 Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which
26 the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to
27 the alleged violation, and (d) all test data obtained by the Notifying Person regarding the Covered
28 Product and supporting documentation sufficient for validation of the test results, including all

1 laboratory reports, quality assurance reports and quality control reports associated with testing of
2 the Covered Products. Such Notice of Violation shall be based upon test data that meets the
3 criteria of Exhibit C. Wipe, swipe, and swab testing are not sufficient to support a Notice of
4 Violation.

5 4.2.2.3 The Notifying Person shall promptly make available for inspection
6 and/or copying upon request all supporting documentation related to the testing of the Covered
7 Products and associated quality control samples, including chain of custody records, all laboratory
8 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
9 printouts from all analytical instruments relating to the testing of Covered Product samples and
10 any and all calibration, quality assurance, and quality control tests performed or relied upon in
11 conjunction with the testing of the Covered Products, obtained by or available to the Notifying
12 Person that pertains to the Covered Product's alleged noncompliance with Section 3 and, if
13 available, any exemplars of Covered Products tested.

14 4.2.3 **Notice of Election of Response.** No more than 30 days after receiving a
15 Notice of Violation, Defendant shall provide written notice to the Notifying Person whether it
16 elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

17 4.2.3.1 If a Notice of Violation is contested the Notice of Election shall
18 include all then-available documentary evidence regarding the alleged violation, including all test
19 data, if any. If Defendant or the Notifying Person later acquires additional test or other data
20 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
21 information to the party. Any test data used to rebut a Notice of Violation shall meet the criteria
22 of Exhibit C.

23 4.2.3.2 If a Notice of Violation is not contested, the Notice of Election shall
24 include a description of Defendant's corrective action pursuant to Section 4.2.6. The Notice of
25 Election shall include the name, address, telephone number, and other contact information, of
26 Defendant's Supplier(s) of each Covered Product identified in the Notice of Violation, and any
27 other Defendant to whom it sold any Covered Product(s) identified in the Notice of Violation.

28 4.2.4 **Meet and Confer.** If a Notice of Violation is contested, the Notifying

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

10 **4.2.5 Non-Contested Matters.** If Defendant elects not to contest the
11 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
12 and shall make any contributions required by Section 4.2.7.

13 **4.2.6 Corrective Action in Non-Contested Matters.** If Defendant elects not to
14 contest the allegation, it shall include in its Notice of Election a detailed description of corrective
15 action that it has undertaken or proposes to undertake to remove the Covered Product(s) identified
16 in the Notice of Violation for sale in California. Corrective action must include instructions to
17 Defendant's stores to cease offering the Covered Product(s) identified in the Notice of Violation
18 for sale in California as soon as practicable. Defendant shall make available to the Notifying
19 Person for inspection and/or copying records and correspondence regarding the corrective action.
20 If there is a dispute over the corrective action, the Parties shall meet and confer pursuant to Section
21 4.2.4 before seeking any remedy in court.

22 **4.2.7 Required Contributions to Proposition 65 Jewelry Testing Fund in**
23 **Non-Contested Matters.** Defendant shall be required to make a contribution to the Proposition
24 65 Jewelry Testing Fund established by the Amended Master Consent Judgment as specified
25 below:

26 **4.2.7.1** If Defendant serves a Notice of Election not to contest the
27 allegations in a Notice of Violation within 15 days of receipt of the Notice of Violation, it shall not
28 be required to make any contributions pursuant to this Section.

1 4.2.7.2 If Defendant serves a Notice of Election not to contest the
2 allegations in a Notice of Violation more than 15 days but less than 31 days after receipt of the
3 Notice of Violation, Defendant shall make a required contribution in the amount of \$2,500 for
4 each Supplier from whom it purchased the Covered Product(s) identified in any Notices of
5 Violation served within a 30-day period.

6 4.2.7.3 If Defendant withdraws a Notice of Election contesting the violation
7 and serves a new Notice of Election not to contest the allegations in a Notice of Violation within
8 60 days after receipt of the Notice of Violation, and before any enforcement action concerning the
9 violations alleged in the Notice of Violation is filed, Defendant shall make a required contribution
10 in the amount of \$7,500 for each Supplier from whom it purchased the Covered Product(s)
11 identified in any Notices of Violation served within a 30-day period.

12 4.2.7.4 The contributions shall be paid within 15 days of service of a Notice
13 of Election.

14 4.2.7.5 Defendant's liability for required contributions shall be limited as
15 follows:

16 4.2.7.5.1 Defendant as a Supplier to one or more retailers shall
17 be liable for one required contribution within any 30-day period,
18 regardless of the number of retailers to whom the Covered Product
19 is distributed.

20 4.2.7.5.2 If Defendant has manufactured, sold, or distributed a
21 Covered Product identified in a Notice of Violation, only one
22 required contribution may be assessed against the Defendant
23 potentially liable therefore in any 30-day period, in the following
24 order of priority: (1) Manufacturers; (2) Importers; (3) Distributors,
25 and (4) Retailers.

26 4.2.7.5.3 Defendant's monetary liability to make required
27 contributions under Section 4.2.7.2 shall be limited to \$5,000 for
28 each 30-day period. Defendant's monetary liability to make

1 required contributions under Section 4.2.7.3 shall be limited to
2 \$15,000 for each 30-day period.

3 4.2.7.6 If Defendant has paid either of the payments set forth in Sections
4 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
5 12-month period for Covered Products sold to Defendant from the same Supplier then, at the
6 Notifying Person's option, the Notifying Person may seek whatever fines, costs, penalties, or
7 remedies are provided by law for failure to comply with the Consent Judgment.

8 4.2.8 **Limitation on Liability.** Defendant's liability when it elects not to
9 contest a Notice of Violation shall be limited to the contributions required by Section 4.2.7.

10 **5. PAYMENTS**

11 5.1 **Payments From Defendant.** Within seven days of the entry of this Consent
12 Judgment, Defendant shall pay the total sum of \$45,000 as a settlement payment. Any failure by
13 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee in the
14 amount of \$100 for each day after the delivery date the payment is received. The late fees
15 required under this section shall be recoverable, together with reasonable attorneys' fees, by way
16 of motion to enforce this Consent Judgment.

17 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
18 in three separate checks delivered to the offices of the Lexington Law Group, LLP (Attn: Eric
19 Somers), 1627 Irving Street, San Francisco, California 94122, and made payable and allocated as
20 follows:

21 5.2.1 Defendant shall pay the sum of \$1,000 as a civil penalty pursuant to
22 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with
23 Health & Safety Code §25249.12. The \$1,000 penalty check shall be made payable to the Center
24 For Environmental Health.

25 5.2.2 Defendant shall pay the sum of \$14,500 as payment to CEH in lieu of
26 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
27 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
28 exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such

1 funds to monitor compliance with the reformulation requirements of this and other similar Consent
2 Judgments, to purchase and test jewelry, and to prepare and compile the information and
3 documentation necessary to support a Notice of Violation. The payment in lieu of penalty check
4 shall be made payable to the Center For Environmental Health.

5 5.2.3 Defendant shall pay the sum of \$29,500 as reimbursement of reasonable
6 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable
7 to the Lexington Law Group, LLP.

8 **6. MODIFICATION AND DISPUTE RESOLUTION**

9 6.1 **Modification.** This Consent Judgment may be modified from time to time by
10 express written agreement of the Parties, with the approval of the Court, or by an order of this
11 Court upon motion and in accordance with law.

12 6.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation is
13 adopted that addresses the lead content of Covered Products sold in California, any Party shall be
14 entitled to request that the Court modify this Consent Judgment for good cause shown.

15 6.3 **Modification of Amended Master Consent Judgment.** Upon the entry of any
16 order amending Sections 2, 3 or 4 of the Amended Master Consent Judgment, the corresponding
17 terms of Sections 2, 3.1 through 3.4, or 4 of this Consent Judgment shall be deemed amended, so
18 that the injunctive terms contained in Sections 2, 3.1 through 3.4, or 4 of this Consent Judgment
19 remain "substantially identical terms as provided in Sections 2, 3 and 4 of the amended consent
20 judgment," as those terms are used in Health & Safety Code §25214.3(d). Defendant's obligation
21 to undertake additional injunctive relief under Section 3.5 of this Consent Judgment shall not be
22 subject to amendment under this section, and may not be modified absent stipulation of the parties
23 or court order.

24 6.4 **Reopeners.** The Parties may seek to reopen the requirements of Section 3 as to
25 Covered Products other than Children's Products as follows:

26 6.4.1 **Limited Reopener of Component Designation for Certain**
27 **Components.** The parties acknowledge that the materials described in Sections 3.2.1.8 and
28 3.2.1.9 are not generally known to contain or expose users to lead and, as such, have been

1 Save Mart Supermarkets
2 1800 Standiford Avenue
3 P.O. Box 3689
4 Modesto CA 95352

5 With a copy to:

6 James Robert Maxwell
7 Rogers Joseph O'Donnell
8 311 California Street
9 San Francisco, CA 94104
10 Tel: (415) 365-5376 / Fax: (415) 956-6457
11 jmaxwell@rjo.com

12 6.5.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
13 this Consent Judgment, until and unless modified pursuant to Section 8, shall be:

14 Eric S. Somers
15 Lexington Law Group, L.L.P.
16 1627 Irving Street
17 San Francisco, California 94122
18 Tel: (415) 759-4111 / Fax: (415) 759-4112
19 esomers@lexlawgroup.com

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 their parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
23 companies and their successors and assigns ("Defendant Releasees"), and all entities other than
24 those listed on Exhibit D to 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
29 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection
30 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

31 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
32 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
33 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation

1 of Proposition 65 or any other statutory or common law claims that have been or could have been
2 asserted in the public interest regarding the failure to warn about exposure to lead arising in
3 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
4 Effective Date, or any claim based on the facts or conduct alleged in the Complaint.

5 7.3 Compliance with the terms of this Consent Judgment by Defendant and its
6 Defendant Releasees shall constitute compliance with Proposition 65 by that Defendant, its
7 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
8 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant
9 after the Effective Date.

10 7.4 Nothing in this Section 7 shall apply to any Supplier that is not Defendant unless
11 such Supplier is a parent, subsidiary, or sister company of Defendant.

12 7.5 Nothing in this Section 7 shall release, or in any way affect any rights that
13 Defendant might have against any other party, whether or not that party is a settling defendant in
14 the captioned litigation or any related case.

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 to the Party(ies) identified in Section 6.5.
18 Any party may modify the person and address to whom the notice is to be sent by sending each
19 other party notice by certified mail and/or other verifiable form of written communication.

20 **9. COURT APPROVAL**

21 9.1 This Consent Judgment shall become effective on the Effective Date, provided
22 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
23 Defendant shall support approval of such Motion.

24 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
25 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

26 **10. GOVERNING LAW AND CONSTRUCTION**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California.

1 10.2 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment has been accepted and approved as to its final form by all Parties and their
4 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
5 interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.
6 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that
7 ambiguities are to be resolved against the drafting Party should not be employed in the
8 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
9 Civil Code §1654.

10 **11. ATTORNEYS' FEES**

11 11.1 A party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs
13 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent
14 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
15 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

16 11.2 Notwithstanding Section 11.1, a party who prevails in a contested enforcement
17 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
18 Civil Procedure §1021.5 against a party that acted with substantial justification. The party seeking
19 such an award shall bear the burden of meeting all of the elements of §1021.5, and this provision
20 shall not be construed as altering any procedural or substantive requirements for obtaining such an
21 award.

22 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
23 sanctions pursuant to law.

24 **12. ENTIRE AGREEMENT**

25 12.1 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
28 and therein. There are no warranties, representations, or other agreements between the Parties

1 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
2 other than those specifically referred to in this Consent Judgment have been made by any Party
3 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
4 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
5 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
6 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
7 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
8 nor shall such waiver constitute a continuing waiver.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

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

13 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
14 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
15 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

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

17 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
18 against an entity that is not Defendant on terms that are different than those contained in this
19 Consent Judgment.

20 **16. EXECUTION IN COUNTERPARTS**


21 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
22 means of facsimile, which taken together shall be deemed to constitute one document.

23 IT IS SO STIPULATED:
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Dated: October 9, 2008

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Printed Name

Executive Director
Title

Dated: October __, 2008

SAVE MART SUPERMARKETS

Printed Name

Title

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

Dated:

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

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Dated: October __, 2008

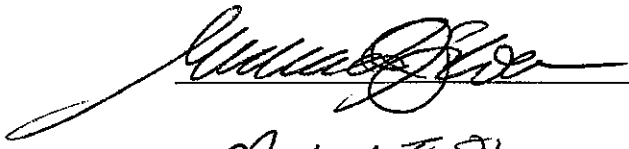
CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

Dated: October 28, 2008

SAVE MART SUPERMARKETS



Printed Name
Michael J. Silvana

Title
S.V.P. - C.A.O.

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

Dated:

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

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

2 **CLASS 1 COMPONENTS**

3 Stainless and surgical steels

4 Karat gold

5 Sterling silver

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

7 Natural and cultured pearls.

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

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

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

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

17 Adhesives

18 **CLASS 2 COMPONENTS**

19 COMPONENT	20 LEAD CONTENT LIMITS
21 Metal substrates that are electroplated	22 Metal alloys with less than 10 percent 23 lead by weight ("88 metal") that are 24 electroplated with suitable under and finish 25 coats and that are plated utilizing the Best 26 Management Practices described in Exhibit B. 27 For Covered Products shipped by Defendant as 28 a Supplier after December 31, 2008 to a third party for retail sale in California, and for

1		products sold or offered for retail sale in
2		California by Defendant after August 31, 2009,
3		this standard shall be metal alloys with less
4		than 6 percent lead by weight ("92 metal") that
5		are electroplated with suitable under and finish
6		coats and that are plated utilizing the Best
7		Management Practices described in Exhibit B.
8	Unplated metal not defined as Class 1	1.5%
9	Components.	
10	Metal (plated and unplated) used in	0.06% (600 ppm)
11	Children's Products	
12	Plastic/Rubber (e.g., acrylic,	0.06%, (600 ppm). For Covered
13	polystyrene, plastic beads/stones, polyvinyl	Products shipped by Defendant as a Supplier
14	chloride (PVC))	after December 31, 2008 to a third party for
15		retail sale in California, and for products sold
16		or offered for retail sale in California by
17		Defendant after August 31, 2009, this standard
18		shall be no more than 0.02 percent (200 ppm)
19		lead by weight
20	Dyes and Surface Coatings	0.06% (600 ppm)
21	Printing inks or ceramic glazes used in	0.06% (600 ppm)
22	Children's Products	
23	Glass or crystal decorative components	Total weight no more than 1.0 gram,
24	used in Children's Products	excluding glass or crystal decorative
25		components that contain less than 0.02 percent
26		(200 parts per million) lead and have no
27		intentionally added lead.

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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

1 shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid
2 copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between
3 plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite,
4 imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces
5 can be treated to produce other finishes such as matt, oxidized, or smut black finishes.

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

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EXHIBIT C (TESTING PROTOCOLS)

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

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

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

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

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COMPONENT	NOTES AND EXCEPTIONS
Metals plated with suitable undercoats and finish coats	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.1% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Unplated metal and metal substrates not defined as Class 1 Components.	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be 0.050 g to 1 g. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.01% for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Polyvinyl chloride (PVC)	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion, and should be chopped or comminuted prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Non-PVC Plastic/Rubber (e.g., acrylic, polystyrene, plastic beads/stones).	Digestion using hot concentrated nitric acid with optional hydrochloric acid and optional hydrogen peroxide. Sample size should be a minimum of 0.05 g if using microwave digestion or 0.5 if using hot plate digestion and should be chopped or comminuted prior to digestion. Plastic beads or stones should be crushed prior to digestion. Digested samples may require dilution prior to analysis. Digestion and analysis should achieve a reported detection limit no greater than 0.001% (10 ppm) for samples. Any necessary dilutions shall be made to assure that measurements are made within the calibrated range of the analytical instrument.
Coatings on Glass and Plastic Pearls.	The coating of glass or plastic beads should be scraped onto a surface free of dust, such as a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The razor blade or sharp instrument should be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples. Weigh the scrapings. A minimum of 50 mg of scraped

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	<p>coating should be used for analysis. If less than 50 mg of scraped coating is obtained from an individual pearl, then multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount. The number of pearls used to make the composite must be noted. Avoid inclusion of the substrate pearl material in the scrapings. Digest the scrapings according to USEPA Method 3050B or 3051 or equivalent procedure for hot acid digestion in preparation for trace lead analysis. Dilute the digestate in the minimum volume practical for analysis. Analyze the digested sample according to specification of Exhibit C (approved, validated methodology for inductively-coupled plasma mass spectrometry). A reporting limit of 0.001% (10 ppm) in the coating must be obtained for the analysis. The sample result must be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, then the sample must be diluted and re-analyzed within the calibrated range of the instrument.</p>
<p>Dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, crystal</p>	<p>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.</p> <p>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.</p>
<p>Glass and crystal used in Children's Products (for weight)</p>	<p>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.</p>

EXHIBIT D

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

1. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
2. A-List, Inc. dba Kitson
3. Amiee Lynn, Inc.
4. AZ3, Inc.
5. BCBG Max Azria Group, Inc.
6. Beena Beauty Holding, Inc.
7. Big A Drug Stores, Inc.
8. Busch Entertainment Corporation
9. Charles Gantt dba Country Clutter
10. Conair Corporation
11. Cousin Corporation of America
12. Creative Visions, Inc. dba Country Clutter
13. Elite Distributing Company dba Edco
14. Estée Lauder Inc.; The Estée Lauder Companies Inc.
15. Furla (U.S.A.) Incorporated
16. Georgiou Studio, Inc.
17. Goody Products, Inc.
18. Hand & Mind, Inc.
19. Hayun Fashion Investments Corporation dba Planet Funk
20. I Love Bracelets, Inc.
21. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
22. Jacadi USA, Inc.
23. La-Kontra
24. Learning Express, Inc.
25. Legoland California LLC
26. Lisa Kline, Inc.
27. Long Rap, Inc..

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- 28. Mango
- 29. Marin Beauty Company
- 30. Max Rave, LLC
- 31. Maxfield, Inc.
- 32. Peninsula Beauty Supply, Inc.
- 33. Peter David, Inc.
- 34. Planet Beauty, Inc.
- 35. Raley's
- 36. Rite Aid Corporation
- 37. Safeway Inc.
- 38. Scünci International, Inc.
- 39. Sea World, Inc.
- 40. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 41. Six Flags Theme Parks, Inc.
- 42. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 43. Venus Fashion Jewelry
- 44. Whole Foods Market California, Inc.; Whole Foods Market, Inc.