

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

LEXINGTON LAW GROUP  
Eric S. Somers, State Bar No. 139050  
Mark N. Todzo, State Bar No. 168389  
Howard Hirsch, State Bar No. 213209  
1627 Irving Street  
San Francisco, CA 94122  
Telephone: (415) 759-4111  
Facsimile: (415) 759-4112

Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Plaintiff,

v.

CLAIRE'S BOUTIQUES, INC.; and Defendant  
DOES 1 through 200, inclusive;

Defendants.

Case No. CGC-09-492696

**[PROPOSED] CONSENT  
JUDGMENT AS TO DEFENDANT  
CLAIRE'S BOUTIQUES, INC.**

1           **1. INTRODUCTION**

2           1.1     On September 18, 2009, plaintiff the Center for Environmental Health  
3     (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco  
4     County Superior Court, entitled *Center for Environmental Health v. Claire’s Boutiques, Inc.*, San  
5     Francisco County Superior Court Case Number CGC-09-492696 (the “Action”), for civil  
6     penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
7     §25249.5 *et seq.* (“Proposition 65”).

8           1.2     Defendant Claire’s Boutiques, Inc. (“Claire’s”) is a “person in the course of  
9     doing business” under Proposition 65 and manufactures, distributes and/or sells keychains (the  
10    “Products”) in the State of California. Claire’s and CEH are referred to collectively herein as the  
11    Parties.

12          1.3     On or about June 4, 2009, CEH served Claire’s and the appropriate public  
13    enforcement agencies with the requisite 60-day notice that Claire’s is in violation of Proposition  
14    65. CEH’s notice and the Complaint in this Action allege that Claire’s exposes individuals who  
15    use or otherwise handle the Products to lead and/or lead compounds (referred to interchangeably  
16    herein as “Lead”), chemicals known to the State of California to cause cancer, birth defects and  
17    other reproductive harm, without first providing clear and reasonable warning to such persons  
18    regarding the carcinogenicity and reproductive toxicity of Lead. The notice and Complaint allege  
19    that Claire’s’ conduct violates Health & Safety Code §25249.6, the warning provision of  
20    Proposition 65.

21          1.4     For purposes of this Consent Judgment only, the Parties stipulate that this  
22    Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
23    personal jurisdiction over Claire’s as to the acts alleged in CEH’s Complaint, that venue is proper  
24    in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
25    Judgment as a full and final resolution of all claims which were or could have been raised in the  
26    Complaint based on the facts alleged therein.

27          1.5     The Parties enter into this Consent Judgment pursuant to a settlement of  
28    certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'  
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
7 any other or future legal proceedings. This Consent Judgment is the product of negotiation and  
8 compromise and is accepted by the parties, for purposes of settling, compromising and resolving  
9 issues disputed in this action, including future compliance by Claire's with Section 2 of this  
10 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Shipping Date.** As of the date of entry of this Consent Judgment, Claire's  
13 shall not purchase, import, manufacture, or supply to an unaffiliated third party any Product that  
14 exceeds the following Lead Limits:

15 **2.1.1 Polyvinyl chloride (PVC):** no more than 0.02 percent Lead by  
16 weight (200 parts per million ("ppm"));

17 **2.1.2 Glass or crystal decorative components:** must either: (a) weigh  
18 in total no more than 1.0 gram; or (b) contain less than 0.02 percent (200 ppm) Lead and have no  
19 intentionally added Lead;

20 **2.1.3 Paint or other Surface Coatings:** no more than 0.009 percent (90  
21 ppm). "Paint or other Surface Coatings" has the meaning defined in 16 C.F.R. § 1303.2(b)<sup>1</sup>, as  
22 amended from time to time;

23 **2.1.4 All other materials:** no more than .03 percent Lead by weight (300  
24 ppm).

25 \_\_\_\_\_  
26 <sup>1</sup> As of the date of execution of this Consent Judgment, "Paint or other Surface Coatings" means a  
27 fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter,  
28 which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather,  
cloth, plastic, or other surface. This term does not include printing inks or those materials which  
actually become a part of the substrate, such as the pigment in a plastic article, or those materials  
which are actually bonded to the substrate, such as by electroplating or ceramic glazing.

1                   **2.2 Final Retail Compliance Date.** As of March 1, 2011, Claire's shall not  
2 sell or offer for sale any Product that exceeds the Lead Limits in Section 2.1.

3                   **2.3 Phase down.** Subject to the following, as of August 14, 2011, the Lead  
4 Limit in Sections 2.1.1 and 2.1.4 shall be phased down to less than .01 percent Lead by weight  
5 (100 ppm). In the event the Consumer Product Safety Commission ("CPSC") determines prior  
6 to August 14, 2011 that it is not technically feasible for manufacturers of Products to meet this  
7 limit, the maximum Lead limit of the Products shall remain as set forth in Sections 2.1.1 or 2.1.4  
8 as applicable. This phase-down provision shall not apply to paint or other surface coatings or to  
9 glass or crystal decorative components, which shall remain subject to Section 2.1.2 or Section  
10 2.13 as applicable.

11                   **2.4 Supplier Specifications, Certification, and Testing.** Claire's shall  
12 require that its suppliers provide Product that complies with the Lead content requirements of  
13 Sections 2.1 or 2.3 of this Consent Judgment as applicable. Claire's shall obtain written  
14 certification with corresponding test results from its suppliers of the Products certifying that the  
15 Products meet the requirements of Sections 2.1 or 2.3 as applicable.

16                   **2.5 Confirmatory testing by CEH.** CEH intends to conduct periodic testing  
17 of the Products. Such testing shall be conducted by an independent laboratory. In the event that  
18 CEH's testing demonstrates Lead levels in excess of the requirements of Section 2.1 or 2.3 of this  
19 Consent Judgment as applicable, CEH shall inform Claire's of the alleged violation(s), including  
20 information sufficient to permit Claire's to identify the Product(s). Claire's shall, within thirty  
21 (30) days following such notice, provide CEH, at the address listed in Section 11, with  
22 information demonstrating its compliance with Section 2.4 of this Consent Judgment. Claire's  
23 shall cease selling and shipping the Product identified in CEH's notice for sale in California. This  
24 remedy is in addition to any other remedies available to enforce the terms of this Consent  
25 Judgment.

26                   **2.6 Documentation.** The certifications and results of all testing performed  
27 pursuant to this Consent Judgment shall be retained by Claire's for a period of three years from  
28 the date of the certification or testing and shall be made available to CEH upon request.

1           **3. SETTLEMENT PAYMENTS**

2           **3.1**     Within 15 days of entry of this Consent Judgment, Claire's shall pay a total  
3 of \$50,000 as a settlement payment. This total shall be paid in three separate checks delivered to  
4 the offices of the Lexington Law Group at the address set forth in Section 11 below and made  
5 payable and allocated as follows.

6                   **3.1.1 Payments:** The sum of \$2,000 pursuant to Health and Safety Code  
7 § 25249.7(b). This payment shall be made by check payable to Center for Environmental Health.  
8 CEH shall provide \$1,500 of this amount (75%) to the Safe Drinking Water and Toxic  
9 Enforcement Fund in accordance with Health and Safety Code § 25249.12.

10                   **3.1.2 Monetary Payment in Lieu of Penalty:** \$15,750 shall be paid to  
11 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment shall  
12 be made by check payable to Center for Environmental Health. CEH shall use such funds to  
13 continue its work protecting people from exposures to toxic chemicals. As part of this work,  
14 CEH intends to conduct periodic testing of the Products as set forth in Section 2.3. In addition, as  
15 part of its Community Environmental Action and Justice Fund, CEH will use four percent of such  
16 funds to award grants to grassroots environmental justice groups working to educate and protect  
17 people from exposures to toxic chemicals. The method of selection of such groups can be found  
18 at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund)

19                   **3.1.3 Attorneys' Fees and Costs:** \$32,250 shall be used to reimburse  
20 CEH and its attorneys for a portion of their reasonable investigation fees and costs, attorneys'  
21 fees, and any other costs incurred as a result of investigating, bringing this matter to Claire's'  
22 attention, litigating and negotiating a settlement in the public interest. This payment shall be  
23 made by check payable to Lexington Law Group.

24           **4. MODIFICATION OF CONSENT JUDGMENT**

25           **4.1**     This Consent Judgment may be modified by written agreement of CEH  
26 and Claire's, or upon motion of CEH or Claire's as provided by law.

27           **5. ENFORCEMENT OF CONSENT JUDGMENT**

28           **5.1**     CEH may, by motion or application for an order to show cause before the

1 Superior Court of the County of San Francisco, enforce the terms and conditions contained in this  
2 Consent Judgment. Should CEH prevail on any motion, application for an order to show cause or  
3 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
5 Claire's prevail on any motion application for an order to show cause or other proceeding,  
6 Claire's may be awarded its reasonable attorneys' fees and costs as a result of such motion or  
7 application upon a finding by the court that CEH's prosecution of the motion or application  
8 lacked substantial justification. For purposes of this Consent Judgment, the term substantial  
9 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of  
10 Civil Procedure Section 2016, *et seq.*

11 **6. APPLICATION OF CONSENT JUDGMENT**

12 6.1 This Consent Judgment shall apply to and be binding upon the Parties  
13 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
14 them.

15 **7. RELEASE**

16 7.1 This Consent Judgment is a full, final and binding resolution  
17 between CEH and Claire's of any violation of Proposition 65 that was or could have been  
18 asserted in the Complaint against Claire's or its parents, subsidiaries, directors, officers,  
19 employees, or customers based on failure to warn about alleged exposure to Lead contained in the  
20 Products, with respect to any Products manufactured, distributed or sold by Claire's on or prior to  
21 the date of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment  
22 by Claire's shall constitute compliance with Proposition 65 by Claire's with respect to any  
23 alleged failure to warn about exposure to Lead contained in the Products. This release does not  
24 limit or effect the obligations of any party created under this Consent Judgment.

25 **8. SEVERABILITY**

26 8.1 In the event that any of the provisions of this Consent Judgment are held  
27 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
28 affected.

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

**9. GOVERNING LAW**

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

**10. RETENTION OF JURISDICTION**

10.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment.

**11. PROVISION OF NOTICE**

11.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:                   Howard Hirsch  
                                  Lexington Law Group, LLP  
                                  1627 Irving Street  
                                  San Francisco, CA 94122

For Claire's:             Stephen Sernett  
                                  Claire's Boutiques, Inc.  
                                  2400 West Central Road  
                                  Hoffman Estates, IL 60192

With a copy to:  
Frank Citera and Gretchen Miller  
Greenberg Traurig LLP  
77 West Wacker Drive  
Chicago, IL 60601

**12. COURT APPROVAL**

12.1 If this Consent Judgment is not approved by the Court, it shall be of no further force or effect. The Parties agree to support a Motion for Approval of this Consent Judgment.

**13. EXECUTION AND COUNTERPARTS**

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

**14. AUTHORIZATION**

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

1 The undersigned have read, understand and agree to all of the terms and conditions of this  
2 Consent Judgment. Except as provided herein, each party is to bear its own fees and costs.

3 **AGREED TO:**

4

5 **CENTER FOR ENVIRONMENTAL HEALTH**

6  7/28/10  
7 \_\_\_\_\_  
Signature

8 CHARLIE PIZZARO  
9 \_\_\_\_\_  
Printed Name

10 ASSOCIATE DIRECTOR  
11 \_\_\_\_\_  
Title

14 **CLAIRE'S BOUTIQUES, INC.**

16 \_\_\_\_\_  
Signature

18 \_\_\_\_\_  
Printed Name

20 \_\_\_\_\_  
Title

28

1 The undersigned have read, understand and agree to all of the terms and conditions of this  
2 Consent Judgment. Except as provided herein, each party is to bear its own fees and costs.

3 **AGREED TO:**

4  
5 CENTER FOR ENVIRONMENTAL HEALTH

6  
7 \_\_\_\_\_  
Signature

8  
9 \_\_\_\_\_  
Printed Name

10  
11 \_\_\_\_\_  
Title

12  
13  
14 CLARE'S BOUTIQUES, INC.

15   
16 \_\_\_\_\_  
Signature

17  
18 Rebecca R. Grand  
Printed Name

19  
20 General Counsel  
Title

21  
22  
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

**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between the Parties, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Superior Court of the State of California