

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

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

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

7 1.5 On February 9, 2009, 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 August 4, 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 not covered under Sections 3.1.2 or 3.1.3, or that is made
21 of any material not covered under Sections 3.1.2 or 3.1.3, that is more than 0.02 percent (200 parts
22 per million ("ppm")) Lead by weight;

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

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

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

6 **3.2 Market Withdrawal of Covered Products.** On or before the Effective Date,
7 Defendant shall cease shipping the Silver Charm Bracelet, Item No. MB3012 AS, which was
8 identified in the 60-Day Notice of Violation sent by CEH to Defendant (the “Recall Product”), to
9 stores and/or customers in California, and Defendant shall withdraw the Recall Product from the
10 market in California, and, at a minimum, send instructions to any of its stores and/or customers
11 that offer the Recall Product for sale in California to cease offering such Recall Product for sale
12 and to either return all Recall Products to Defendant for destruction, or to directly destroy the
13 Recall Products. Any destruction of the Recall Products shall be in compliance with all applicable
14 laws. Defendant shall keep and make available to CEH for inspection and copying records and
15 correspondence regarding the market withdrawal and destruction of the Recall Products. If there
16 is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy
17 in court.

18 **4. ENFORCEMENT**

19 **4.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause to
20 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
21 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
22 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
23 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
24 by new action, motion or order to show cause before the Superior Court of Alameda, seek to
25 enforce the terms and conditions contained in this Consent Judgment. Should the Party seeking to
26 enforce prevail on any motion or application under this section, such Party shall be entitled to
27 recover its reasonable attorneys’ fees and costs associated with such motion, order to show cause
28 or procedure from the other Party.

1 **5. PAYMENTS**

2 **5.1 Payments From Defendant.** Within ten (10) days of the entry of this Consent
3 Judgment, Defendant shall pay the total sum of \$40,000 as a settlement payment.

4 **5.2 Allocation of Payments.** The total settlement amount for Defendant shall be paid
5 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),
6 1627 Irving Street, San Francisco, California 94122 and made payable and allocated as follows:

7 **5.2.1** Defendant shall pay the sum of \$1,000 as a penalty pursuant to Health &
8 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
9 Safety Code §25249.12. The penalty check shall be made payable to the Center For
10 Environmental Health.

11 **5.2.2** Defendant shall pay the sum of \$12,800 as payment to CEH in lieu of
12 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title
13 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from
14 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
15 to monitor compliance with the reformulation requirements of this and other similar Consent
16 Judgments, to purchase and test jewelry, and to prepare and compile the information and
17 documentation necessary to support a Notice of Violation. In addition, as part of its Community
18 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants
19 to grassroots environmental justice groups working to educate and protect people from exposures
20 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at
21 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
22 Center For Environmental Health.

23 **5.2.3** Defendant shall pay the sum of \$26,200 as reimbursement of reasonable
24 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable
25 to the Lexington Law Group.

26 **6. MODIFICATION AND DISPUTE RESOLUTION**

27 **6.1 Modification.** This Consent Judgment may be modified from time to time by
28 express written agreement of the Parties, with the approval of the Court, or by an order of this

1 Court upon motion and in accordance with law.

2 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
3 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
4 modify the Consent Judgment.

5 **7. CLAIMS COVERED AND RELEASE**

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

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

23 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
24 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant
25 Releasees and their Downstream Defendant Releasees with respect to any alleged failure to warn
26 about lead in Covered Products manufactured, distributed or sold by Defendant after the Effective
27 Date.

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1 **8. PROVISION OF NOTICE**

2 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by certified mail and electronic mail as follows:

4 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
5 pursuant to this Consent Judgment shall be:

6 Robert Morse
7 Feldman Law Group
8 12 East 41st Street
9 New York, NY 10017
10 roberthmorse@gmail.com

11 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
12 this Consent Judgment shall be:

13 Eric S. Somers
14 Lexington Law Group
15 1627 Irving Street
16 San Francisco, CA 94122
17 esomers@lexlawgroup.com

18 8.2 Any Party may modify the person and address to whom the notice is to be sent by
19 sending the other Party notice by certified mail and/or other verifiable form of written
20 communication.

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 Defendant 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 effect
26 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

27 **10. GOVERNING LAW AND CONSTRUCTION**

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

11. ATTORNEYS' FEES

11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent

1 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
2 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
3 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
4 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

5 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
6 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
7 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
8 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
9 provision shall not be construed as altering any procedural or substantive requirements for
10 obtaining such an award.

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

13 **12. ENTIRE AGREEMENT**

14 12.1 This Consent Judgment contains the sole and entire agreement and understanding
15 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
16 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
17 and therein. There are no warranties, representations, or other agreements between the Parties
18 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
19 other than those specifically referred to in this Consent Judgment have been made by any Party
20 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
21 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
22 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
23 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
24 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
25 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
26 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
27 whether or not similar, nor shall such waiver constitute a continuing waiver.

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1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

5 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
7 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.


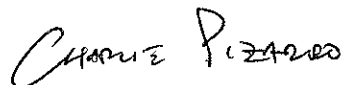
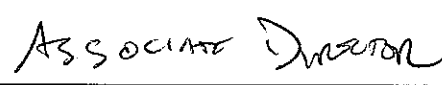
8 **15. NO EFFECT ON OTHER SETTLEMENTS**

9 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
10 against an entity that is not Defendant on terms that are different than those contained in this
11 Consent Judgment.

12 **16. EXECUTION IN COUNTERPARTS**

13 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
14 means of facsimile, which taken together shall be deemed to constitute one document.

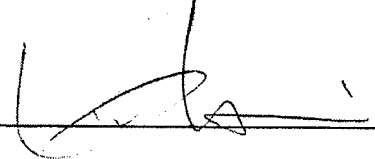
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16 IT IS SO STIPULATED:

<p>17 Dated: April <u>28</u>, 2010</p>	<p>18 CENTER FOR ENVIRONMENTAL HEALTH</p> <p>19 </p> <hr/> <p>20</p> <p>21 </p> <hr/> <p>22 Printed Name</p> <p>23</p> <p>24 </p> <hr/> <p>25 Title</p> <p>26</p> <p>27</p> <p>28</p>
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Dated: ~~April~~ ^{May} 7, 2010

MOA INTERNATIONAL CORP.



KU CHOL YI

Printed Name

President

Title

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

Dated:

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

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

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