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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] AMENDED CONSENT
) JUDGMENT AS TO PLANET
BURLINGTON COAT FACTORY) BEAUTY, INC. AND BEENA
WAREHOUSE CORPORATION, et al,) BEAUTY HOLDING, INC.
)
Defendants.)
)
)
)
)
AND RELATED CONSOLIDATED CASES.)
)

1. INTRODUCTION

1.1 This Amended Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Planet Beauty, Inc. and Beena Beauty Holding, Inc. (collectively, the “Settling Defendants”), to settle certain claims asserted by CEH against Settling Defendants 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

1 later consolidated with three other actions including the lead case entitled *People v. Burlington*
2 *Coat Factory et al.* (Alameda Superior Court Case No. RG 04-162075).

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

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

8 1.5 On June 28, 2007, CEH provided a "Notice of Violation of Proposition 65" to the
9 California Attorney General, the District Attorneys of every county in California, the City
10 Attorneys of every California city with a population greater than 750,000, and to Planet Beauty,
11 Inc. and Beena Beauty Holding, Inc., regarding the presence of lead in jewelry manufactured,
12 distributed or sold by Settling Defendants.

13 1.6 On November 8, 2007, the complaint in the *Nadri* Action was amended to name
14 additional defendants, including Planet Beauty, Inc. and Beena Beauty Holding, Inc. (the Fourth
15 Amended Complaint in the *Nadri* Action is herein referred to as the "Complaint").

16 1.7 Settling Defendants are corporations that employ 10 or more persons, and which
17 manufacture, distribute and/or sell Covered Products in the State of California.

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

25 1.9 CEH and Settling Defendants enter into this Consent Judgment as a full and final
26 settlement of all claims that were raised in the Complaint, or which could have been raised in the
27 Complaint, arising out of the facts or conduct related to Settling Defendants alleged therein. By
28 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not

1 admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law
2 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
3 or equitable requirements relating to lead in jewelry. Nothing in this Consent Judgment shall be
4 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
5 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
6 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
7 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the
8 Parties may have in this or any other or future legal proceedings. This Consent Judgment is the
9 product of negotiation and compromise and is accepted by the Parties for purposes of settling,
10 compromising, and resolving issues disputed in this action.

11 **2. DEFINITIONS**

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

16 2.2 The term "Effective Date" means the date this Consent Judgment is entered by the
17 Court.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** After the Effective Date, Settling
20 Defendants shall not manufacture, ship, or sell or offer for sale any Covered Product within the
21 United States that contains any component, or is made of any material, that contains more than
22 0.01 percent lead by weight (100 ppm). Any determination of lead content of a Covered Product
23 under this Consent Judgment shall be conducted pursuant to the Test Protocols set forth in Exhibit
24 A.

25 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
26 Settling Defendants shall cease shipping (1) the Metal and CZ Owl Necklace, Item No. 435, which
27 was identified in the 60-Day Notice of Violation sent by CEH to Settling Defendants, and (2) the
28 Pave Hair Clips, Manufacturer ID No. 7-81580-00671-1 (the "Recall Products"), to stores and/or

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

10 **4. ENFORCEMENT**

11 4.1 CEH may, by motion or application for an order to show cause before the Superior
12 Court of the County of Alameda, enforce the terms and conditions contained in this Consent
13 Judgment. Should CEH prevail on any motion or application under this section, CEH shall be
14 entitled to recover its reasonable attorneys' fees and costs associated with such motion or
15 application.

16 **5. PAYMENTS**

17 5.1 **Payments From Settling Defendants.** Within five days of the entry of this
18 Consent Judgment, Settling Defendants shall pay the total sum of \$35,000 as a settlement
19 payment.

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

24 5.2.1 Settling Defendants shall pay the sum of \$1,000 as a penalty pursuant to
25 Health & Safety Code §25249.7(b),

26 5.2.2 Settling Defendants shall pay the sum of \$11,200 as payment to CEH in
27 lieu of penalty pursuant to Health & Safety Code §25249.7(b), and California Code of
28 Regulations, title 11, §3202(b). CEH will use such funds to continue its work educating and

1 protecting people from exposures to toxic chemicals, including heavy metals. In addition, CEH
2 may use a portion of such funds to monitor and enforce compliance with the reformulation
3 requirements of this and other similar Consent Judgments. The payment in lieu of penalty check
4 shall be made payable to the Center For Environmental Health.

5 5.2.3 Settling Defendants shall pay the sum of \$22,800 as reimbursement of
6 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be
7 made payable 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 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
13 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
14 modify the Consent Judgment.

15 **7. CLAIMS COVERED AND RELEASE**

16 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
17 Settling Defendants and their parents, shareholders, divisions, subdivisions, subsidiaries, partners,
18 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other
19 than those listed on Exhibit B of this Consent Judgment to whom they distribute or sell Covered
20 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
21 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of
22 Proposition 65 or any other statutory or common law claims that have been or could have been
23 asserted in the public interest against Settling Defendants, Defendant Releasees, and Downstream
24 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection
25 with Covered Products manufactured, distributed, or sold by Settling Defendants prior to the
26 Effective Date.

27 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
28 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against

1 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
2 violation of Proposition 65 or any other statutory or common law claims that have been or could
3 have been asserted in the public interest regarding the failure to warn about exposure to lead
4 arising in connection with Covered Products manufactured, distributed or sold by Settling
5 Defendants prior to the Effective Date.

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

11 **8. PROVISION OF NOTICE**

12 8.1 When any party is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by certified mail and electronic mail as follows:

14 8.1.1 **Notices to Settling Defendants.** The person for Settling Defendants to
15 receive Notices pursuant to this Consent Judgment shall be:

16 Houman Fakhimi
17 Fakhimi & Associates
18 3 Hutton Centre Drive, Suite 620
19 Santa Ana, California 92707
Tel: (714) 542-2188 / Fax: (714) 542-3119
hfakhimi@lawhf.com

20 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
21 this Consent Judgment shall be:

22 Eric S. Somers
23 Lexington Law Group, L.L.P.
24 1627 Irving Street
25 San Francisco, California 94122
Tel: (415) 759-4111 / Fax: (415) 759-4112
esomers@lexlawgroup.com

26 8.2 Any party may modify the person and address to whom the notice is to be sent by
27 sending each other party notice by certified mail and/or other verifiable form of written
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1 communication.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective on the Effective Date, provided
4 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
5 Settling Defendants shall support approval of such Motion.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
7 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8 **10. GOVERNING LAW AND CONSTRUCTION**

9 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California.

11 10.2 The Parties, including their counsel, have participated in the preparation of this
12 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
13 Consent Judgment has been accepted and approved as to its final form by all Parties and their
14 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
15 interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.
16 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that
17 ambiguities are to be resolved against the drafting Party should not be employed in the
18 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
19 Civil Code §1654.

20 **11. ENTIRE AGREEMENT**

21 11.1 This Consent Judgment contains the sole and entire agreement and understanding
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
24 and therein. There are no warranties, representations, or other agreements between the Parties
25 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
26 other than those specifically referred to in this Consent Judgment have been made by any Party
27 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
28 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,

1 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
2 Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
3 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
4 nor shall such waiver constitute a continuing waiver.

5 **12. RETENTION OF JURISDICTION**

6 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

9 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
10 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
11 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

12 **14. NO EFFECT ON OTHER SETTLEMENTS**

13 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
14 against an entity that is not Settling Defendants on terms that are different than those contained in
15 this Consent Judgment.

16 **15. EXECUTION IN COUNTERPARTS**

17 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
18 means of facsimile, which taken together shall be deemed to constitute one document.

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20 IT IS SO STIPULATED:

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Dated: ~~November~~ __, 2008
May 22, 2009

CENTER FOR ENVIRONMENTAL HEALTH



CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: November __, 2008

PLANET BEAUTY, INC.

Printed Name

Title

Dated: March __, 2009

BEENA BEAUTY HOLDING, INC.

Printed Name

Title

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Dated: November __, 2008


CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

Dated: ~~November __, 2008~~
4-27-2009

PLANET BEAUTY, INC.



Bahman Fakhimi


Printed Name

pres.

Title

Dated: ~~March __, 2009~~
4-27

BEENA BEAUTY HOLDING, INC.



Bahman Fakhimi

Printed Name

pres.

Title

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

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3 Dated:

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

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1 **EXHIBIT A (TESTING PROTOCOLS)**

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

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

21 All jewelry components samples shall be prepared for testing in accordance with USEPA
22 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 A (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>

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EXHIBIT B
(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. Big A Drug Stores, Inc.
7. Busch Entertainment Corporation
8. Conair Corporation
9. Cousin Corporation of America
10. Creative Visions, Inc. dba Country Clutter
11. Elite Distributing Company dba Edco
12. Furla (U.S.A.) Incorporated
13. Georgiou Studio, Inc.
14. Goody Products, Inc.
15. Hand & Mind, Inc.
16. Hayun Fashion Investments Corporation dba Planet Funk
17. I Love Bracelets, Inc.
18. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
19. Jacadi USA, Inc.
20. La-Kontra
21. Legoland California LLC
22. Lisa Kline, Inc.
23. Long Rap, Inc.
24. Mango
25. Marin Beauty Company
26. Max Rave, LLC
27. Peter David, Inc.

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- 28. Raley's
- 29. Rite Aid Corporation
- 30. Safeway Inc.
- 31. Scünci International, Inc.
- 32. Sea World, Inc.
- 33. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 34. Six Flags Theme Parks, Inc.
- 35. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 36. Venus Fashion Jewelry
- 37. Whole Foods Market California, Inc.; Whole Foods Market, Inc.