

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 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 George C. Hernandez, Jr., Dept. 17
AEROPOSTALE, INC., *et al.*,)
) **[PROPOSED] CONSENT JUDGMENT**
Defendants.) **AS TO BIJOU INTERNATIONAL**
) **CORPORATION**

AND CONSOLIDATED CASES)
)
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 Bijou International Corporation (“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. 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 Defendant
3 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendant.

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 Defendant as Doe 9. On
6 November 19, 2012, the Court entered Defendant's default, and on February 7, 2014, the Court
7 entered Default Judgment against Defendant. The Default Judgment imposed injunctive relief
8 ordering Defendant to cease offering for sale in California jewelry containing lead in quantities
9 exceeding certain reformulation levels, and ordered Defendant to pay \$1,448,655 in civil penalties
10 and attorneys' fees and costs. A true a correct copy of that Default Judgment is attached hereto as
11 Exhibit A.

12 1.4 CEH and Defendant (the "Parties") stipulate that, immediately prior to entry of this
13 Consent Judgment, the Court set aside the Default Judgment and enter this Consent Judgment in
14 its place. The Parties agree that, should Defendant fail to make any of the payments set forth in
15 Section 5 below in a timely fashion, the terms of this Consent Judgment shall cease to have effect
16 and the terms of the Default Judgment shall be reinstated forthwith, as set forth in Section 5.3.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
19 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
20 Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
21 resolution of all claims which were or could have been raised in the Complaint based on the facts
22 alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
23 Defendant.

24 1.6 CEH and Defendant enter into this Consent Judgment as a full and final settlement
25 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
26 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
27 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
28 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or

1 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
2 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be
3 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
4 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
5 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendant denies
6 the material, factual and legal allegations in CEH's Complaint and expressly denies any wrong
7 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
8 remedy, argument or defense the Parties may have in this or any other pending or future legal
9 proceedings. This Consent Judgment is the product of negotiation and compromise and is
10 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
11 disputed in this Action.

12 **2. DEFINITIONS**

13 2.1 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, decorated hair accessories,
15 earring, necklace, pin, ring and body piercing jewelry; or (b) any bead, chain, link, pendant, or
16 other component of such an ornament.

17 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** After the Effective Date, Defendant shall
20 not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product
21 that contains:

22 3.1.1 Any component not covered under Section 3.1.2, or that is made of any
23 material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million
24 ("ppm")) lead by weight; or

25 3.1.2 Any Paint or Surface Coating that is more than 0.009 percent lead by
26 weight (90 ppm). For purposes of this Consent Judgment, "Paint or Surface Coating" shall carry
27 the same meaning as "Paint or other similar surface coating" under 16 C.F.R. §1303.2(b)(1)
28 ("Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,

1 with or without a suspension of finely divided coloring matter, which changes to a solid film when
2 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This
3 term does not include printing inks or those materials which actually become a part of the
4 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
5 the substrate, such as by electroplating or ceramic glazing.”).

6 **3.2 Market Withdrawal of Covered Products.** To the extent it has not already done
7 so, on or before the Effective Date, Defendant shall cease shipping the Statement Necklace with
8 Jewel Rhinestones in Gold, SKU No. 0413000042367, as identified in CEH’s pre-suit Notice of
9 Violation to Defendant (the “Recall Covered Products”) to stores and/or customers in California.
10 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any
11 remedy in court

12 **4. ENFORCEMENT**

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

20 **5. PAYMENTS**

21 **5.1 Payments by Defendant.** Defendant shall pay a total of \$100,000 to CEH by
22 delivering checks payable to Lexington Law Group Client Trust Account in the amount of
23 \$20,000 each on or before each of the following dates:

- 24 5.1.1 August 15, 2014
- 25 5.1.2 August 31, 2014
- 26 5.1.3 October 31, 2014
- 27 5.1.4 December 31, 2014
- 28 5.1.5 March 31, 2015

1 With respect to each payment, time shall be of the essence.

2 **5.2 Delivery and Allocation of Payments.** The funds paid by Defendant shall be
3 delivered on or before the above due dates to the offices of the Lexington Law Group (Attn: Eric
4 S. Somers), 503 Divisadero Street, San Francisco, California 94117, and allocated between the
5 following categories by CEH:

6 5.2.1 The sum of \$13,200 shall be allocated as a civil penalty pursuant to Health
7 & Safety Code §25249.7(b), such money to be apportioned in accordance with Health & Safety
8 Code §25249.12 by CEH.

9 5.2.2 The sum of \$19,800 shall be allocated as payment in lieu of civil penalty to
10 CEH pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
11 11, §3203(b). CEH will use such funds to continue its work educating and protecting people from
12 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
13 to monitor compliance with the reformulation requirements of this and other similar Consent
14 Judgments and to purchase and test Covered Products to confirm compliance with such
15 reformulation requirements. In addition, as part of its Community Environmental Action and
16 Justice Fund, CEH will use four (4) percent of such funds to award grants to grassroots
17 environmental justice groups working to educate and protect people from exposures to toxic
18 chemicals. The method of selection of such groups can be found at the CEH web site at
19 www.ceh.org/justicefund.

20 5.2.3 The sum of \$67,000 shall be allocated to the Lexington Law Group as
21 reimbursement of a portion of CEH's reasonable attorneys' fees and costs.

22 **5.3 Effect of Untimely Payment.** Should Defendant fail to pay in full any of the
23 installment amounts required under Section 5.1 by the date specified therein, then within five (5)
24 days of service of a notification from CEH of such failure to pay, Defendant shall be deemed in
25 default of this Consent Judgment. Upon occurrence of any such default by Defendant:

26 5.3.1 The parties stipulate and the Court orders that the terms of the Default
27 Judgment attached as Exhibit A shall be reinstated immediately, including all injunctive terms.
28 Plaintiff may obtain an order vacating entry of this Consent Judgment and reinstating the Default

1 Judgment by presenting *ex parte* to the appropriate judicial officer a declaration stating that a
2 default under this Consent Judgment has occurred. Defendant waives any right to a noticed
3 hearing on such an order vacating entry of this Consent Judgment and reinstating the Default
4 Judgment.

5 5.3.2 Defendant shall become liable to CEH for the full monetary amount
6 specified in the Default Judgment, less any payments already made by Defendant pursuant to
7 Section 5.1, together with any additional taxable costs incurred by CEH in obtaining an order
8 vacating entry of this Consent Judgment. Such payment shall be made by Defendant within ten
9 (10) days of receiving a Notice of Entry of the Order vacating entry of this Consent Judgment and
10 reinstating the Default Judgment.

11 5.3.3 The terms of this Consent Judgment, except as relating to the transition to
12 the reinstatement of the Default Judgment, shall become null and void.

13 **6. MODIFICATION AND DISPUTE RESOLUTION**

14 6.1 **Modification.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties, with the approval of the Court, or by an order of this
16 Court upon motion and in accordance with law.

17 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
18 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
19 modify the Consent Judgment.

20 **7. CLAIMS COVERED AND RELEASE**

21 7.1 This Consent Judgment is a full, final, and binding resolution between CEH acting
22 in the public interest and Defendant and Defendant's parents, shareholders, subsidiaries and their
23 successors and assigns ("Defendant Releasees"), and all entities other than those entities listed on
24 Exhibit B to whom they distribute or sell Covered Products including, but not limited to,
25 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
26 ("Downstream Defendant Releasees"), of any violation of Proposition 65 up through the Effective
27 Date based on the failure to warn about exposure to lead in Covered Products manufactured,
28 distributed, or sold by Defendant prior to the Effective Date as set forth in the Notice of Violation.

1 7.2 CEH, for itself releases, waives, and forever discharges any and all claims against
2 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation
3 of Proposition 65 or any other statutory or common law claims that have been or could have been
4 asserted in the public interest regarding the failure to warn about exposure to lead arising in
5 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
6 Effective Date.

7 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
8 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, Defendant
9 Releasees and Downstream Defendant Releasees with respect to any alleged failure to warn about
10 lead in Covered Products manufactured, distributed or sold by Defendant after the Effective Date.

11 **8. PROVISION OF NOTICE**

12 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by first class and electronic mail as follows:

14 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
15 pursuant to this Consent Judgment shall be:

16 Maurice Haber
17 Bijou International Corporation
18 42 W 39th St FL 8
19 New York, New York 10018-2086
20 maurice@bijoudrive.com

21 **Notices to Plaintiff.** The person for CEH to receive Notices
22 pursuant to this Consent Judgment shall be:

23 Eric S. Somers
24 Lexington Law Group
25 503 Divisadero Street
26 San Francisco, CA 94117
27 esomers@lexlawgroup.com

28 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.

29 **9. COURT APPROVAL**

30 9.1 This Consent Judgment shall become effective on the Effective Date, provided

1 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
2 Defendant shall support approval of such Motion.

3 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
4 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

5 **10. GOVERNING LAW AND CONSTRUCTION**

6 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California.

8 **11. ATTORNEYS' FEES**

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

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

20 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
21 sanctions pursuant to law.

22 **12. ENTIRE AGREEMENT**

23 12.1 This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
26 and therein. There are no warranties, representations, or other agreements between the Parties
27 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
28 other than those specifically referred to in this Consent Judgment have been made by any Party

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

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

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

13 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
14 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
15 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

17 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
18 against an entity that is not Defendant on terms that are different than those contained in this
19 Consent Judgment.

20 **16. EXECUTION IN COUNTERPARTS**

21 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
22 means of facsimile or e-mail in pdf format, which taken together shall be deemed to constitute one
23 document.

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

26 Dated:

27 Honorable George C. Hernandez, Jr.
28 Judge of the Superior Court of the State of California

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

IT IS SO STIPULATED:

Dated: Aug 14, 2014

CENTER FOR ENVIRONMENTAL HEALTH



Carlisle Pizarro

Printed Name

Associate Director

Title

Dated: _____, 2014

BIJOU INTERNATIONAL CORPORATION

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

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____, 2014

Printed Name

Title

Dated: Aug 13, 2014

BIJOU INTERNATIONAL CORPORATION



Maurice Haber
Printed Name

President
Title

Exhibit A

1 LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
2 Howard Hirsch, State Bar No. 213209
Victoria Hartanto, State Bar No. 259833
3 503 Divisadero Street
San Francisco, CA 94117
4 Telephone: (415) 913-7800
Facsimile: (415) 759-4112
5 esomers@lexlawgroup.com
hhirsch@lexlawgroup.com
6 vhartanto@lexlawgroup.com

7 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH
8
9

ENDORSED
FILED
ALAMEDA COUNTY

FEB - 7 2014

CLERK OF THE SUPERIOR COURT
By **YOLANDA ESTRADA** Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)
15 Plaintiff,)
16 v.)
17 AEROPOSTALE, INC., et al.,)
18 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, Jr., Dept. 17

**[PROPOSED] DEFAULT JUDGMENT
AGAINST BIJOU INTERNATIONAL
CORPORATION**

19 This Document Relates to:

20 *Center for Environmental Health v. Two's
Company, Inc., et al., Case No. RG 10-545680*
21

Date: February 7, 2014
Time: 8:30 a.m.

Complaint Filed: May 12, 2010
Trial Date: None

RECEIVED

FEB 04 2014

ANGELA YAMSAUAN
ALAMEDA COUNTY SUPERIOR COURT

26

27

28

1 Pursuant to California Code of Civil Procedure ("C.C.P.") §585, the Court hereby
2 enters final judgment in favor of Plaintiff Center for Environmental Health ("CEH") against
3 Defendant Bijou International Corporation ("Bijou") as follows¹:

4 1. Bijou is permanently enjoined from offering for sale in California all
5 jewelry that contain lead and lead compounds in quantities that exceed the reformulation levels
6 permitted under California's Lead-Containing Jewelry Statute, Health & Safety Code §25214.1,
7 *et seq.*;

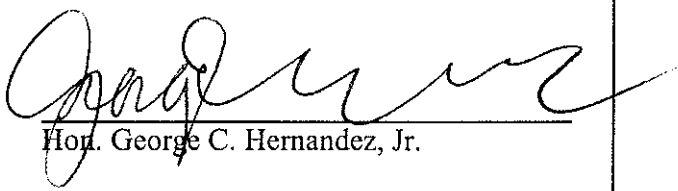
8 2. Bijou is ordered to pay \$1,147,500 or \$ _____ in civil penalties
9 pursuant to Health & Safety Code §25249.7(b);

10 3. Bijou is ordered to pay \$300,000 in attorneys' fees pursuant to C.C.P.
11 §1021.5 and \$1,155 in costs pursuant to C.C.P. §1032; and

12 4. All amounts required by paragraphs 2 and 3 of this Default Judgment are
13 due within thirty days of the date of entry of this Default Judgment. These amounts shall be paid
14 to CEH's attorneys by check made out to "Lexington Law Group," and shall be sent to CEH's
15 attorneys at the following address: Lexington Law Group, Attn: Eric S. Somers, 503 Divisadero
16 Street, San Francisco, California, 94117.

17
18 **IT IS SO ORDERED.**

19
20 Dated: 2/7/2014



Hon. George C. Hernandez, Jr.

21
22
23
24
25
26
27 _____
28 ¹ Pursuant to C.C.P. §579, this Default Judgment is entered as a separate and final
judgment against Bijou International Corporation only.

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 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. Bien Bien, Inc.
14. Big A Drug Stores, Inc.
15. Bon Jewel, Inc.
16. Brandy Melville; Brandy and Melville NY Incorporated
17. California Dream Co., Inc.
18. Cocomo Connection, Inc.
19. Costume Craze, L.C.
20. Elegance Fashion Mart, Inc.
21. Fashion Fantasia, Inc.
22. First Fantasies-Costume Cuzzins, Inc.
23. Georgiou Studio, Inc.
24. Ginerva SRL

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