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

CENTER FOR ENVIRONMENTAL HEALTH,) Lead Case No. RG 10-514803
A non-profit corporation,)
) (Consolidated with Case Nos.
Plaintiff,) RG 10-545680 and RG 10-545687)
)
vs.) ASSIGNED FOR ALL PURPOSES TO:
) Judge Steven A. Brick, Department 17
AEROPOSTALE, INC., *et al.*,)
) **[PROPOSED] CONSENT JUDGMENT**
Defendants.) **AS TO TRIPLE ACCESSORIES, INC.**
) **AND ROYAL LOVE, INC.**

This Document Relates To:
Center for Environmental Health v. Two's Company, Inc., Case No. RG 10-545680

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Triple Accessories, Inc. and Royal Love, Inc. (“Defendants”), to settle certain claims asserted by CEH against Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Two's Company, Inc.*, Alameda County Superior Court Case No. RG 10-545680 (the “Action”).

1.2 On October 24, 2011, CEH provided a “Notice of Violation of Proposition 65” to

1 the California Attorney General, the District Attorneys of every county in California, the City
2 Attorneys of every California city with a population greater than 750,000, and to Defendants
3 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendants.

4 1.3 On November 8, 2010, CEH filed its complaint in *CEH v. Two's Company*. On
5 January 12, 2012, CEH amended the *Two's Company* complaint to name Royal Love, Inc. and
6 Triple Accessories, Inc. as Doe 10 and Doe 12, respectively.

7 1.4 For purposes of this Consent Judgment only, CEH and Defendants (the "Parties")
8 stipulate that this Court has jurisdiction over the allegations of violations contained in the
9 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that
10 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
11 Consent Judgment as a full and final resolution of all claims which were or could have been raised
12 in the Complaint based on the facts alleged therein with respect to Covered Products
13 manufactured, distributed, and/or sold by Defendants.

14 1.5 CEH and Defendants enter into this Consent Judgment as a full and final settlement
15 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
16 arising out of the facts or conduct related to Defendants alleged therein. By execution of this
17 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
18 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
19 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
20 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be
21 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
22 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
23 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendants deny
24 the material, factual and legal allegations in CEH's Complaint and expressly deny any wrong
25 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
26 remedy, argument or defense the Parties may have in this or any other pending or future legal
27 proceedings. This Consent Judgment is the product of negotiation and compromise and is
28 accepted by the Parties solely for purposes of settling, compromising, and resolving issues

1 disputed in this Action.

2 **2. DEFINITIONS**

3 2.1 The term “Covered Product” means (a) the following ornaments worn by a person:
4 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories,
5 earring, necklace, pin, ring and body piercing jewelry; or (b) any bead, chain, link, pendant, or
6 other component of such an ornament.

7 2.2 The term “Effective Date” means the date of entry of this Consent Judgment.

8 **3. INJUNCTIVE RELIEF**

9 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendants shall
10 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product
11 that contains:

12 3.1.1 Any component not covered under Section 3.1.2, or that is made of any
13 material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million
14 (“ppm”)) lead by weight; or

15 3.1.2 Any Paint or Surface Coating that is more 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 **Market Withdrawal of Covered Products.** On or before the Effective Date,
25 Defendants shall cease shipping the Necklace with Heart, Ball and Chain Pendants, SKU No.
26 0413000030586, as identified in CEH’s pre-suit Notice of Violation to Defendants (the “Recall
27 Covered Products”), to stores and/or customers in California, and Defendants shall withdraw the
28 Recall Covered Products from the market in California, and, at a minimum, send instructions to

1 any of their stores and/or customers that offer the Recall Covered Products for sale in California to
2 cease offering such Recall Covered Products for sale and to either return all Recall Covered
3 Products to Defendants for destruction, or to directly destroy the Recall Covered Products. Any
4 destruction of the Recall Covered Products shall be in compliance with all applicable laws.
5 Defendants shall keep and make available to CEH for inspection and copying records and
6 correspondence regarding the market withdrawal and destruction of the Recall Covered Products.
7 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any
8 remedy in court

9 **4. ENFORCEMENT**

10 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
11 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
12 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
13 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
14 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
15 by new action, motion or order to show cause before the Superior Court of Alameda, seek to
16 enforce the terms and conditions contained in this Consent Judgment.

17 **5. PAYMENTS**

18 5.1 **Payments From Defendants.** Defendants shall pay a total of \$37,500 pursuant to
19 this Consent Judgment, such payment to be made as set forth in this Section. On or before
20 December 15, 2012, Defendants shall pay the sum of \$12,500 in three separate checks as follows:
21 (a) \$1,644 made payable to the Center for Environmental Health as a civil penalty; (b) \$2,466
22 made payable to the Center for Environmental Health as a payment in lieu of additional civil
23 penalty; and (c) \$8,390 made payable to the Lexington Law Group as partial reimbursement of
24 attorneys' fees and costs. On or before January 15, 2013, Defendants shall make a second
25 payment of \$12,500 in three separate checks as follows: (a) \$1,643 made payable to the Center for
26 Environmental Health as a civil penalty; (b) \$2,467 made payable to the Center for Environmental
27 Health as a payment in lieu of additional civil penalty; and (c) \$8,390 made payable to the
28 Lexington Law Group as partial reimbursement of attorneys' fees and costs. On or before March

1 15, 2013, Defendants shall make a third and final payment of \$12,500 in three separate checks as
2 follows: (a) \$1,643 made payable to the Center for Environmental Health as a civil penalty; (b)
3 \$2,467 made payable to the Center for Environmental Health as a payment in lieu of additional
4 civil penalty; and (c) \$8,390 made payable to the Lexington Law Group as partial reimbursement
5 of attorneys' fees and costs.

6 **5.2 Allocation of Payments.** All of the settlement payments required under this
7 Section shall be delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503
8 Divisadero Street, San Francisco, California 94117-2212, and allocated as set forth below between
9 the following categories:

10 5.2.1 Defendants shall pay the sum of \$4,930 as a penalty pursuant to Health &
11 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
12 Safety Code §25249.12. The penalty checks shall be made payable to the Center For
13 Environmental Health.

14 5.2.2 Defendants shall pay the sum of \$7,400 as payment to CEH in lieu of
15 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
16 11, §3203(b). CEH will use such funds to continue its work educating and protecting people from
17 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
18 to monitor compliance with the reformulation requirements of this and other similar Consent
19 Judgments and to purchase and test Covered Products to confirm compliance with such
20 reformulation requirements. In addition, as part of its Community Environmental Action and
21 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
22 justice groups working to educate and protect people from exposures to toxic chemicals. The
23 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
24 The payment in lieu of penalty checks shall be made payable to the Center For Environmental
25 Health.

26 5.2.3 Defendants shall pay the sum of \$25,170 as reimbursement of reasonable
27 attorneys' fees and costs. The attorneys fees and cost reimbursement checks shall be made
28 payable to the Lexington Law Group.

1 **6. MODIFICATION AND DISPUTE RESOLUTION**

2 6.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **7. CLAIMS COVERED AND RELEASE**

9 7.1 This Consent Judgment is a full, final, and binding resolution between CEH acting
10 in the public interest and Defendants and Defendants’ parents, shareholders, subsidiaries and their
11 successors and assigns (“Defendant Releasees”), and all entities other than those entities listed on
12 Exhibit A to whom they distribute or sell Covered Products including, but not limited to,
13 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
14 (“Downstream Defendant Releasees”), of any violation of Proposition 65 up through the Effective
15 Date based on the failure to warn about exposure to lead in Covered Products manufactured,
16 distributed, or sold by Defendants prior to the Effective Date as set forth in the Notice of
17 Violation.

18 7.2 CEH, for itself releases, waives, and forever discharges any and all claims against
19 Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
20 violation of Proposition 65 or any other statutory or common law claims that have been or could
21 have been asserted in the public interest regarding the failure to warn about exposure to lead
22 arising in connection with Covered Products manufactured, distributed or sold by Defendants prior
23 to the Effective Date.

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

1 **8. PROVISION OF NOTICE**

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

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

6 Milord A. Keshishian
7 Milord & Associates, P.C.
8 2049 Century Park East, Suite 3850
9 Los Angeles, CA 90067
10 milord@milordlaw.com

11 And:

12 Andrew Jablon
13 Resch Polster & Berger LLP
14 9200 W. Sunset Blvd.
15 Ninth Floor
16 Los Angeles, CA 90069
17 ajablon@rpblaw.com

18 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
19 this Consent Judgment shall be:

20 Eric S. Somers
21 Lexington Law Group
22 503 Divisadero Street
23 San Francisco, CA 94117
24 esomers@lexlawgroup.com

25 8.2 Any Party may modify the person and address to whom the notice is to be sent by
26 sending the other Party notice by first class and electronic mail.

27 **9. COURT APPROVAL**

28 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
Defendants 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.

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **11. ATTORNEYS' FEES**

5 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
7 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
8 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
9 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

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

16 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

19 12.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein. There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
24 other than those specifically referred to in this Consent Judgment have been made by any Party
25 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
28 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,

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

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

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

9 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
10 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
11 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

13 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
14 against an entity that is not Defendants on terms that are different than those contained in this
15 Consent Judgment.

16 **16. EXECUTION IN COUNTERPARTS**

17 16.1 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 ORDERED, ADJUDGED,
AND DECREED**

Dated:

Honorable Steven A. Brick
Judge of the Superior Court of the State of California

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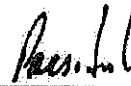
Dated: <u>Dec 7</u> , 2012	CENTER FOR ENVIRONMENTAL HEALTH  <hr/> <p>Carmine Pizzano</p> <hr/> <p>Printed Name</p> <hr/> <p>Associate Director</p> <hr/> <p>Title</p>
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Dated: _____, 2012	TRIPLE ACCESSORIES, INC. <hr/> <hr/> <p>Printed Name</p> <hr/> <hr/> <p>Title</p>
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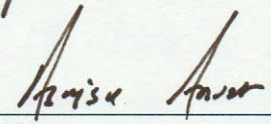
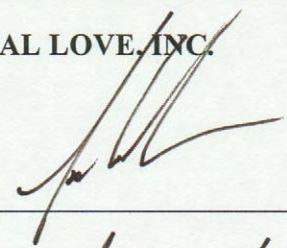
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Dated: <u>November 28</u> 2012	TRIPLE ACCESSORIES, INC.  _____  _____ Printed Name  _____ Title
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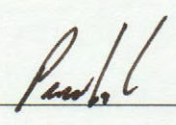
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Dated: Nov 28, 2012

ROYAL LOVE, INC.



Printed Name



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

1. ABC Online Resources, LLC
2. Adia Kibur Accessories, Inc.
3. Albertson's LLC; Albertson's, Inc.; New Albertson's, Inc.
4. Andrea Bijoux
5. Ann 2 La Moda, Inc.
6. Art Box
7. Artini Accessories Inc.
8. Athenian Fashions, Inc.
9. AZ3, Inc.; BCBG Max Azria Group, Inc.
10. B&J Accessories
11. Banana Republic, LLC
12. Barnes & Noble, Inc.
13. Bastiat Santa Monica, Inc.
14. Bien Bien, Inc.
15. Big A Drug Stores, Inc.
16. Bijou International Corporation
17. Bluefly, Inc.
18. Bon Jewel, Inc.
19. Brandy Melville; Brandy and Melville NY Incorporated
20. California Dream Co., Inc.
21. Cocomo Connection, Inc.
22. Costume Craze, L.C.
23. Elegance Fashion Mart, Inc.
24. Fashion Fantasia, Inc.

- 1 25. First Fantasies-Costume Cuzzins, Inc.
- 2 26. Georgiou Studio, Inc.
- 3 27. Ginerva SRL
- 4 28. Halloween Express
- 5 29. I Love Bracelets, Inc.
- 6 30. INVU Accessories
- 7 31. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
- 8 32. Jacadi USA, Inc.
- 9 33. Jones Jewelry Group, Inc.
- 10 34. Legoland California LLC
- 11 35. Long Rap, Inc.
- 12 36. M&P Central, Inc.
- 13 37. Marin Beauty Company
- 14 38. Max Rave, LLC
- 15 39. Nima Accessories, Inc.
- 16 40. Pink Ice, Inc.
- 17 41. Precious Accessories, Inc.
- 18 42. Rite Aid Corporation
- 19 43. Safeway, Inc.
- 20 44. Scorpio Accessories LLC
- 21 45. Screamers Costumers
- 22 46. Scünci International, Inc.
- 23 47. Sea World, Inc.
- 24 48. Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 25 49. Shop Bloc Inc.
- 26 50. Simply You
- 27 51. Six Flags Theme Parks, Inc.
- 28 52. Sonsi, Inc.

- 1 53. Spirit Halloween Superstores, LLC
- 2 54. Toscana Accessories Inc.
- 3 55. Unbeatable Sale.Com Inc.
- 4 56. U.S. Jewelry House, Ltd.

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