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

Coordination Proceeding Special Title:)	Lead Case No. JCCP 4666
PROPOSITION 65 JEWELRY CASES)	Consolidated with Case Nos.
)	RG 10-514803 (<i>CEH v. Aeropostale</i>)
)	RG 10-545680 (<i>CEH v. Two's Company</i>)
This Document Relates To:)	RG 10-545687 (<i>CEH v. Cara</i>)
)	RG 12-620105 (<i>CEH v. Gags and Games</i>)
<i>Center for Environmental Health v. Nadri, et al.</i> , Case No. RG 06-269531)	ASSIGNED FOR ALL PURPOSES TO:
)	Judge Steven A. Brick, Department 17
<i>Center for Environmental Health v. Forum Novelties, Inc., et. al.</i> , Case No. RG 11-574481)	[PROPOSED] CONSENT JUDGMENT
)	
<i>Center for Environmental Health v. Gags and Games, Inc., et. al.</i> , Case No. RG 12-620105)	

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), on the one hand, and defendants Rubie’s Costume Company, Inc. (“Rubie’s”), Forum Novelties Company, Inc. (“Forum”) and the companies listed with Rubie’s and Forum on Exhibit A attachments (collectively with Rubie’s and Forum, the “Settling Defendants”), on the other hand, to settle certain claims asserted by CEH against Settling Defendants as set forth in the operative Complaints in *Center for Environmental Health v. Nadri,*

1 *et al.*, Case No. RG 06-26953, *Center for Environmental Health v. Forum Novelties, Inc., et al.*,
2 Case No. RG 11-574481, and *Center for Environmental Health v. Gags and Games, Inc., et al.*,
3 Case No. RG 12-620105. The Exhibit A attachments identify the specific case or cases to which
4 each Settling Defendant is a party.

5 1.2 Beginning on November 20, 2008, CEH served multiple 60-Day Notices of
6 Violation under Proposition 65 alleging that Settling Defendants violated Proposition 65 by
7 exposing persons to cadmium and/or lead and lead compounds (collectively, “Lead”) contained in
8 jewelry, without first providing a clear and reasonable warning pursuant to Proposition 65.

9 1.3 Each Settling Defendant is a corporation that manufactures, distributes and/or
10 sells Covered Products (as defined herein) in the State of California, or has done so in the past.

11 1.4 For purposes of this Consent Judgment only, CEH and Settling Defendants (the
12 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
13 the operative Complaint applicable to each Settling Defendant and personal jurisdiction over
14 Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County of
15 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

16 1.5 In executing this Consent Judgment, Settling Defendants expressly maintain that
17 their manufacture, distribution and/or sale of Covered Products as defined in Section 2.3 below
18 has at all times complied with all applicable laws including Proposition 65 (California Health &
19 Safety Code sections 25249.5, *et seq.*). In executing this Consent Judgment, CEH maintains that
20 there is a real controversy underlying this lawsuit because Settling Defendants have in the past
21 violated Proposition 65 in connection with their sale of Covered Products. By execution of this
22 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
23 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
24 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
25 requirements relating to cadmium or Lead in jewelry. Nothing in this Consent Judgment is or
26 shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or
27 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an
28 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing

1 in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
2 the Parties may have in this or any other pending or future legal proceedings. This Consent
3 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for
4 purposes of settling, compromising, and resolving issues disputed in this action. Other than for
5 enforcement of its terms between the parties, this Consent Judgment shall not be admissible in any
6 other legal proceeding for any purpose.

7 1.6 In executing this Consent Judgment, Rubie's and Forum maintain and represent
8 that that they have for years had a Proposition 65 compliance testing program for all of their
9 Covered Products.

10 **2. DEFINITIONS**

11 2.1 The term "Cadmium Limit" means a concentration of 0.03 percent (300 parts per
12 million ("ppm")) by weight cadmium in any component of a Covered Product, or in any material
13 used in a Covered Product. The forgoing shall not apply to components of or materials used in
14 Covered Products made from cubic zirconia (sometimes called cubic zirconium, CZ), glass,
15 rhinestones or vitrified ceramics except where the Covered Products in question are subject to
16 California Health & Safety Code section 25214.2(d).

17 2.2 The term "Lead Limit" means:

18 2.2.1 For Paint or Surface Coating, a concentration of 0.009 percent Lead by
19 weight (90 ppm). For purposes of this Consent Judgment, "Paint or Surface Coating" shall carry
20 the same meaning as "Paint or other similar surface coating" under 16 C.F.R. §1303.2(b)(1)
21 ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,
22 with or without a suspension of finely divided coloring matter, which changes to a solid film when
23 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This
24 term does not include printing inks or those materials which actually become a part of the
25 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
26 the substrate, such as by electroplating or ceramic glazing.").

27 2.2.2 For materials other than Paint or Surface Coating in Children's Products, a
28 concentration of 0.01 percent Lead by weight (100 ppm). For purposes of this Consent Judgment,

1 “Children’s Products” shall carry the same meaning as “children’s product” under the Consumer
2 Product Safety Improvement Act of 2008, 15 U.S.C. § 2052(a)(2).

3 2.2.3 For Polyvinyl chloride (“PVC”) components, a concentration of 0.02
4 percent Lead by weight (200 ppm).

5 2.2.4 For all other components, a concentration of 0.03 percent Lead by weight
6 (300 ppm).

7 2.3 The term “Covered Product” means (a) the following ornaments worn by a
8 person: an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, watch (excluding the
9 timepiece itself if removable), decorated hair accessory, earring, necklace, pin, ring; similar
10 clothing or shoe ornaments which are detachable; and body piercing jewelry; or (b) any bead,
11 chain, link, pendant, or other component of such an ornament.

12 2.4 The term “Effective Date” means the date of entry of this Consent Judgment.

13 2.5 The term “Listed Chemicals” means Lead and/or cadmium, as specified on
14 Exhibit A for each Settling Defendant.

15 **3. INJUNCTIVE RELIEF**

16 3.1 **Reformulation of Covered Products.** Settling Defendants shall comply with
17 the following requirements to achieve expeditious reformulation of the Covered Products to
18 reduce or eliminate exposures to Listed Chemicals arising from Covered Products that they sell or
19 offer for sale:

20 3.1.1 **Specification Compliance Date.** To the extent they have not already done
21 so, no more than 30 days after the Effective Date, Settling Defendants shall provide the Cadmium
22 Limit and the Lead Limit to their vendors of Covered Products and shall instruct each vendor to
23 expeditiously provide Covered Products that do not exceed either the Cadmium Limit or the Lead
24 Limit on a nationwide basis.

25 3.1.2 **Compliance.** After the Effective Date, Settling Defendants shall not
26 manufacture, purchase, import, sell or offer for sale any Covered Product that will be sold to
27 California consumers that exceeds the Lead Limit or the Cadmium Limit.
28

1 **3.2 Treatment of Exhibit A Products.** On or before the Effective Date, Settling
2 Defendants shall have: (i) ceased shipping the specific products identified next to its name on
3 Exhibit A (the “Exhibit A Products”) to stores and/or customers in California; (ii) withdrawn the
4 Exhibit A Products from the market in California; and (iii) if the Exhibit A Products were not
5 withdrawn from sale in California prior to the Effective Date, sent instructions to any of its stores
6 and/or customers that offer the Exhibit A Products for sale in California to cease offering such
7 Exhibit A Products for sale and to either return all Exhibit A Products to Settling Defendants for
8 destruction, or to directly destroy the Exhibit A Products. Any destruction of the Exhibit A
9 Products shall be in compliance with all applicable laws. Within 60 days of the Effective Date,
10 Settling Defendants shall certify to CEH that Settling Defendants have complied with this Section
11 3.2. If there is a dispute over the corrective action, the Parties shall meet and confer before
12 seeking any remedy in court. Provided that Settling Defendants have taken the actions specified
13 above, Settling Defendants may thereafter begin selling reformulated versions of the Exhibit A
14 products that do not exceed either the Lead Limit or the Cadmium Limit in California in the future
15 provided that they maintain test results dated after the Effective Date showing that the Exhibit A
16 Products do not exceed either the Lead Limit or the Cadmium Limit.

17 **3.3 Date Coding of Rubie’s and Forum Covered Products.** All Covered Products
18 manufactured, purchased, imported, sold or offered for sale by Rubie’s or Forum after December
19 31, 2012 shall have a date code legibly displayed on the outside of the packaging of the Covered
20 Product that clearly indicates the month and year that the Covered Product was manufactured.

21 **4. ENFORCEMENT**

22 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an
23 order to show cause before this Court, enforce the terms and conditions contained in this Consent
24 Judgment, except that any action by CEH to enforce alleged violations of the Cadmium Limit
25 and/or the Lead Limit by Settling Defendants shall be brought exclusively pursuant to, and as
26 limited by, this Section 4. Where CEH seeks to enforce the Lead and/or Cadmium limits as to
27 Rubie’s or Forum Covered Products, CEH may only pursue enforcement under any of the
28 provisions of this Section 4 against Rubie’s and/or Forum as the case may be, and not against any

1 other Settling Defendant, nor may CEH commence a separate enforcement action against any non-
2 party retailer for any such Rubie's and/or Forum Covered Product.

3 **4.2 Enforcement of Alleged Materials Violation.**

4 **4.2.1 Notice of Alleged Violation.** In the event that, at any time following the
5 Effective Date, CEH identifies one or more Covered Products manufactured, distributed, or sold
6 by a Settling Defendant that CEH believes in good faith exceed the Cadmium Limit and/or the
7 Lead Limit, CEH may issue a Notice of Alleged Violation as defined in Section 4.2.3 below.

8 CEH may issue a single Notice of Alleged Violation for each distinct Covered Product that CEH
9 believes in good faith exceeds the Cadmium Limit and/or the Lead Limit, but CEH may not issue
10 a different Notice of Alleged Violation for different units of the identical Covered Product.

11 **4.2.2 Service of Notice of Alleged Violation and Supporting Documentation.**

12 **4.2.2.1** Any Notice of Alleged Violation issued hereunder shall be sent to
13 the person(s) identified in Exhibit A to receive notices for each Settling Defendant that is
14 responsible for the alleged violation, and must be served within 75 days of the date the Covered
15 Product at issue for that Settling Defendant was purchased or otherwise acquired by CEH,
16 provided, however, that CEH may have up to an additional 45 days to provide the Settling
17 Defendant with the test data required by Section 4.2.3.2 below if it has not yet obtained it from its
18 laboratory, with any deadlines for Settling Defendant to make an election about how to proceed in
19 response to the Notice of Alleged Violation extended day for day until such test data is received
20 by the Settling Defendant. Any Notice of Alleged Violation shall include information on all of the
21 units of the particular Covered Product that is the subject of the Notice of Alleged Violation in
22 Plaintiff's possession at the time the Notice of Alleged Violation is issued, whether or not all such
23 units are alleged to violate either the Lead or Cadmium Limits contained herein.

24 **4.2.2.2** The Notice of Violation shall, at a minimum, set forth for each
25 Covered Product: (a) the date the alleged violation was observed; (b) the location and name of the
26 retailer(s) at which the Covered Product was purchased; (c) a description of the Covered Product
27 giving rise to the alleged violation; (d) copies of photographs of both sides of the product
28 packaging for the Covered Product at issue such that to the extent possible relevant information on

1 the Covered Product packaging such as date of manufacture and SKU number can be identified;
2 and (e) all test data obtained by CEH regarding all units of the Covered Product at issue and
3 supporting documentation sufficient for validation of the test results, including any laboratory
4 reports, quality assurance reports and quality control reports associated with testing of the Covered
5 Products. Such Notice of Alleged Violation shall be based upon total acid digest test data from an
6 independent laboratory. Wipe, swipe, and swab testing by themselves are not sufficient to support
7 a Notice of Alleged Violation.

8 4.2.2.3 CEH shall promptly make available for inspection and/or copying
9 upon request by and at the expense of the Settling Defendant, any supporting documentation
10 related to the testing of the Covered Products subject to the Notice of Alleged Violation, as well as
11 associated quality control samples, including chain of custody records, all laboratory logbook
12 entries for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
13 from all analytical instruments relating to the testing of Covered Product samples and any and all
14 calibration tests performed or relied upon in conjunction with the testing of the Covered Products,
15 obtained by or available to CEH that pertain to the Covered Product's alleged exceedance of the
16 Cadmium Limit and/or Lead Limit, and, if available, any exemplars of Covered Products tested.

17 4.2.3 **Notice of Election of Response.** No more than 45 days after service of a
18 Notice of Alleged Violation (or any extension pursuant to Section 4.2.2.1 above), the Settling
19 Defendant shall provide written notice to CEH whether it elects to contest the allegations
20 contained in a Notice of Alleged Violation ("Notice of Election"). Failure to provide a Notice of
21 Election within 45 days of service of a Notice of Alleged Violation (or any extension pursuant to
22 Section 4.2.2.1 above) shall be deemed an election to contest the Notice of Alleged Violation.

23 4.2.3.1 If a Notice of Alleged Violation is contested, the Notice of Election
24 shall include all then-available documentary evidence regarding the alleged violation, including all
25 test data of all units of the Covered Product subject to the Notice of Alleged Violation, if any. If a
26 Settling Defendant or CEH later acquires additional test or other data regarding the alleged
27 violation, it shall notify the other Party and promptly provide all such data or information to the
28 Party. Any test data used to contest a Notice of Alleged Violation shall meet the criteria of

1 Section 4.2.2.2. All test results of Covered Products conducted by or on behalf of a Settling
2 Defendant or CEH, including both passing and failing test results, shall be maintained by the
3 Settling Defendant or CEH for a period of no less than three years after the date the test was
4 performed.

5 **4.2.4 Meet and Confer.** If a Notice of Alleged Violation is contested, CEH and
6 the Settling Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of
7 serving a Notice of Election contesting a Notice of Alleged Violation, the Settling Defendant may
8 withdraw the original Notice of Election contesting the alleged violation and serve a new Notice
9 of Election conceding the violation, provided however that the Settling Defendant shall pay \$2500
10 in addition to any payment required under Section 4.2.7. At any time, CEH may withdraw a
11 Notice of Alleged Violation, in which case for purposes of this Section 4 the result shall be as if
12 CEH never issued any such Notice of Alleged Violation. If no informal resolution of a Notice of
13 Alleged Violation results within 30 days of a Notice of Election to contest, CEH may file an
14 enforcement motion or application pursuant to Section 4.1. If the dispute involves only a Rubie's
15 or Forum Covered Product any motion to enforce shall only be filed as to Rubie's and/or Forum as
16 the case may be. In any such proceeding, CEH may seek whatever fines, costs, penalties
17 attorneys' fees or remedies are provided by law for failure to comply with the Consent Judgment.
18 Should Plaintiff decide to bring an enforcement action against such Settling Defendant, it must be
19 brought within 180 days of the expiration of the 30 day meet and confer period set forth above
20 unless such deadline is extended in writing by mutual agreement of Plaintiff and the Settling
21 Defendant. If CEH does not file any such enforcement action within 180 days or any mutually
22 agreed extension, the Notice of Alleged violation shall be treated as withdrawn, in which case for
23 purposes of this Section 4 the result shall be as if CEH never issued any such Notice of Alleged
24 Violation.

25 **4.2.5 Non-Contested Matters.** If a Settling Defendant elects not to contest the
26 allegations in a Notice of Alleged Violation, it shall undertake corrective action pursuant to
27 Section 4.2.6 and shall make any payments required by Section 4.2.7. A notice of election not to
28 contest an alleged violation of this Consent Judgment shall be considered an offer of compromise

1 under California Evidence Code § 1152 and Federal Rule of Evidence 408 and shall not otherwise
2 constitute an admission of any fact or issue by Settling Defendant. Such notice of election shall
3 also not be admissible in any proceeding, for any purpose, other than a proceeding brought
4 pursuant to the terms of this Section 4.

5 **4.2.6 Corrective Action in Non-Contested Matters.** If a Settling Defendant
6 elects not to contest the allegation, the Settling Defendant shall include in its Notice of Election a
7 detailed description with supporting documentation of the corrective action that it has undertaken
8 or proposes to undertake to address the alleged violation. Any such correction shall, at a
9 minimum, provide reasonable assurance that the Covered Product subject to the Notice of Alleged
10 Violation will no longer be offered for sale in California. Corrective action must include
11 instructions to the Settling Defendant's stores and/or customers that offer the Covered Product for
12 sale to consumers to cease offering the Covered Product(s) identified in the Notice of Alleged
13 Violation for sale in California as soon as practicable. The Notice of Election shall also include
14 the name, address, telephone number, and other contact information, of Settling Defendant's
15 supplier(s) of each Covered Product identified in the Notice of Alleged Violation and any retailers
16 to whom Settling Defendant sold any Covered Product(s) identified in the Notice of Alleged
17 Violation. Settling Defendant shall make available to CEH for inspection and/or copying records
18 and correspondence regarding the corrective action. If there is a dispute over the corrective action,
19 the Parties shall meet and confer pursuant to Section 4.2.4 before seeking any remedy in court.
20 Notwithstanding the foregoing, newly manufactured units of the Covered Product subject to the
21 Notice of Alleged Violation that have a manufactured date after the date of the Notice of Alleged
22 Violation and that do not exceed the Lead Limit or the Cadmium Limit can be sold to California
23 consumers provided that Settling Defendant produces to CEH compliant test results for such
24 newly manufactured product dated after the Notice of Alleged Violation.

25 **4.2.7 Payments in Non-Contested Matters.** In addition to the corrective
26 action set forth in Section 4.2.6 above, a Settling Defendant shall be required to make a payment
27 as reimbursement for costs for investigating, preparing, sending and prosecuting Notices of
28 Alleged Violation, and to reimburse attorneys' fees and costs incurred in connection with these

1 activities, solely and exclusively as specified in Sections 4.2.7.1- 4.2.7.6 below, except to the
2 extent any additional payment may be required under Section 4.2.4 above. Should any non-
3 contested Notice of Alleged Violation give rise to an enforcement right under Section 4.2.8, CEH
4 may at its option either exercise that right and obtain any attorneys fees and costs a court orders
5 under Section 4.2.8, or exercise the rights set forth in Sections 4.2.7.1- 4.2.7.6 below, but not both.

6 4.2.7.1 If the Notice of Alleged Violation is the first Notice of Alleged
7 Violation served on a Settling Defendant within the prior eighteen month period that was not
8 successfully contested or withdrawn, and the Settling Defendant serves a Notice of Election not to
9 contest the allegations in the instant Notice of Alleged Violation, the Settling Defendant shall not
10 be required to make a payment.

11 4.2.7.2 If (i) the Settling Defendant is Rubie's or Forum, (ii) the Settling
12 Defendant serves a Notice of Election not to contest the allegations in the instant Notice of
13 Alleged Violation, and (iii) the Covered Product that is the subject of the Notice of Alleged
14 Violation was manufactured prior to December 31, 2012 and does not include a date stamp
15 indicating it was manufactured after December 31, 2012, then the Settling Defendant shall not be
16 required to make a payment but only to take the corrective action specified in Section 4.2.6. Other
17 than for purposes of the corrective action specified in Section 4.2.6, any such Notice of Alleged
18 Violation shall not count or be treated as a Notice of Alleged Violation for purposes of this
19 Section 4, provided the Settling Defendant takes the corrective action specified in Section 4.2.6.

20 4.2.7.3 If (i) the Settling Defendant is Rubie's or Forum, (ii) the Settling
21 Defendant previously received at least one Notice of Alleged Violation within the prior eighteen
22 month period that was not successfully contested or withdrawn, (iii) the Settling Defendant serves
23 a Notice of Election not to contest the allegations in the instant Notice of Alleged Violation, and
24 (iv) the Covered Product that is the subject of the Notice of Alleged Violation was manufactured
25 after December 31, 2012 and includes a date stamp indicating it was manufactured after December
26 31, 2012, then the Settling Defendant shall be required to make a payment of \$10,000, inclusive of
27 all Plaintiff's attorneys' fees and costs. This payment shall, however, be reduced to \$5,000
28 inclusive of all Plaintiff's attorneys' fees and costs if the Settling Defendant produces with its

1 Notice of Election acid digest test data showing that the Covered Product that is the subject of the
2 Notice of Alleged Violation did not exceed the Cadmium Limit and/or Lead Limit at issue in the
3 Notice of Alleged Violation. For purposes of this Section 4.2.7.3 only, “acid digest test data” shall
4 mean total cadmium or total Lead (as applicable depending on the Listed Chemical at issue in the
5 Notice of Alleged Violation) by acid digest testing performed by an accredited laboratory on the
6 Covered Product alleged to be in violation of the Cadmium Limit and/or Lead Limit where the test
7 was conducted within fourteen (14) months after the date the Covered Product that is the subject
8 of the Notice of Alleged Violation was manufactured. This payment shall, however, be further
9 reduced to \$2,500 if the Settling Defendant in addition to producing acid digest test data
10 qualifying for a payment reduction to \$5,000, also produces with its Notice of Election XRF Test
11 Data showing that the Covered Product that is the subject of the Notice of Alleged Violation did
12 not exceed the Cadmium Limit and/or Lead Limit at issue in the Notice of Alleged Violation. For
13 purposes of this Section 4.2.7.3 only, “XRF Test Data” means a contemporaneously prepared
14 electronic or written test report, either signed by the XRF Operator or electronically indicating the
15 XRF operator, showing total cadmium or total Lead (as applicable depending on the Listed
16 Chemical at issue in the Notice of Alleged Violation) by X-ray fluorescence (XRF) testing
17 performed on a sample of the Covered Product pulled from randomly selected inventory pursuant
18 to an existing written screening policy for Listed Chemicals in Covered Products where the test
19 was conducted within one year after the date the Covered Product that is the subject of the Notice
20 of Alleged Violation was manufactured. Any payments required hereunder for Rubie’s and/or
21 Forum Covered Products shall resolve all payment issues related to the Covered Products subject
22 to the Notice of Violation, and no other Settling Defendants shall be required to make any
23 payments related to such Covered Products provided they take all corrective action required under
24 Section 4.2.6.

25 4.2.7.4 If (i) the Settling Defendant is not Rubie’s or Forum and the Notice
26 of Alleged Violation does not involve a Rubie’s and/or Forum Covered Product, (ii) the Settling
27 Defendant previously received a Notice of Alleged Violation that was not successfully contested
28 or withdrawn, and (iii) the Settling Defendant serves a Notice of Election not to contest the

1 allegations in the instant Notice of Alleged Violation, then the Settling Defendant shall be required
2 to make a payment of \$10,000. This payment shall, however, be reduced to \$5,000 if the Settling
3 Defendant produces with its Notice of Election acid digest test data showing that the Covered
4 Product that is the subject of the Notice of Alleged Violation did not exceed the Cadmium Limit
5 and/or Lead Limit at issue in the Notice of Alleged Violation. For purposes of this Section 4.2.7.4
6 only, “acid digest test data” shall mean total cadmium or total Lead (as applicable depending on
7 the Listed Chemical at issue in the Notice of Alleged Violation) by acid digest testing performed
8 by an accredited laboratory on the Covered Product alleged to be in violation of the Cadmium
9 Limit and/or Lead Limit where the test was conducted within one year prior to the date the
10 Covered Product that is the subject of the Notice of Alleged Violation was manufactured. Acid
11 digest test data may be performed by the manufacturer, importer or distributor of the Covered
12 Product. This payment shall, however, be further reduced to \$2,500 if the Settling Defendant in
13 addition to producing acid digest test data qualifying for a payment reduction to \$5,000, also
14 produces with its Notice of Election Domestic XRF Test Data showing that the Covered Product
15 that is the subject of the Notice of Alleged Violation did not exceed the Cadmium Limit and/or
16 Lead Limit at issue in the Notice of Alleged Violation. For purposes of this Section 4.2.7.4 only,
17 “Domestic XRF Test Data” means a contemporaneously prepared written test report signed by the
18 XRF Operator showing total cadmium or total Lead (as applicable depending on the Listed
19 Chemical at issue in the Notice of Alleged Violation) by X-ray fluorescence (XRF) testing
20 performed on a sample of the Covered Product pulled from randomly selected inventory in the
21 United States pursuant to an existing written screening policy for Listed Chemicals in Covered
22 Products where the test was conducted within one year prior to the date the Covered Product that
23 is the subject of the Notice of Alleged Violation was manufactured. Domestic XRF Test Data
24 may be performed by the manufacturer, importer or distributor of the Covered Product.

25 4.2.7.5 If more than one Settling Defendant has manufactured, sold, offered
26 for sale or distributed a Covered Product identified in a non-contested Notice of Alleged
27 Violation, only one required payment may be assessed under this Section 4.2.7 or under any other
28 Consent Judgment that covers the same Covered Product identified in the non-contested Notice of

1 Alleged Violation in the following order: manufacturer; importer; distributor; retailer. Where the
2 Covered Product is a Rubie's and/or Forum Covered Product, any required payment may only be
3 assessed against Rubie's or Forum as the case may be

4 4.2.7.6 Any payments required under Sections 4.2.7.3-4.2.7.5 shall be made
5 by check payable to the Lexington Law Group and shall be paid within 15 days of service of a
6 Notice of Election triggering a payment.

7 4.2.8 **Repeat Violator.** If a Settling Defendant other than Rubie's or Forum has
8 been served with more than three Notices of Alleged Violation that were not successfully
9 contested or withdrawn in any 12-month period then, at CEH's option, CEH may seek whatever
10 fines, costs, penalties, attorneys' fees or other remedies that are provided by law for failure to
11 comply with this Consent Judgment. If the Settling Defendant is Rubie's and/or Forum and has
12 been served with more than three Notices of Alleged Violation for Covered Products that were
13 date coded and manufactured after December 31, 2012 that were not successfully contested or
14 withdrawn in any 12-month period then, at CEH's option, CEH may seek whatever fines, costs,
15 penalties, attorneys' fees or other remedies that are provided by law for failure to comply with this
16 Consent Judgment. In the circumstance where Rubie's and/or Forum Covered Products are
17 subject to this provision, Plaintiff may only bring an enforcement action against Rubie's and/or
18 Forum for such covered Products and not against any other Settling Defendant or non-party
19 retailer. Prior to seeking such relief, CEH and the Settling Defendant shall meet and confer in
20 good faith for a period not to exceed 30 days (unless extended by mutual agreement) to determine
21 if the Parties can agree on measures Settling Defendant can undertake to prevent future violations.
22 Should Plaintiff decide to bring an enforcement action against such Settling Defendant, it must be
23 brought within 180 days of the expiration of the 30 day meet and confer period set forth above (or
24 any extension thereto) unless such deadline is extended in writing by mutual agreement of
25 Plaintiff and the Settling Defendant.

26 **5. PAYMENTS**

27 5.1 **Payments From Settling Defendants.** Solely for purposes of settlement,
28 without admitting any liability, and expressly denying any violation, Settling Defendants shall,

1 within ten days of entry of this Consent Judgment, jointly and severally pay the total sum of
2 \$350,000 in a single check made payable to and delivered to the offices of the Lexington Law
3 Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California 94117-2212, as
4 reimbursement of a portion of Plaintiff's reasonable attorneys' fees and costs.

5 **6. MODIFICATION AND DISPUTE RESOLUTION**

6 6.1 **Modification.** This Consent Judgment may be modified from time to time by
7 express written agreement of the Parties with the approval of the Court, or by an order of this
8 Court upon motion and in accordance with law.

9 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
10 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
11 modify the Consent Judgment.

12 **7. CLAIMS COVERED AND RELEASE**

13 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
14 Settling Defendants, and Settling Defendants' parents, shareholders, employees, divisions,
15 subdivisions, subsidiaries, partners, sister companies and their successors and assigns ("Defendant
16 Releasees"), and all entities to whom they distribute or sell Covered Products including, but not
17 limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
18 licensees ("Downstream Defendant Releasees") of any violation of Proposition 65 against Settling
19 Defendants, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to
20 warn about exposure to the Listed Chemical(s) applicable to each such Settling Defendant arising
21 in connection with Covered Products manufactured, distributed, or sold by each Settling
22 Defendant prior to the Effective Date.

23 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
24 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
25 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
26 violation of Proposition 65 regarding the failure to warn about exposure to the Listed Chemical(s)
27 applicable to each such Settling Defendant arising in connection with Covered Products
28 manufactured, distributed or sold by Settling Defendants prior to the Effective Date.

1 7.3 Compliance with the terms of this Consent Judgment by Settling Defendants and
2 the Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants,
3 the Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
4 failure to warn about the Listed Chemical(s) applicable to each such Settling Defendant in
5 Covered Products manufactured, distributed or sold by Settling Defendants after the Effective
6 Date.

7 **8. PROVISION OF NOTICE**

8 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail as follows:

10 8.1.1 **Notices to Settling Defendants.** The persons for Settling Defendants to
11 receive Notices pursuant to this Consent Judgment shall be the person(s) identified in Exhibit A.

12 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
13 this Consent Judgment shall be:

14 Eric S. Somers
15 Lexington Law Group
16 503 Divisadero Street
17 San Francisco, CA 94117
18 esomers@lexlawgroup.com

19 8.2 Any Party may modify the person and address to whom the notice is to be sent by
20 sending the other Party notice by first class and electronic mail.

21 **9. COURT APPROVAL**

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

25 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
26 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
27 purpose.
28

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **11. ENTIRE AGREEMENT**

5 11.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
8 and therein. There are no warranties, representations, or other agreements between the Parties
9 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
10 other than those specifically referred to in this Consent Judgment have been made by any Party
11 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
12 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
13 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
14 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
15 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
16 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
17 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
18 whether or not similar, nor shall such waiver constitute a continuing waiver.

19 **12. RETENTION OF JURISDICTION**

20 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
21 the Consent Judgment.

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

23 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
25 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
26 Party.

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

28 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim

1 against any entity that is not a Settling Defendant on terms that are different from those contained
2 in this Consent Judgment.

3 **15. EXECUTION IN COUNTERPARTS**

4 15.1 The stipulations to this Consent Judgment may be executed in counterparts and
5 by means of facsimile electronic pdf, which taken together shall be deemed to constitute one
6 document.

7
8 **IT IS SO ORDERED, ADJUDGED,
9 AND DECREED**


10 Dated: _____, 2012

The Honorable Steven A. Brick
Judge of the Superior Court

12 **IT IS SO STIPULATED:**

13
14 Dated: 5/23, 2012

CENTER FOR ENVIRONMENTAL HEALTH

16
17 


18 CHARLIE PIZZANO
19 _____
Printed Name

20
21 ASSOCIATE DIRECTOR
22 _____
Title

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Dated: May 23, 2012

FORUM NOVELTIES CO., INC.



ROBERT KAMIN
Printed Name

Managing Director
Title

Dated: _____, 2012

RUBIE'S COSTUME COMPANY, INC.

Printed Name

Title

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FORUM NOVELTIES CO., INC.

Dated: _____, 2012

Printed Name

Title

RUBIE'S COSTUME COMPANY, INC.

Dated: MAY 23, 2012

Marc P. Beige

MARC P. BEIGE
Printed Name

PRESIDENT
Title

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Dated: 6/1, 2012

ASADART, LLC
Defendant Name

Scott Monard
Signature

SCOTT Monard
Printed Name

CEO
Title

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Costume Supercenter of NJ L.L.C.

Dated: May 31, 2012

Costume Supercenter LLC

~~Erk Mandell~~
Defendant Name

EM
Signature


Erk Mandell
Printed Name

CEO
Title

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Dated: 6/1, 2012.

Morris Costumes, Inc.
Defendant Name


Signature

SCOTT MORRIS
Printed Name

President
Title

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Dated: May 29, 2012

TOYNK TOYS LLC
Defendant Name

Ron Madoch
Signature

Ron Madoch .
Printed Name

Co-owner, Member/Manager LLC
Title

EXHIBIT A
Settling Defendants

Settling Defendant: Forum Novelties Co., Inc.

1. Cases:

Center for Environmental Health v. Nadri, et al., Case No. RG 06-26953, Named as a defendant on January 29, 2009.

Center for Environmental Health v. Forum Novelties, Inc. et. al., Case No. RG 11-574481. Named as a defendant on May 5, 2011.

2. Listed Chemical(s) Applicable to Defendant:

Lead Cadmium

3. Product(s) to be removed from sale in California:

- Asp Snake Necklace, SKU No. 721773546730
- Asp Snake Earrings & Necklace, SKU No. 721773601750
- Big Daddy Bracelet, SKU No. 721773595943
- Big Daddy Ring, SKU No. 721773546341
- Combat Cutie Dog Tags, SKU No. 721773629570
- Combat Cutie Earrings, SKU No. 721773629556
- Disco Fever 70 Rainbow Hoop Earrings, SKU No. 721773630286
- Flirtin' with the 50's Charm Bracelet, SKU No. 721773618109
- Flirtin' with the 50's Going Steady High School Ring with Chain, SKU No. 721773615450
- Flirtin' with the 50's Jewelry Set, SKU No. 721773618086
- Old School Bling Necklace with Boom Box, SKU No. 721773644702
- Old School Bling Necklace with Knuckle Pendant, SKU No. 721773644719
- Pirate Beads, SKU No. 721773570452
- Pirate Bracelet, SKU No. 721773581427
- Pirate Necklace, SKU No. 721773581434
- Skull and Crossbones Bracelet, SKU No. 7-21773-60784-4

1 • Spider Ring, SKU No. 7-21773-57173-2

2 5. Person(s) to receive Notices Pursuant to Section 8:

3 Robert Kamin
4 Managing Director
5 Forum Novelties, Inc.
6 1770 Walt Whitman Road
7 Melville, NY 11747
8 robert@forumnovelties.com

9 With a copy to:

10 James Robert Maxwell
11 Rogers Joseph O'Donnell
12 311 California Street, 10th Floor
13 San Francisco, CA 94104
14 jrm@rjo.com
15
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1 **Settling Defendant: Rubie's Costume Company, Inc.**

2 1. Cases:

3 *Center for Environmental Health v. Nadri, et al.*, Case No. RG 06-26953, Named as a
4 defendant on January 29, 2009.

5 *Center for Environmental Health v. Forum Novelties, Inc., et. al.*, Case No. RG 11-
6 574481. Named as a defendant on May 24, 2012.

7 2. Listed Chemical(s) Applicable to Defendant:

8 X Lead X Cadmium

9 3. Product(s) to be removed from sale in California:

- 10 • All That Jazz Diamond Brooch, SKU No. 082686095020
11 • Black Spider Choker, SKU No. 01004803
12 • Betty Boop Jewelry Set, SKU No. 082686065801
13 • Sabina Augusta Bracelet, SKU No. 082686076180
14 • Secret Wishes Heart Charm Bracelet, SKU No. 0-82686-07870-2
15 • Secret Wishes Lips Charm Bracelet, SKU No. 82686078696
16 • Skull Hairbows, SKU No. 082686035934

17 4. Person(s) to receive Notices Pursuant to Section 8:

18 Marc Beige
19 President
20 Rubie's Costume Company, Inc.
21 One Rubie Plaza
22 Richmond Hill, NY 11418
23 marc711@aol.com

24 With a copy to:

25 James Robert Maxwell
26 Rogers Joseph O'Donnell
27 311 California Street, 10th Floor
28 San Francisco, CA 94104
jrm@rjo.com

1 **Settling Defendant:** ASADART, LLC

2
3 1. Case:

4 *CEH v. Gags and Games, Inc. et al.*, Case No. RG 12-620105. Named as a defendant on
5 March 6, 2012.

6 2. Listed Chemical(s) Applicable to Defendant:

7 Lead Cadmium

8 3. Recall Product(s): Betty Boop Jewelry Set, Item No. 6580
9 SKN No. 0-82686-06580-1

10 4. Person(s) to receive Notices Pursuant to Section 8:

11
12 Mr. Scott Morris
Name

Ms. Melissa Jones, Esq.
Name

13 President
Title

Of Counsel
Title

14
15 6900 Morris Estate Dr.
Address Line 1

500 Capitol Mall, 16th Fl.
Address Line 1

16 Charlotte, NC 28262
Address Line 2

Sacramento, CA 95814
Address Line 2

17
18 N/A
Email Address

majones@stocl.com
Email Address

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1 Settling Defendant: Costume Supercenter LLC, Costume Supercenter
2 of NJ L.L.C.

3 1. Case:

4 *CEH v. Gags and Games, Inc. et al.*, Case No. RG 12-620105. Named as a defendant on
5 March 6, 2012.

6 2. Listed Chemical(s) Applicable to Defendant:

7 Lead Cadmium

8 3. Recall Product(s):

9 Pirate Bracelet, Style No. 58142

10 4. Person(s) to receive Notices Pursuant to Section 8:

11
12 Erik Mandell
13 Name

Name

14 CEO
15 Title

Title

16 45 Fernwood Ave
17 Address Line 1

Address Line 1

18 Edison, NJ 08837
19 Address Line 2

Address Line 2

20 emandell@costumesupercenter.com
21 Email Address

Email Address

1 Settling Defendant: Morn's Costumes, Inc.

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3 1. Case:

4 *CEH v. Gags and Games, Inc. et al.*, Case No. RG 12-620105. Named as a defendant on
5 March 6, 2012.

6 2. Listed Chemical(s) Applicable to Defendant:

7 Lead Cadmium

8 3. Recall Product(s): Betty Boop Jewelry Set, Item No. 6580,
9 SKU No. 0-82680-06580-1

10 4. Person(s) to receive Notices Pursuant to Section 8:

11
12 Mr. Scott Morris
13 Name
14 President
15 Title
16 6900 Morris ~~Street~~ ^{Estate} Dr.
17 Address Line 1
18 Charlotte, NC 28262
19 Address Line 2
20 N/A
21 Email Address

22 Ms. Melissa Jones, Esp.
23 Name
24 Of Counsel
25 Title
26 500 Capito Mall, 16th Fl.
27 Address Line 1
28 Sacramento, CA 95814
Address Line 2
majones@steel.com
Email Address

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Settling Defendant: ToyNK Toys LLC

1. Case:

CEH v. Gags and Games, Inc. et al., Case No. RG 12-620105. Named as a defendant on March 6, 2012.

2. Listed Chemical(s) Applicable to Defendant:

Lead Cadmium

3. Recall Product(s):

All That Jazz Diamond Brooch, SKU No. 082686095020

4. Person(s) to receive Notices Pursuant to Section 8:

Ron Madoch
Name

Name

Coowner, Member/Manager LLC
Title

Title

430 N. York Rd,
Address Line 1

Address Line 1

Bensenville, IL 60106
Address Line 2

Address Line 2

Ron@toyNK.com
Email Address

Email Address