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

CENTER FOR ENVIRONMENTAL HEALTH,
A non-profit corporation,

Plaintiff,

vs.

AEROPOSTALE, INC., *et al.*,

Defendants.

) Lead Case No. RG 10-514803

)
) (Consolidated with Case Nos.
) RG 10-545680 and RG 10-545687)

) ASSIGNED FOR ALL PURPOSES TO:
) Judge George C. Hernandez, Department 17

) **[PROPOSED] MODIFIED CONSENT**
) **JUDGMENT AS TO TWO'S COMPANY,**
) **INC.**

This Document Relates To:

Center for Environmental Health v. Two's
Company, Inc., Case No. RG 10-545680

This Modified Consent Judgment (the "Consent Judgment") supersedes in its entirety the Consent Judgment agreed to by Center for Environmental Health ("CEH") and Two's Company, Inc. ("Defendant") and entered by the Court on August 15, 2011, in the matter entitled *Center for Environmental Health v. Two's Company, Inc.*, Alameda County Superior Court Case No. RG 10-545680 (the "Action").

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by CEH and Defendant to settle certain
3 claims asserted by CEH against Defendant as set forth in the operative complaint in the Action.

4 1.2 On August 6, 2010, CEH provided a “Notice of Violation of Proposition 65” to the
5 California Attorney General, the District Attorneys of every county in California, the City
6 Attorneys of every California city with a population greater than 750,000, and to Defendant
7 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

8 1.3 On November 8, 2010, CEH filed the complaint against Defendant in the Action.

9 1.4 Defendant is a corporation that employs 10 or more persons, and which
10 manufactures, distributes and/or sells Covered Products in the State of California.

11 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the “Parties”)
12 stipulate that this Court has jurisdiction over the allegations of violations contained in the
13 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
14 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
15 Consent Judgment as a full and final resolution of all claims which were or could have been raised
16 in the Complaint based on the facts alleged therein with respect to Covered Products
17 manufactured, distributed, and/or sold by Defendant.

18 1.6 CEH and Defendant enter into this Consent Judgment as a full and final settlement
19 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
20 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
21 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
22 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
23 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
24 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be
25 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
26 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
27 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies
28 the material, factual and legal allegations in CEH’s Complaint and expressly denies any wrong

1 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
2 remedy, argument or defense the Parties may have in this or any other pending or future legal
3 proceedings. This Consent Judgment is the product of negotiation and compromise and is
4 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
5 disputed in this action.

6 **2. DEFINITIONS**

7 2.1 The term “Children’s Products” means Covered Products that are made for,
8 marketed for use by, or marketed to, Children.

9 2.1.1 For purposes of this Consent Judgment, the term “Children” means
10 children six (6) years of age and younger.

11 2.1.2 A Covered Product is made for, marketed for use by, or marketed to
12 Children if it is either:

13 2.1.2.1 Represented in its packaging, display, or advertising, as appropriate
14 for use by Children; or

15 2.1.2.2 Sold in conjunction with, attached to, or packaged together with
16 other products that are packaged, displayed, or advertised as appropriate for use by Children; or

17 2.1.2.3 Sized for Children and not intended for use by adults; or

18 2.1.2.4 Sold in

19 2.1.2.4.1 a vending machine; or

20 2.1.2.4.2 a retail store, catalogue, or online website, in which
21 Defendant exclusively offers for sale products that are packaged,
22 displayed, or advertised as appropriate for use by Children; or

23 2.1.2.4.3 those discrete portions of a retail store, catalogue, or
24 online website, in which Defendant offers for sale products that are
25 packaged, displayed, or advertised as appropriate for use by
26 Children.

27 2.2 The term “Covered Product” means (a) the following ornaments worn by a person:
28 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories,

1 earring, necklace, pin, ring and body piercing jewelry; or (b) any bead, chain, link, pendant, or
2 other component of such an ornament.

3 2.3 The term “Effective Date” means the date of entry of this Consent Judgment.

4 **3. INJUNCTIVE RELIEF**

5 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall
6 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product
7 unless the Covered Product complies with Section 3.2 or, for Children’s Products, Section 3.3 of
8 this Consent Judgment.

9 3.2 **General Reformulation Requirements.** Covered Products that are not Children’s
10 Products shall be made entirely from Class 1, Class 2 and Class 3 Components, or any
11 combination thereof, as these terms are defined below.

12 3.2.1 A “Class 1 Component” is the portion of a Covered Product that contains
13 one or more of the following materials:

14 3.2.1.1 Stainless and surgical steels.

15 3.2.1.2 Karat gold.

16 3.2.1.3 Sterling silver.

17 3.2.1.4 Platinum, palladium, iridium, ruthenium, rhodium, or osmium
18 (“platinum group metals”).

19 3.2.1.5 Natural and cultured pearls.

20 3.2.1.6 Glass, ceramic, and crystal decorative components (e.g., cat’s eye,
21 cubic zirconia (sometimes called cubic zirconium, CZ), glass, rhinestones, cloisonné).

22 3.2.1.7 Any gemstone that is cut and polished for ornamental purposes,
23 except the following: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
24 phosgenite, samarskite, vanadinite, and wulfenite.

25 3.2.1.8 Elastic, fabric, ribbon, rope, and string with no intentionally-added
26 lead and not otherwise listed as a Class 2 Component.

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1 3.2.1.9 Natural decorative materials (e.g., amber, bone, coral, feathers, fur,
2 horn, leather, shell, wood) that are in their natural state or are treated in a way that does not add
3 lead.

4 3.2.1.10 Adhesives.

5 3.2.2 A “Class 2 Component” is the portion of a Covered Product that contains
6 one or more of the following materials:

7 3.2.2.1 Metal alloys with less than 6 percent lead by weight (“92 metal”)
8 that are electroplated with suitable under and finish coats and that are plated utilizing the Best
9 Management Practices described in Exhibit A.

10 3.2.2.2 Unplated metal containing less than 1.5 percent lead by weight that
11 is not defined as a Class 1 Component.

12 3.2.2.3 Plastic or rubber (e.g., acrylic, polystyrene, plastic beads/stones, and
13 polyvinyl chloride (“PVC”)) containing less than 0.02 percent lead by weight (200 parts per
14 million (“ppm”)).

15 3.2.2.4 Paint or Surface Coating containing less than 0.009 percent lead by
16 weight (90 ppm). For purposes of this Consent Judgment, “Paint or Surface Coating” shall carry
17 the same meaning as “Paint or other similar surface coating” under 16 C.F.R. §1303.2(b)(1)
18 (“Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,
19 with or without a suspension of finely divided coloring matter, which changes to a solid film when
20 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This
21 term does not include printing inks or those materials which actually become a part of the
22 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
23 the substrate, such as by electroplating or ceramic glazing.”).

24 3.2.3 A “Class 3 Component” is any part of a Covered Product that is not a
25 Class 1 or Class 2 Component. Class 3 Components must contain less than 0.06 percent lead by
26 weight (600 ppm).

27 3.3 **Children’s Products.** Children’s Products shall be made entirely from:

28 3.3.1 Any component not covered under Section 3.3.2, or that is made of any

1 material not covered under Section 3.3.2, containing less than 0.01 percent lead by weight (100
2 ppm).

3 3.3.2 Any Paint or Surface Coating containing less than 0.009 percent lead by
4 weight (90 ppm).

5 **4. ENFORCEMENT**

6 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
7 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
8 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
9 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
10 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
11 by new action, motion or order to show cause before the Superior Court of Alameda, seek to
12 enforce the terms and conditions contained in this Consent Judgment. Should the Party seeking to
13 enforce prevail on any motion or application under this section, such Party shall be entitled to
14 recover its reasonable attorneys' fees and costs associated with such motion, order to show cause
15 or procedure from the other Party.

16 **5. PAYMENTS**

17 5.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
18 Judgment, Defendant shall pay the total sum of \$30,000 as a settlement payment.

19 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
20 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
21 Hirsch), 503 Divisadero Street, San Francisco, California 94117 and made payable and allocated
22 as follows:

23 5.2.1 Defendant shall pay the sum of \$3,930 as a penalty pursuant to Health &
24 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
25 Safety Code §25249.12. The penalty check shall be made payable to the Center for
26 Environmental Health.

27 5.2.2 Defendant shall pay the sum of \$5,900 as payment to CEH in lieu of
28 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title

1 11, §3203(b). CEH will use such funds to continue its work educating and protecting people from
2 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
3 to monitor compliance with the reformulation requirements of this and other similar Consent
4 Judgments and to purchase and test Covered Products to confirm compliance with such
5 reformulation requirements. In addition, as part of its Community Environmental Action and
6 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
7 justice groups working to educate and protect people from exposures to toxic chemicals. The
8 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
9 The payment in lieu of penalty check shall be made payable to the Center for Environmental
10 Health.

11 5.2.3 Defendant shall pay the sum of \$20,170 as reimbursement of reasonable
12 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable
13 to the Lexington Law Group.

14 **6. MODIFICATION AND DISPUTE RESOLUTION**

15 6.1 **Modification.** This Consent Judgment may be modified from time to time by
16 express written agreement of the Parties, with the approval of the Court, or by an order of this
17 Court upon motion and in accordance with law.

18 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
19 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
20 modify the Consent Judgment.

21 **7. CLAIMS COVERED AND RELEASE**

22 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
23 Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries, partners,
24 sister companies and their successors and assigns ("Defendant Releasees"), and all entities other
25 than those listed on Exhibit B of this Consent Judgment to whom they distribute or sell Covered
26 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,
27 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of
28 Proposition 65 or any other statutory or common law claims that have been or could have been

1 asserted in the public interest against Defendant, Defendant Releasees, and Downstream
2 Defendant Releasees, regarding the failure to warn about exposure to lead arising in connection
3 with Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

4 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
5 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
6 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation
7 of Proposition 65 or any other statutory or common law claims that have been or could have been
8 asserted in the public interest regarding the failure to warn about exposure to lead arising in
9 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
10 Effective Date.

11 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
12 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant
13 Releasees and their Downstream Defendant Releasees with respect to any alleged failure to warn
14 about lead in Covered Products manufactured, distributed or sold by Defendant after the Effective
15 Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail as follows:

19 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
20 pursuant to this Consent Judgment shall be:

21 Michael E. Gallagher
22 Dongell Lawrence Finney LLP
23 707 Wilshire Boulevard, 45th Floor
24 Los Angeles, CA 90017-3609
25 mgallagher@dlflawyers.com
26
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1 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
2 this Consent Judgment shall be:

3 Howard Hirsch
4 Lexington Law Group
5 503 Divisadero Street
6 San Francisco, CA 94117
7 hhirsch@lexlawgroup.com

8 8.2 Any Party may modify the person and address to whom the notice is to be sent by
9 sending the other Party notice by first class and electronic mail.

10 **9. COURT APPROVAL**

11 9.1 This Consent Judgment shall become effective on the Effective Date, provided
12 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
13 Defendant shall support approval of such Motion.

14 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
15 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

16 **10. GOVERNING LAW AND CONSTRUCTION**

17 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 **11. ATTORNEYS' FEES**

20 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
21 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
22 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
23 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
24 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

25 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
26 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
27 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
28 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
provision shall not be construed as altering any procedural or substantive requirements for

1 obtaining such an award.

2 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
3 sanctions pursuant to law.

4 **12. ENTIRE AGREEMENT**

5 12.1 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 **13. RETENTION OF JURISDICTION**

20 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

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

23 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.
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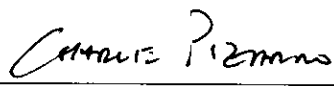
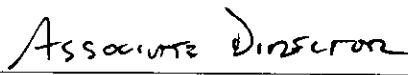
1 **15. NO EFFECT ON OTHER SETTLEMENTS**

2 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against an entity that is not Defendant on terms that are different than those contained in this
4 Consent Judgment.

5 **16. EXECUTION IN COUNTERPARTS**

6 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile, which taken together shall be deemed to constitute one document.
8

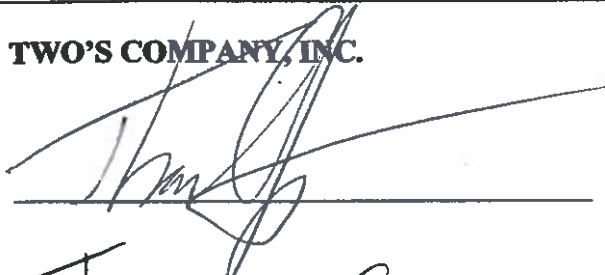
9 **IT IS SO STIPULATED:**
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<p>11 Dated: August 12 2013 12 <i>SEPT</i></p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>13 </p> <hr/> <p>14</p> <p>15 </p> <hr/> <p>16 Printed Name</p> <p>17</p> <p>18 </p> <hr/> <p>19 Title</p> <p>20</p>
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Dated: August 30, 2013

TWO'S COMPANY, INC.


Thomas Gottlieb
Printed Name
President
Title

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

Dated:

Honorable George C. Hernandez
Judge of the Superior Court of the State of California

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EXHIBIT A
BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES

PRE-PLATING PROCEDURE

The pieces must be cleaned. Any polishing compound must be removed before plating by cleaning with aqueous cleaning solution or solvent and rinsed with water.

The pieces must be activated.

The pieces must be rinsed in clean water before plating.

PLATING BATH MAINTENANCE

The temperature of each plating bath must be controlled to the appropriate temperature in accordance with the recommendations of the equipment and plating chemical suppliers.

The nickel and nickel-substitute tanks must be agitated or aerated in accordance with the chemical suppliers' recommendations.

All baths must be filtered continuously during plating and filters changed at least than monthly.

pH must be measured each day of plating and adjusted within the chemical supplier's recommendations.

All plating employees must be trained on the use of the equipment in accordance with recommendation of equipment manufacturer and plating chemical suppliers.

The plating baths must be maintained in accordance with the plating chemical suppliers recommendations.

Plating tanks must be swept at least weekly.

Anodes must be inspected monthly in accordance with the anode supplier's recommendations.

Racks must be stripped at least annually.

The electrical equipment must be sized appropriately for each tank in accordance with equipment manufacturer's recommendations and calibrated annually.

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PLATING PROCEDURES

Substantial pieces such as pendants, drops, and rings without prongs or other such feature shall be plated with at least 15 minutes combined plating with copper (copper strike and/or acid copper), nickel or nickel substitute, and/or finish coat. The pieces will also be rinsed between plating tanks. Finish decorative coatings include brass, bronze, copper, gold, gun metal, hematite, imitation rhodium, matt finish, palladium, platinum, rhodium, or silver. If desired, plated pieces can be treated to produce other finishes such as matt, oxidized, or smut black finishes.

Mechanical, functional (e.g., lobster claws, spacers, mechanical closures, connectors), or fine pieces such as prongs and fine chains may be plated to cover the exposed surface consistent with good manufacturing practices for appearance and function. Components that articulate closely together such as snake chain and tight hinges or that need to be manipulated into position will be plated to prevent binding, stiffness, and cracking of plating.

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EXHIBIT B
LIST OF ENTITIES NOT SUBJECT
TO DOWNSTREAM DEFENDANT RELEASE

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