

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

CENTER FOR ENVIRONMENTAL)	Case No. RG 10-514803
HEALTH, a non-profit corporation,)	
)	[PROPOSED] CONSENT JUDGMENT
Plaintiffs,)	
)	
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 defendant Cousin Corporation of America (“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. Aeropostale, Inc., et al.*, Alameda County Superior Court Case No. RG No. 10-514803.

1.2 On April 21, 2011, CEH served a Notice of Violation under Proposition 65 alleging that Defendant, along with other entities named in the notice, violated Proposition 65 by exposing

1 persons to cadmium contained in jewelry, without first providing a clear and reasonable warning
2 pursuant to Proposition 65.

3 1.3 In April 2011, CEH filed the operative Second Amended Complaint (“Complaint”)
4 in this action.

5 1.4 Defendant is a corporation that employs ten or more persons, and which
6 manufactures, distributes and/or sells Covered Products (as defined herein) in the State of
7 California.

8 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the “Parties”)
9 stipulate that this Court has jurisdiction over the allegations of violations contained in the
10 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
11 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
12 Consent Judgment as a full and final resolution of all claims which were or could have been raised
13 in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed, and/or sold by Defendant.

15 1.6 CEH and Defendant enter into this Consent Judgment as a full and final settlement
16 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
17 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
18 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
19 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
20 demonstrating any violations of Proposition 65 (California Health and Safety Code sections
21 25249.5 *et seq.*) or any other statutory, common law or equitable requirements relating to
22 cadmium in jewelry. Nothing in this Consent Judgment is or shall be construed as an admission
23 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Defendant denies the material, factual and
26 legal allegations in CEH’s Complaint and expressly denies any wrong doing whatsoever. Nothing
27 in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
28 the Parties may have in this or any other pending or future legal proceedings. This Consent

1 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for
2 purposes of settling, compromising, and resolving issues disputed in this action.

3 2. DEFINITIONS

4 2.1 The term “Cadmium Limit” means a concentration of 0.03 percent (300 parts per
5 million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any material
6 used in a Covered Product. The forgoing shall not apply to components of or materials used in
7 Covered Product made from cubic zirconia (sometimes called cubic zirconium, CZ), glass,
8 rhinestones or vitrified ceramics except where the Covered Products in question are subject to
9 California Health and Safety Code Section 25214.2(d).

10 2.2 The term “Covered Product” means (a) the following ornaments worn by a person:
11 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, watch (excluding the
12 timepiece itself if removable), decorated hair accessory, earring, necklace, pin, ring; similar
13 clothing or shoe ornaments which are detachable; and body piercing jewelry; or (b) any bead,
14 chain, link, pendant, or other component of such an ornament.

15 2.3 The term “Effective Date” means the date of entry of this Consent Judgment.

16 2.4 The term “Settling Defendant” and “Settling Defendants” shall mean Defendant
17 and any other defendant that is a party to the Consent Judgment in this action between CEH and a
18 group of settling defendants that includes, among others, A.I.J.J. Enterprises, Inc., Aeropostale,
19 Inc., Hot Topic, Inc., The New 5-7-9 and Beyond, Inc., Rainbow Apparel Distribution Center
20 Corp., Rainbow USA, Inc., Rogers Sports Management Group, and Shalom International, Inc.

21 3. INJUNCTIVE RELIEF

22 3.1 **Reformulation of Covered Products.** Defendant shall comply with the following
23 requirements to achieve expeditious reformulation of the Covered Products to reduce or eliminate
24 exposures to cadmium arising from the Covered Products:

25 3.1.1 **Specification Compliance Date.** To the extent it has not already done so,
26 no more than 30 days after the Effective Date, Defendant shall provide the Cadmium Limit to its
27 vendors of Covered Products and shall instruct each vendor to expeditiously provide Covered
28 Products that do not exceed the Cadmium Limit on a nationwide basis.

1 3.1.2 **Inventory Cutoff/Shipping Restriction Date.** As of September 1, 2011,
2 Defendant shall not manufacture, purchase, import, or supply to an unaffiliated third party any
3 Covered Product that will be sold or offered for sale to California consumers that exceeds the
4 Cadmium Limit.

5 3.1.3 **Final Retail Compliance Date.** Commencing on December 31, 2011,
6 Defendant shall not sell or offer for sale, or authorize any customer (including a merchandise
7 liquidator) to sell or offer for sale in California, any Covered Product that exceeds the Cadmium
8 Limit.

9 3.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
10 Defendant shall have: (i) ceased shipping the specific product identified as a Recall Product next
11 to its name on Exhibit A (the “Recall Product”), to stores and/or customers in California, (ii)
12 withdrawn the Recall Product from the market in California, and (iii) if the Recall Product was not
13 withdrawn from sale in California prior to the Effective Date, sent instructions to any of its stores
14 and/or customers that offer the Recall Product for sale in California to cease offering such Recall
15 Product for sale and to either return all Recall Products to Defendant for destruction, or to directly
16 destroy the Recall Products. Any destruction of the Recall Products shall be in compliance with
17 all applicable laws. Within 60 days of the Effective Date, Defendant shall certify to CEH that it
18 has complied with this Section 3.2. If there is a dispute over the corrective action, the Parties shall
19 meet and confer before seeking any remedy in court.

20 4. **ENFORCEMENT**

21 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
22 order to show cause before this Court, enforce the terms and conditions contained in this Consent
23 Judgment. Any action to enforce alleged violations of the Cadmium Limit by Defendant shall be
24 brought exclusively pursuant to this Section 4.

25 4.2 **Enforcement of Materials Violation.**

26 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective
27 Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by
28

1 Defendant that CEH believes in good faith exceed the Cadmium Limit, CEH may issue a Notice
2 of Violation pursuant to this Section.

3 **4.2.2 Service of Notice of Violation and Supporting Documentation.**

4 4.2.2.1 The Notice of Violation shall be served on each Settling Defendant
5 that CEH knows sold or offered for sale the Covered Product to California consumers.

6 4.2.2.2 With respect to Defendant, the Notice of Violation shall be sent to
7 the person(s) identified in Exhibit A to receive notices for Defendant, and must be served within
8 75 days of the date the Covered Product at issue was purchased or otherwise acquired by CEH,
9 provided, however, that: (i) CEH may have up to an additional 45 days to provide Defendant with
10 the test data required by Section 4.2.2.3 below if it has not yet obtained it from its laboratory; and
11 (ii) CEH may serve a subsequent Notice of Violation to a supplier of a Covered Product identified
12 in a previous Notice of Violation so long as: (a) the identity of the supplier cannot be discerned
13 from the labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
14 within 75 days of the date the supplier is identified in writing to CEH by another Settling
15 Defendant.

16 4.2.2.3 The Notice of Violation shall, at a minimum, set forth for each
17 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the
18 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the
19 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and
20 supporting documentation sufficient for validation of the test results, including any laboratory
21 reports, quality assurance reports and quality control reports associated with testing of the Covered
22 Products. Such Notice of Violation shall be based upon total acid digest test data from an
23 independent laboratory. Wipe, swipe, and swab testing are not sufficient to support a Notice of
24 Violation.

25 4.2.2.4 CEH shall promptly make available for inspection and/or copying
26 upon request by and at the expense of Defendant, any supporting documentation related to the
27 testing of the Covered Products and associated quality control samples, including chain of custody
28 records, all laboratory logbook entries for laboratory receiving, sample preparation, and

1 instrumental analysis, and all printouts from all analytical instruments relating to the testing of
2 Covered Product samples and any and all calibration tests performed or relied upon in conjunction
3 with the testing of the Covered Products, obtained by or available to CEH that pertains to the
4 Covered Product's alleged exceedance of the Cadmium Limit, and, if available, any exemplars of
5 Covered Products tested.

6 4.2.3 **Notice of Election of Response.** No more than 30 days after service of a
7 Notice of Violation, Defendant shall provide written notice to CEH whether it elects to contest the
8 allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice
9 of Election within 30 days of service of a Notice of Violation shall be deemed an election to
10 contest the Notice of Violation.

11 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
12 include all then-available documentary evidence regarding the alleged violation, including all test
13 data, if any. If Defendant or CEH later acquires additional test or other data regarding the alleged
14 violation, it shall notify the other party and promptly provide all such data or information to the
15 party. Any test data used to contest a Notice of Violation shall meet the criteria of section 4.2.2.3.

16 4.2.4 **Meet and Confer.** If a Notice of Violation is contested, CEH, Defendant
17 and any other affected Settling Defendants shall meet and confer to attempt to resolve their
18 dispute. Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no
19 enforcement motion or application has been filed by CEH pursuant to Section 4.1, Defendant may
20 withdraw the original Notice of Election contesting the violation and serve a new Notice of
21 Election conceding the violation, provided however that Defendant shall pay \$5,000 in addition to
22 any payment required under Section 4.2.7. At any time, CEH may withdraw a Notice of
23 Violation, in which case for purposes of this Section 4 the result shall be as if CEH never issued
24 any such Notice of Violation. If no informal resolution of a Notice of Violation results within 30
25 days of a Notice of Election to contest, CEH may file an enforcement motion or application
26 pursuant to Section 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties
27 attorneys' fees or remedies are provided by law for failure to comply with the Consent Judgment.
28

1 4.2.5 **Non-Contested Matters.** If Defendant elects not to contest the
2 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
3 and shall make any payments required by Section 4.2.7.

4 4.2.6 **Corrective Action in Non-Contested Matters.** If Defendant elects not to
5 contest the allegation, it shall include in its Notice of Election a detailed description with
6 supporting documentation of the corrective action that it has undertaken or proposes to undertake
7 to address the alleged violation. Any such correction shall, at a minimum, provide reasonable
8 assurance that the Covered Product will no longer be offered for sale in California. Corrective
9 action must include instructions to Defendant's stores and/or its customers that offer the Covered
10 Product for sale to consumers to cease offering the Covered Product(s) identified in the Notice of
11 Violation for sale in California as soon as practicable. The Notice of Election shall also include
12 the name, address, telephone number, and other contact information, of Defendant's supplier(s) of
13 each Covered Product identified in the Notice of Violation, and any other Settling Defendant to
14 whom it sold any Covered Product(s) identified in the Notice of Violation. Defendant shall make
15 available to CEH for inspection and/or copying records and correspondence regarding the
16 corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer
17 pursuant to Section 4.2.4 before seeking any remedy in court.

18 4.2.7 **Payments in Non-Contested Matters.** In addition to the corrective
19 action, Defendant shall be required to make a payment as reimbursement for costs for
20 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
21 attorneys' fees and costs incurred in connection with these activities, as specified below:

22 4.2.7.1 If Defendant has not previously received a Notice of Violation, or
23 has only received one or more Notices of Violation that were successfully contested or withdrawn,
24 and if Defendant serves a Notice of Election not to contest the allegations in the instant Notice of
25 Violation, it shall not be required to make a payment under this Section.

26 4.2.7.2 If Defendant previously received a Notice of Violation that was not
27 successfully contested or withdrawn, and Defendant serves a Notice of Election not to contest the
28

1 allegations in the instant Notice of Violation, it shall be required to make a payment of \$10,000.

2 This payment shall, however, be:

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

15 B. Waived if the Attorney General or other public enforcer has, prior to the
16 date the Notice of Violation was issued, brought an action or proceeding regarding the
17 same violation;

18 C. Waived if Defendant can demonstrate that the alleged violation pertains to
19 an identical component or components for which a Settling Defendant has already made a
20 payment to CEH under a substantially identical Consent Judgment entered in this action.
21 For purposes of this Section, a component shall only be deemed identical if it is (i) made of
22 the same materials; (ii) is of the identical size, shape, color and SKU (if any); and is (iii)
23 supplied by the same entity.

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

27 4.2.7.3 The payment shall be made by check payable to the Lexington Law
28 Group and shall be paid within 15 days of service of a Notice of Election triggering a payment.

1 4.2.7.4 A Settling Defendant’s liability for payments shall be limited as
2 follows:

3 A. A Settling Defendant that is a supplier to one or more retailers shall be
4 liable for one required payment for any particular Covered Product within any 30-day
5 period.

6 B. If more than one Settling Defendant has manufactured, sold or distributed a
7 Covered Product identified in a Notice of Violation, only one required contribution may be
8 assessed against all potentially liable Settling Defendants provided that the Settling
9 Defendants stopped selling the Covered Product within 30 days of the Notice of Violation,
10 in the following order of priority: (1) manufacturers, (2) importers, (3) distributors, and (4)
11 retailers. Notwithstanding this priority, if Defendant receives a Notice of Violation and is
12 not contesting the Notice of Violation, it shall comply with Section 4.2.6.

13 C. Defendant’s monetary liability to make required payments shall be limited
14 to \$30,000 for each 75-day period.

15 4.2.8 **Interaction with Related Statute.** On January 1, 2012, the California the
16 Department of Toxic Substances Control (“DTSC”) will have authority to enforce Health &
17 Safety Code section 25214.3 with respect to cadmium in children’s jewelry. The parties agree that
18 Defendant will not be subject to enforcement under the Consent Judgment if an enforcement
19 proceeding regarding the same Covered Product has been initiated or resolved by DTSC pursuant
20 to Health and Safety Code section 25214.3 prior to issuance of any Notice of Violation hereunder.

21 4.2.9 **Repeat Violations.** If Defendant has received three or more Notices of
22 Violation that were not successfully contested or withdrawn in any 12-month period then, at
23 CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other remedies
24 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
25 relief, CEH shall meet and confer with Defendant for a period not to exceed 30 days (unless
26 extended by mutual agreement) to determine if the parties can agree on measures Defendant can
27 undertake to prevent future violations.

28

1 5. PAYMENTS

2 5.1 **Payments From Defendant.** Within five (5) days of entry of this Consent
3 Judgment, Defendant shall pay the amount set forth as a settlement payment on Exhibit A, as
4 further specified in Section 5.2 below.

5 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
6 in four separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),
7 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated as
8 follows:

9 5.2.1 Defendant shall pay the amount designated on Exhibit A as a Penalty
10 pursuant to Health & Safety Code §25249.7(b,) to be apportioned in accordance with California
11 Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of
12 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
13 25% of the penalty remitted to CEH. Accordingly, one penalty payment check for the amount
14 designated on Exhibit A as OEHHA Portion of Penalty shall be made payable to “OEHHA” for
15 the Safe Drinking Water and Toxic Enforcement Fund and be attributed to taxpayer identification
16 number 68-0284486. A second penalty payment check in the amount designated for Defendant on
17 Exhibit A as CEH Portion of Penalty shall made payable to the “Center for Environmental Health”
18 and associated with taxpayer identification number 94-3251981.

19 5.2.2 Defendant shall also separately pay to CEH the amount designated on
20 Exhibit A as Payment In Lieu of Civil Penalty pursuant to Health & Safety Code §25249.7(b), and
21 California Code of Regulations, Title 11, §3202(b). CEH will restrict the use of such funds to the
22 following purposes: (a) monitoring compliance with the reformulation requirements of this and
23 other similar Consent Judgments; (b) purchasing and testing jewelry; (c) preparing and compiling
24 the information and documentation necessary to support enforcement efforts under this Consent
25 Judgment; (d) contributions to CEH’s Community Environmental Action and Justice Fund; and
26 (e) supporting CEH programs and activities that seek to reduce the public health impacts or risks
27 of exposure to heavy metals, including cadmium, known to the State of California to cause cancer
28 or reproductive harm. Such programs and activities currently include (i) CEH’s membership on

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

15 5.2.3 Defendant shall also separately pay to the Lexington Law Group the
16 amount designated for Defendant on Exhibit A as Attorneys' Fees and Costs Reimbursement as
17 reimbursement for a portion of reasonable attorneys' fees and costs. The attorneys' fees and cost
18 reimbursement check shall be made payable to the "Lexington Law Group" and associated with
19 taxpayer identification number 94-3317175.

20 6. MODIFICATION AND DISPUTE RESOLUTION

21 6.1 **Modification.** This Consent Judgment may be modified from time to time by
22 express written agreement of the Parties with the approval of the Court, or by an order of this
23 Court upon motion and in accordance with law.

24 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
25 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
26 modify the Consent Judgment.

27 7. CLAIMS COVERED AND RELEASE

28 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and

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

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

17 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
18 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant
19 Releasees and the Downstream Defendant Releasees with respect to any alleged failure to warn
20 about cadmium in Covered Products manufactured, distributed or sold by Defendant after the
21 Effective Date.

22 8. PROVISION OF NOTICE

23 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
24 notice shall be sent by first class and electronic mail as follows:

25 8.1.1 **Notices to Defendant.** The person(s) for Defendant to receive Notice
26 pursuant to this Consent Judgment are identified on Exhibit A.

27 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
28 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

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
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 first class and electronic mail.

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 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, 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 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in

1 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
2 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
3 whether or not similar, nor shall such waiver constitute a continuing waiver.

4 12. RETENTION OF JURISDICTION

5 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
6 the Consent Judgment.

7 13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

8 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
10 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

11 14. NO EFFECT ON OTHER SETTLEMENTS

12 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
13 against any other entity on terms that are different than those contained in this Consent Judgment.

14 15. EXECUTION IN COUNTERPARTS

15 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
16 means of facsimile, which taken together shall be deemed to constitute one document.

17

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

20 Dated:

Judge of the Superior Court of the State of California

21

22 **IT IS SO STIPULATED:**

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

Dated: June ~~18~~, 2011

Aug
18

CENTER FOR ENVIRONMENTAL HEALTH



CHARLES PIZZANO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: June __, 2011

COUSIN CORPORATION OF AMERICA

Printed Name

Title

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

Dated: June __, 2011

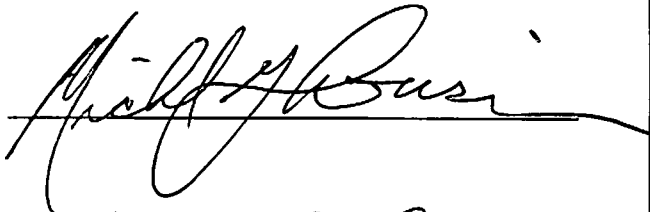
CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

Dated: ~~June~~ 2011
August 31

COUSIN CORPORATION OF AMERICA



MICHAEL G. COUSIN

Printed Name

V.P.

Title

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

1. Section 3.2 Recall Product:

Flip Flop Charms, SKU No. 0-16321-56670-5, Item No. 6124904

2. Defendant's Settlement Payment and Allocation

Total Settlement Payment	\$110,000
Total Civil Penalty	\$15,640
OEHHA Portion of Civil Penalty (75%)	\$11,730
CEH Portion of Civil Penalty (25%)	\$3,910
Payment in Lieu of Civil Penalty	\$23,460
Attorneys' Fees and Costs	\$70,900

3. Person to Receive Notice for Settling Defendant:

Charles E. Lykes, Jr.
1172 Brownell Street, Suite A
Clearwater, FL 33756
charles@lykeslaw.com

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 B

List of Entities Not Subject to Downstream Release

- Ashley Stewart Ltd.
- Atico International USA, Inc.
- Burlington Coat Factory Warehouse Corporation
- C2:8
- Cara Accessories Ltd.
- CVS Pharmacy, Inc.
- Fad, Inc.
- Forum Novelties, Inc.
- High Accessories, Inc.
- J.M. Hollister, LLC
- Metropark USA, Inc.
- New Ashley Stewart, Inc.
- NY Style
- Party City Corporation
- Rubie's Costume Company, Inc.
- Sears, Roebuck and Co.
- Spencer Gifts, LLC.
- Styles For Less, Inc.
- Urban Brands, Inc.
- Western Fashion, Inc.