

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

PEOPLE OF THE STATE OF CALIFORNIA, ex )  
rel. BILL LOCKYER, Attorney General, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BURLINGTON COAT FACTORY )  
WAREHOUSE CORPORATION, et al, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_)  
AND RELATED CONSOLIDATED CASES. )

Case No. RG 04-162075  
(Consolidated with RG 04-162037, RG  
04-169511)  
[PROPOSED] CONSENT JUDGMENT  
AS TO ZOOM EYEWORKS, INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and Zoom Eyeworks, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Nadri, Inc., et al.*, Alameda County Superior Court Case No. RG 06-269531 (the "*Nadri* Action").

1.2 On May 12, 2006, CEH filed the original complaint in the *Nadri* Action, which was later consolidated with three other actions including the lead case, *People v. Burlington Coat*

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

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

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

7 1.5 On December 9, 2008, CEH provided a "Notice of Violation of Proposition 65" to  
8 the California Attorney General, the District Attorneys of every county in California, the City  
9 Attorneys of every California city with a population greater than 750,000, and to Defendant  
10 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

11 1.6 On January 29, 2009, the Complaint in the *Nadri* Action was amended to name  
12 Defendant as a party.

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

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

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

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

10 **2. DEFINITIONS**

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

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

16 **3. INJUNCTIVE RELIEF**

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

20 3.1.1 Any component that is more than 0.01 percent lead by weight (100 parts  
21 per million ("ppm")); and

22 3.1.2 Any Surface Coating that is more than 0.009 percent lead by weight (90  
23 ppm). For purposes of this Consent Judgment, "Surface Coating" shall carry the same meaning as  
24 "Paint or other similar surface coating" under 16 CFR §1303.2(b)(1) ("Paint and other similar  
25 surface-coating materials means a fluid, semi-fluid, or other material, with or without a suspension  
26 of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a  
27 metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include  
28 printing inks or those materials which actually become a part of the substrate, such as the pigment

1 in a plastic article, or those materials which are actually bonded to the substrate, such as by  
2 electroplating or ceramic glazing.”).

3           **3.2 Market Withdrawal of Covered Products.** On or before the Effective Date,  
4 Defendant shall cease shipping the ICU Eyewear Necklace with Pendant, SKU No. 40834-00047,  
5 which was identified in the 60-Day Notice of Violation sent by CEH to Defendant (the “Recall  
6 Product”), to stores and/or customers, and Defendant shall withdraw the Recall Product from the  
7 market, and, at a minimum, send instructions to any of its stores and/or customers that offer the  
8 Recall Product for sale to cease offering such Recall Product for sale and to either return all Recall  
9 Products to Defendant for destruction, or to directly destroy the Recall Products. Any destruction  
10 of the Recall Products shall be in compliance with all applicable laws. Defendant shall keep and  
11 make available to CEH for inspection and copying records and correspondence regarding the  
12 market withdrawal and destruction of the Recall Products. If there is a dispute over the corrective  
13 action, the Parties shall meet and confer before seeking any remedy in court.

#### 14           **4. ENFORCEMENT**

15           **4.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
16 enforce the terms of this Consent Judgment, CEH shall provide Defendant with thirty (30) days  
17 advanced written notice of the alleged violation and shall meet and confer with Defendant during  
18 such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the  
19 alleged violation. After such thirty (30) day period, CEH may, by new action, motion or order to  
20 show cause before the Superior Court of Alameda, seek to enforce the terms and conditions  
21 contained in this Consent Judgment. Should CEH prevail on any motion or application under  
22 this section, CEH shall be entitled to its reasonable attorneys’ fees and costs associated with  
23 such new action, motion or order to show cause.

#### 24           **5. PAYMENTS**

25           **5.1 Payments From Defendant.** Within five (5) days of the entry of this Consent  
26 Judgment, Defendant shall pay the total sum of \$45,000 as a settlement payment.

27           **5.2 Allocation of Payments.** The total settlement amount for Defendant shall be paid  
28 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),

1 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as follows:

2                   5.2.1           Defendant shall pay the sum of \$1,000 as a penalty pursuant to  
3 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with  
4 Health & Safety Code §25249.12. The penalty check shall be made payable to the Center For  
5 Environmental Health.

6                   5.2.2           Defendant shall pay the sum of \$14,500 as payment to CEH in lieu of  
7 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title  
8 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from  
9 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
10 to monitor compliance with the reformulation requirements of this and other similar Consent  
11 Judgments, to purchase and test jewelry, and to prepare and compile the information and  
12 documentation necessary to support a Notice of Violation. In addition, as part of its Community  
13 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants  
14 to grassroots environmental justice groups working to educate and protect people from exposures  
15 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at  
16 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the  
17 Center For Environmental Health.

18                   5.2.3           Defendant shall pay the sum of \$29,500 as reimbursement of reasonable  
19 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable  
20 to the Lexington Law Group.

21 **6.       MODIFICATION AND DISPUTE RESOLUTION**

22           6.1       **Modification.** This Consent Judgment may be modified from time to time by  
23 express written agreement of the Parties, with the approval of the Court, or by an order of this  
24 Court upon motion and in accordance with law.

25           6.2       **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
26 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
27 modify the Consent Judgment.

28

1       **7. CLAIMS COVERED AND RELEASE**

2           7.1     This Consent Judgment is a full, final, and binding resolution between CEH and  
3 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
4 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other  
5 than those listed on Exhibit A of this Consent Judgment to whom they distribute or sell Covered  
6 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
7 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of  
8 Proposition 65 or any other statutory or common law claims that have been or could have been  
9 asserted in the public interest against Defendant, Defendant Releasees, and Downstream  
10 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection  
11 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

12           7.2     CEH, for itself and acting on behalf of the public interest pursuant to Health and  
13 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against  
14 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
15 of Proposition 65 or any other statutory or common law claims that have been or could have been  
16 asserted in the public interest regarding the failure to warn about exposure to lead arising in  
17 connection with Covered Products manufactured, distributed or sold by Defendant prior to the  
18 Effective Date.

19           7.3     Compliance with the terms of this Consent Judgment by Defendant and its  
20 Defendant Releasees shall constitute compliance with Proposition 65 by that Defendant, its  
21 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged  
22 failure to warn about Lead in Covered Products manufactured, distributed or sold by Defendant  
23 after the Effective Date.

24       **8. PROVISION OF NOTICE**

25           8.1     When any Party is entitled to receive any notice under this Consent Judgment, the  
26 notice shall be sent by certified mail and electronic mail as follows:

27                   8.1.1   **Notices to Defendant.** The persons for Defendant to receive Notices  
28 pursuant to this Consent Judgment shall be:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Steven Kesten  
P.O. Box 426  
San Anselmo, CA 94979  
kcblawoffice@aol.com

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

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

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

**9. COURT APPROVAL**

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

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

**10. GOVERNING LAW AND CONSTRUCTION**

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

**11. ENTIRE AGREEMENT**

11.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party

1 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
2 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
3 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
4 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
5 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
6 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
7 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
8 whether or not similar, nor shall such waiver constitute a continuing waiver.

9 **12. RETENTION OF JURISDICTION**

10 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
11 Consent Judgment.

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

13 13.1 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 **14. NO EFFECT ON OTHER SETTLEMENTS**

17 14.1 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 **15. EXECUTION IN COUNTERPARTS**

21 15.1 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  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO STIPULATED:

Dated: July 9, 2009	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____  Michael Green Printed Name  Executive Director Title
---------------------	---

Dated: July __, 2009	<b>ZOOM EYEWORKS, INC.</b>  _____  Printed Name  _____ Title
----------------------	---

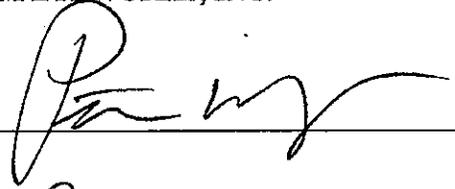
**IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO STIPULATED:

Dated: July __, 2009	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>
	_____
	Printed Name
	_____
	Title

Dated: July 6, 2009	<b>ZOOM EYEWORKS, INC.</b>
	
	PETER WONG
	Printed Name
	CFO
	Title

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

1. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
2. AZ3, Inc.
3. Banana Republic, LLC
4. Barnes & Noble, Inc.
5. BCBG Max Azria Group, Inc.
6. Big A Drug Stores, Inc.
7. Conair Corporation
8. Cousin Corporation of America
9. Elite Distributing Company dba Edco
10. Forum Novelties, Inc.
11. Georgiou Studio, Inc.
12. Hayun Fashion Investments Corporation dba Planet Funk
13. HER Accessories, LLC
14. I Love Bracelets, Inc.
15. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
16. Jacadi USA, Inc.
17. JOIA Accessories, Inc.
18. Legoland California LLC
19. Lisa Kline, Inc.
20. Long Rap, Inc..
21. Marin Beauty Company
22. Max Rave, LLC
23. Peninsula Beauty Supply, Inc.
24. Raley's
25. Rite Aid Corporation
26. Ruby's Costume Company, Inc.
27. Safeway, Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 28. Scünci International, Inc.
- 29. Sea World, Inc.
- 30. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 31. Six Flags Theme Parks, Inc.
- 32. Urban Outfitters West LLC; Urban Outfitters, Inc.
- 33. Volume Distributors, Inc.
- 34. Whole Foods Market California, Inc.