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

CENTER FOR ENVIRONMENTAL)	Case No. RG 10-514803
HEALTH, a non-profit corporation,)	
)	[PROPOSED] CONSENT JUDGMENT
Plaintiffs,)	AS TO FAD, INC. AND SPENCER
)	GIFTS, LLC
VS.)	
)	
AEROPOSTALE, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center for Environmental Health, a California non-profit corporation (“CEH”) and defendants FAD, Inc. and Spencer Gifts, LLC (“Settling Defendants”), to settle certain claims asserted by CEH against Settling Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Aeropostale, Inc., et al.*, Alameda County Superior Court Case No. RG 10-514803.

1.2 On March 30, 2011, CEH served a Notice of Violation under Proposition 65 alleging that Spencer Gifts, LLC, along with other entities named in the notice, violated Proposition 65 by exposing persons to cadmium contained in jewelry, without first providing a

1 clear and reasonable warning pursuant to Proposition 65. On April 21, 2011, CEH served a Notice
2 of Violation under Proposition 65 alleging that FAD, Inc., along with other entities named in the
3 notice, violated Proposition 65 by exposing persons to cadmium contained in jewelry, without first
4 providing a clear and reasonable warning pursuant to Proposition 65.

5 1.3 On April 8, 2011, CEH filed the operative Second Amended Complaint
6 (“Complaint”) in this action. On July 20, 2011, CEH amended the Complaint to name Settling
7 Defendants as parties.

8 1.4 Settling Defendants are each a corporation that employs ten or more persons, and
9 that manufactures, distributes and/or sells Covered Products (as defined herein) in the State of
10 California.

11 1.5 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 Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the
14 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
15 enter this Consent Judgment as a full and final resolution of all claims which were or could have
16 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
17 manufactured, distributed, and/or sold by Settling Defendants.

18 1.6 CEH and Settling Defendants enter into this Consent Judgment as a full and final
19 settlement of all claims that were raised in the Complaint, or which could have been raised in the
20 Complaint, arising out of the facts or conduct related to Settling Defendants alleged therein. By
21 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
22 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law
23 suggesting or demonstrating any violations of Proposition 65 (California Health & Safety Code
24 sections 25249.5, *et seq.*) or any other statutory, common law or equitable requirements relating to
25 cadmium in jewelry. Nothing in this Consent Judgment is or shall be construed as an admission
26 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
27 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
28 conclusion of law, issue of law, or violation of law. Settling Defendants deny the material, factual

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

6 **2. DEFINITIONS**

7 2.1 The term “Cadmium Limit” means a concentration of 0.03 percent (300 parts per
8 million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any material
9 used in a Covered Product. The forgoing shall not apply to components of or materials used in
10 Covered Product made from cubic zirconia (sometimes called cubic zirconium, CZ), glass,
11 rhinestones or vitrified ceramics except where the Covered Products in question are subject to
12 California Health & Safety Code section 25214.2(d).

13 2.2 The term “Covered Product” means (a) the following ornaments worn by a person:
14 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, watch (excluding the
15 timepiece itself if removable), decorated hair accessory, earring, necklace, pin, ring; similar
16 clothing or shoe ornaments which are detachable; and body piercing jewelry; or (b) any bead,
17 chain, link, pendant, or other component of such an ornament.

18 2.3 The term “Effective Date” means the date of entry of this Consent Judgment.

19 **3. INJUNCTIVE RELIEF**

20 3.1 **Reformulation of Covered Products.** Settling Defendants shall comply with the
21 following requirements to achieve expeditious reformulation of the Covered Products to reduce or
22 eliminate exposures to cadmium arising from the Covered Products:

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

27 3.1.2 **Cadmium Limit.** After the Effective Date, Settling Defendants shall not
28 manufacture, purchase, import, sell or offer for sale in California any Covered Product that

1 exceeds the Cadmium Limit.

2 **4. ENFORCEMENT**

3 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
4 order to show cause before this Court, enforce the terms and conditions contained in this Consent
5 Judgment. Any action to enforce alleged violations of the Cadmium Limit by Settling Defendants
6 shall be brought exclusively pursuant to this Section 4.

7 4.2 **Enforcement of Materials Violation.**

8 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
9 Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by a
10 Settling Defendant that CEH believes in good faith exceed the Cadmium Limit, CEH may issue a
11 Notice of Violation pursuant to this Section.

12 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

13 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
14 Exhibit A to receive notices for each Settling Defendant, and must be served within 75 days of the
15 date the Covered Product at issue was purchased or otherwise acquired by CEH, provided,
16 however, that CEH may have up to an additional 45 days to provide a Settling Defendant with the
17 test data required by Section 4.2.2.2 below if it has not yet obtained it from its laboratory.

18 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
19 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the
20 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the
21 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and
22 supporting documentation sufficient for validation of the test results, including any laboratory
23 reports, quality assurance reports and quality control reports associated with testing of the Covered
24 Products. Such Notice of Violation shall be based upon total acid digest test data from an
25 independent laboratory. Wipe, swipe, and swab testing are not sufficient to support a Notice of
26 Violation.

27 4.2.2.3 CEH shall promptly make available for inspection and/or copying
28 upon request by and at the expense of the Settling Defendant, any supporting documentation

1 related to the testing of the Covered Products and associated quality control samples, including
2 chain of custody records, all laboratory logbook entries for laboratory receiving, sample
3 preparation, and instrumental analysis, and all printouts from all analytical instruments relating to
4 the testing of Covered Product samples and any and all calibration tests performed or relied upon
5 in conjunction with the testing of the Covered Products, obtained by or available to CEH that
6 pertains to the Covered Product's alleged exceedance of the Cadmium Limit, and, if available, any
7 exemplars of Covered Products tested.

8 **4.2.3 Notice of Election of Response.** No more than 30 days after service of a
9 Notice of Violation, the Settling Defendant shall provide written notice to CEH whether it elects
10 to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to
11 provide a Notice of Election within 30 days of service of a Notice of Violation shall be deemed an
12 election to contest the Notice of Violation.

13 **4.2.3.1** If a Notice of Violation is contested, the Notice of Election shall
14 include all then-available documentary evidence regarding the alleged violation, including all test
15 data, if any. If the Settling Defendant or CEH later acquire additional test or other data regarding
16 the alleged violation, it shall notify the other party and promptly provide all such data or
17 information to the party. Any test data used to contest a Notice of Violation shall meet the criteria
18 of Section 4.2.2.2.

19 **4.2.4 Meet and Confer.** If a Notice of Violation is contested, CEH and the
20 Settling Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of
21 serving a Notice of Election contesting a Notice of Violation, and if no enforcement motion or
22 application has been filed by CEH pursuant to Section 4.1, the Settling Defendant may withdraw
23 the original Notice of Election contesting the violation and serve a new Notice of Election
24 conceding the violation, provided however that the Settling Defendant shall pay \$5,000 in addition
25 to any payment required under Section 4.2.7. At any time, CEH may withdraw a Notice of
26 Violation, in which case for purposes of this Section 4 the result shall be as if CEH never issued
27 any such Notice of Violation. If no informal resolution of a Notice of Violation results within 30
28 days of a Notice of Election to contest, CEH may file an enforcement motion or application

1 pursuant to Section 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties
2 attorneys' fees or remedies are provided by law for failure to comply with the Consent Judgment.

3 **4.2.5 Non-Contested Matters.** If the Settling Defendant elects not to contest
4 the allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section
5 4.2.6 and shall make any payments required by Section 4.2.7.

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

21 **4.2.7 Payments in Non-Contested Matters.** In addition to the corrective
22 action, the Settling Defendant shall be required to make a payment as reimbursement for costs for
23 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
24 attorneys' fees and costs incurred in connection with these activities, as specified below:

25 **4.2.7.1** If the Settling Defendant has not previously received a Notice of
26 Violation, or has only received one or more Notices of Violation that were successfully contested
27 or withdrawn, and if the Settling Defendant serves a Notice of Election not to contest the
28 allegations in the instant Notice of Violation, it shall not be required to make a payment under this

1 Section.

2 4.2.7.2 If the Settling Defendant previously received a Notice of Violation
3 that was not successfully contested or withdrawn, and the Settling Defendant serves a Notice of
4 Election not to contest the allegations in the instant Notice of Violation, it shall be required to
5 make a payment of \$10,000. This payment shall, however, be:

6 A. Reduced to \$5,000 if the Settling Defendant produces with its Notice of
7 Election test data showing that the Covered Product that is the subject of the Notice of
8 Violation did not exceed the Cadmium Limit. For purposes of this Section 4.2.7.2A only,
9 “test data” shall mean (i) total cadmium by acid digest performed by an accredited
10 laboratory on the Covered Product alleged to be in violation of the Cadmium Limit where
11 the test was conducted within one year prior to the date the Covered Product that is the
12 subject of the Notice of Violation was purchased or obtained by CEH; or (ii) total
13 cadmium by X-ray fluorescence (XRF) performed on the Covered Product alleged to be in
14 violation of the Cadmium Limit by the Settling Defendant pursuant to an existing written
15 screening policy for cadmium in Covered Products where the test was conducted within
16 eighteen months prior to the date the Covered Product that is the subject of the Notice of
17 Violation was purchased or obtained by CEH.

18 B. Reduced to \$5,000 if: (i) the Notice of Violation is issued during the time
19 period running from the Effective Date to twelve months thereafter; and (ii) only non-
20 metallic components of the Covered Product exceeded the Cadmium Limit.

21 4.2.7.3 The payment shall be made by check payable to the “Lexington Law
22 Group” and shall be paid within 15 days of service of a Notice of Election triggering a payment.

23 4.2.8 **Repeat Violations.** If a Settling Defendant has received three or more
24 Notices of Violation that were not successfully contested or withdrawn in any 12-month period
25 then, at CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other
26 remedies that are provided by law for failure to comply with the Consent Judgment. Prior to
27 seeking such relief, CEH shall meet and confer with the Settling Defendant for a period not to
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1 exceed 30 days (unless extended by mutual agreement) to determine if the Parties can agree on
2 measures the Settling Defendant can undertake to prevent future violations.

3 **5. PAYMENTS**

4 5.1 **Payments From Settling Defendants.** Within five (5) days of entry of this
5 Consent Judgment, Settling Defendants shall jointly and severally pay the amount set forth as a
6 settlement payment on Exhibit A, as further specified in Section 5.2 below.

7 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendants shall
8 be paid in four separate checks delivered to the offices of the Lexington Law Group (Attn: Eric
9 Somers), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
10 as follows:

11 5.2.1 Settling Defendants shall pay the amount designated on Exhibit A as a
12 Penalty pursuant to Health & Safety Code §25249.7(b,) to be apportioned in accordance with
13 California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the
14 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
15 remaining 25% of the penalty remitted to CEH. Accordingly, one penalty payment check for the
16 amount designated on Exhibit A as OEHHA Portion of Penalty shall be made payable to
17 “OEHHA” for the Safe Drinking Water & Toxic Enforcement Fund and be attributed to taxpayer
18 identification number 68-0284486. A second penalty payment check in the amount designated for
19 Settling Defendants on Exhibit A as CEH Portion of Penalty shall made payable to the “Center for
20 Environmental Health” and associated with taxpayer identification number 94-3251981.

21 5.2.2 Settling Defendants shall also separately pay to CEH the amount designated
22 on Exhibit A as Payment In Lieu of Civil Penalty pursuant to Health & Safety Code §25249.7(b),
23 and California Code of Regulations, Title 11, §3202(b). CEH will restrict the use of such funds to
24 the following purposes: (a) monitoring compliance with the reformulation requirements of this
25 and other similar Consent Judgments; (b) purchasing and testing jewelry; (c) preparing and
26 compiling the information and documentation necessary to support enforcement efforts under this
27 Consent Judgment; (d) contributions to CEH’s Community Environmental Action and Justice
28 Fund; and (e) supporting CEH programs and activities that seek to reduce the public health

1 impacts or risks of exposure to heavy metals, including cadmium, known to the State of California
2 to cause cancer or reproductive harm. Such programs and activities currently include (i) CEH's
3 membership on the ASTM toy safety committee and participation in a workgroup that is drafting a
4 standard to limit cadmium and other heavy metals in toys; (ii) CEH's work in support of policy
5 initiatives at the state and federal level to restrict the use of cadmium and other heavy metals in
6 consumer products; and (iii) CEH's advocacy for a reduction in the use of toxic chemicals,
7 including heavy metals such as cadmium, in electronic devices and standards for the
8 disposal/recycling of such products, including CEH's participation in an EPA-sponsored multi-
9 stakeholder workgroup seeking to set standards for the design, manufacture, sale, labeling and
10 disposal of televisions and printers. CEH will maintain records that document how these funds
11 were spent. As part of its Community Environmental Action and Justice Fund, CEH will use four
12 percent of such funds to award grants to grassroots environmental justice groups working to
13 educate and protect people from exposures to toxic chemicals. The method of selection of such
14 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of
15 penalty check shall be made payable to the "Center For Environmental Health" and associated
16 with taxpayer identification number 94-3251981.

17 5.2.3 Settling Defendants shall also separately pay to the Lexington Law Group
18 the amount designated for Settling Defendants on Exhibit A as Attorneys' Fees and Costs
19 Reimbursement as reimbursement for a portion of reasonable attorneys' fees and costs. The
20 attorneys' fees and cost reimbursement check shall be made payable to the "Lexington Law
21 Group" and associated with taxpayer identification number 94-3317175.

22 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

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

1 **7. CLAIMS COVERED AND RELEASE**

2 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
3 Settling Defendants and Settling Defendants’ parents, shareholders, divisions, subdivisions,
4 subsidiaries, partners, sister companies and their successors and assigns (“Defendant Releasees”),
5 and all entities other than those entities listed on Exhibit B 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 Settling Defendants, Defendant Releasees, and Downstream
10 Defendant Releasees, regarding the failure to warn about exposure to cadmium arising in
11 connection with Covered Products manufactured, distributed, or sold by Settling Defendants prior
12 to the Effective Date.

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

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

25 **8. PROVISION OF NOTICE**

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

28 8.1.1 **Notices to Settling Defendants.** The person(s) for Settling Defendants to

1 receive Notice pursuant to this Consent Judgment are identified on Exhibit A.

2 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
3 this Consent Judgment shall be:

4 Eric S. Somers
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 esomers@lexlawgroup.com

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

11 **9. COURT APPROVAL**

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

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

17 **10. GOVERNING LAW AND CONSTRUCTION**

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

20 **11. ENTIRE AGREEMENT**

21 11.1 This Consent Judgment contains the sole and entire agreement and understanding
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
24 and therein. There are no warranties, representations, or other agreements between the Parties
25 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
26 other than those specifically referred to in this Consent Judgment have been made by any Party
27 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
28 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the

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

6 **12. RETENTION OF JURISDICTION**

7 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
8 the Consent Judgment.

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

10 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
12 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

14 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
15 against any other entity on terms that are different than those contained in this Consent Judgment.

16 **15. EXECUTION IN COUNTERPARTS**

17 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
18 means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

Dated: ~~February~~ 2, 2012
MARCH

CENTER FOR ENVIRONMENTAL HEALTH

Chris

CHRISTOPHER PIERRE

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: February __, 2012


FAD, INC.

Printed Name

Title

1 **IT IS SO STIPULATED:**

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Dated: February __, 2012	CENTER FOR ENVIRONMENTAL HEALTH <hr/> <hr/> Printed Name <hr/> Title
Dated: February <u>23</u> , 2012	FAD, INC.  <hr/> Allan Axelowitz Printed Name President Title

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Dated: February 16, 2012

SPENCER GIFTS, LLC

Kevin W. Mahoney

KEVIN W MAHONEY

Printed Name

GENERAL COUNSEL / SECRETARY

Title

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

Dated:

Judge of the Superior Court of the State of California

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EXHIBIT A

Settling Defendant(s): FAD, Inc.
Spencer Gifts, LLC

1. Section 3.2 Recall Products:

Body Rage Necklace with Cross Pendant, SKU No. 00745208,
Item No. F SLBK CRS 3AST

2. Settling Defendants' Settlement Payment and Allocation:

Total Settlement Payment	\$85,000
Total Civil Penalty	\$11,300
OEHHA Portion of Civil Penalty (75%)	\$8,475
CEH Portion of Civil Penalty (25%)	\$2,825
Payment in Lieu of Civil Penalty	\$16,900
Attorneys' Fees and Costs	\$56,800

3. Person to Receive Notice for Settling Defendants:

Jeffrey Margulies
Fulbright & Jaworski LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
jmargulies@fulbright.com

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EXHIBIT B

List of Entities Not Subject to Downstream Release

- Amazon.com, Inc.
- American Accessories, Inc.
- Any Time Costumes.com, Inc.
- Basic
- Beadniks
- Burlington Coat Factory Warehouse Corporation
- BuySeasons.com, Inc.
- C2:8
- California Dream Co., Inc.
- Cornerstone Apparel, Inc.
- Fashion Plaza
- Forum Novelties, Inc.
- Halloween Express
- High Accessories, Inc.
- INVU Accessories
- Joppa, Inc.
- Love Culture Inc. and Love Culture LLC
- M&P Central, Inc.
- Metropark USA, Inc.
- New Ashley Stewart, Inc.
- NY Style
- Pink Ice, Inc.
- Rubie's Costume Company, Inc.
- Sears, Roebuck and Co.
- Toynk Toys, LLC

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- Urban Brands, Inc.
- Wal-Mart Stores Inc.
- Western Fashion, Inc.
- Xpose