

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  
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL HEALTH,	)	Lead Case No. RG 10-514803
	)	
Plaintiff,	)	(Consolidated with Case Nos.
	)	RG 10-545680 and RG 10-545687)
vs.	)	
	)	ASSIGNED FOR ALL PURPOSES TO:
AEROPOSTALE, INC., <i>et al.</i> ,	)	Judge Steven A. Brick, Department 17
	)	
Defendants.	)	<b>[PROPOSED] CONSENT JUDGMENT</b>
	)	<b>AS TO BLUEFLY, INC. AND</b>
	)	<b>KENNETH JAY LANE, INC.</b>
<hr/>		
This Document Relates To:	)	
	)	
<i>Center for Environmental Health v. Two's</i>	)	
<i>Company, Inc.</i> , Case No. RG 10-545680	)	
	)	
<hr/>		

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”), and Bluefly, Inc. and Kenneth Jay Lane, 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           1.2     On December 21, 2011, CEH provided a “Notice of Violation of Proposition 65” to  
2 the California Attorney General, the District Attorneys of every county in California, the City  
3 Attorneys of every California city with a population greater than 750,000, and to Defendants  
4 regarding the presence of lead in jewelry manufactured, distributed or sold by Defendants.

5           1.3     On November 8, 2010, CEH filed its complaint in *CEH v. Two’s Company*. On  
6 March 15, 2012, CEH amended the *Two’s Company* complaint to name Bluefly, Inc. and Kenneth  
7 Jay Lane, Inc. as Doe 13 and Doe 16, respectively.

8           1.4     For purposes of this Consent Judgment only, CEH and Defendants (the “Parties”)  
9 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
10 Complaint and personal jurisdiction over Defendants 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 Defendants.

15           1.5     CEH and Defendants 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 Defendants 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 or any other statutory, common law or equitable  
21 requirements relating to lead in jewelry. Nothing in this Consent Judgment is or shall be  
22 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of  
23 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission  
24 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Defendants deny  
25 the material, factual and legal allegations in CEH’s Complaint and expressly deny any wrong  
26 doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
27 remedy, argument or defense the Parties may have in this or any other pending or future legal  
28 proceedings. This Consent Judgment is the product of negotiation and compromise and is

1 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
2 disputed in this Action.

3 **2. DEFINITIONS**

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

8 2.2 The term “Effective Date” means the date of entry of this Consent Judgment.

9 **3. INJUNCTIVE RELIEF**

10 **3.1 Reformulation of Covered Products.**

11 3.1.1 After the Effective Date, Defendants shall not manufacture, purchase or  
12 import any Covered Product that will be offered for sale in California or anywhere else that  
13 exceeds the following Lead Limits:

14 3.1.1.1 Any component not covered under Section 3.1.2, or that is made of  
15 any material not covered under Section 3.1.2, that is more than 0.02 percent (200 parts per million  
16 (“ppm”)) lead by weight; or

17 3.1.1.2 Any Paint or Surface Coating that is more than 0.009 percent lead  
18 by weight (90 ppm). For purposes of this Consent Judgment, “Paint or Surface Coating” shall  
19 carry the same meaning as “Paint or other similar surface coating” under 16 C.F.R. §1303.2(b)(1)  
20 (“Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material,  
21 with or without a suspension of finely divided coloring matter, which changes to a solid film when  
22 a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This  
23 term does not include printing inks or those materials which actually become a part of the  
24 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
25 the substrate, such as by electroplating or ceramic glazing.”).

26 3.1.2 Commencing on May 1, 2013, Defendants shall not ship, sell, or offer for  
27 sale any Covered Product in California or anywhere else that exceeds the Lead Limits specified in  
28 Section 3.1.1.

1                   3.1.3     Notwithstanding Section 3.1.2, Defendants may continue to ship, sell or  
2 offer for sale any Covered Product in California or anywhere else that exceeds the Lead Limits  
3 specified in Section 3.1.1 if: (a) the Covered Product was purchased or imported by Defendants  
4 prior to the Effective Date; and (b) the Covered Product is not sold in violation of California  
5 Health & Health & Safety Code § 25214.1 *et seq.*

6                   3.2     **Market Withdrawal of Covered Products.** On or before the Effective Date,  
7 Defendants shall cease shipping the Kenneth Jay Lane Gold and Amber Necklace with Owl  
8 Pendant, SKU No. 891948834433, Style No. 313362201, Item No. US216672, as identified in  
9 CEH’s pre-suit Notices of Violation to Defendants (the “Recall Covered Products”), to stores  
10 and/or customers in California, and Defendants shall withdraw the Recall Covered Products from  
11 the market in California, and, at a minimum, send instructions to any of their stores and/or  
12 customers that offer the Recall Covered Products for sale in California to cease offering such  
13 Recall Covered Products for sale and to either return all Recall Covered Products to Defendants  
14 for destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall  
15 Covered Products shall be in compliance with all applicable laws. Defendants shall keep and  
16 make available to CEH for inspection and copying records and correspondence regarding the  
17 market withdrawal and destruction of the Recall Covered Products. If there is a dispute over the  
18 corrective action, the Parties shall meet and confer before seeking any remedy in court

19     **4.     ENFORCEMENT**

20                   4.1     **Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
21 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating  
22 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and  
23 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate  
24 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,  
25 by new action, motion or order to show cause before the Superior Court of Alameda, seek to  
26 enforce the terms and conditions contained in this Consent Judgment.

27     **5.     PAYMENTS**

28                   5.1     **Payments From Defendants.** Within five (5) days of the entry of this Consent

1 Judgment, Defendant Kenneth Jay Lane, Inc. (on behalf of itself and Defendant Bluefly, Inc.)  
2 shall pay the total sum of \$70,000 as a settlement payment. Defendants shall be jointly and  
3 severally liable for this payment obligation, and CEH reserves the right to pursue either Defendant  
4 for any failure to provide timely payment.

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

9                   5.2.1 Defendants shall pay the sum of \$9,250 as a penalty pursuant to Health &  
10 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &  
11 Safety Code §25249.12. The penalty check shall be made payable to the Center For  
12 Environmental Health.

13                   5.2.2 Defendants shall pay the sum of \$13,900 as payment to CEH in lieu of  
14 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title  
15 11, §3202(b). CEH will use such funds to continue its work educating and protecting people from  
16 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds  
17 to monitor compliance with the reformulation requirements of this and other similar Consent  
18 Judgments and to purchase and test Covered Products to confirm compliance with such  
19 reformulation requirements. In addition, as part of its Community Environmental Action and  
20 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental  
21 justice groups working to educate and protect people from exposures to toxic chemicals. The  
22 method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).  
23 The payment in lieu of penalty check shall be made payable to the Center For Environmental  
24 Health.

25                   5.2.3 Defendants shall pay the sum of \$46,850 as reimbursement of reasonable  
26 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable  
27 to the Lexington Law Group.  
28

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                                     Jay W. Connolly  
7                                     Seyfarth Shaw LLP  
8                                     560 Mission Street, Suite 3100  
9                                     San Francisco, CA 94105-2930  
10                                    [jconnolly@seyfarth.com](mailto:jconnolly@seyfarth.com)

11                     8.1.2     **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
12 this Consent Judgment shall be:

13                                     Eric S. Somers  
14                                     Lexington Law Group  
15                                     503 Divisadero Street  
16                                     San Francisco, CA 94117  
17                                    [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

18             8.2     Any Party may modify the person and address to whom the notice is to be sent by  
19 sending the other Party notice by first class and electronic mail.

20     **9.     COURT APPROVAL**

21             9.1     This Consent Judgment shall become effective on the Effective Date, provided  
22 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
23 Defendants shall support approval of such Motion.

24             9.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
25 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

26     **10.    GOVERNING LAW AND CONSTRUCTION**

27             10.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
28 California.

29     **11.    ATTORNEYS' FEES**

30             11.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
31 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs

1 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
2 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
3 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

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

10 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of  
11 sanctions pursuant to law.

12 **12. ENTIRE AGREEMENT**

13 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
16 and therein. There are no warranties, representations, or other agreements between the Parties  
17 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
18 other than those specifically referred to in this Consent Judgment have been made by any Party  
19 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
20 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
21 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
22 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
23 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
24 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
25 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
26 whether or not similar, nor shall such waiver constitute a continuing waiver.

27 **13. RETENTION OF JURISDICTION**

28 13.1 This Court shall retain jurisdiction of this matter to implement or modify the



1 Consent Judgment.

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

3 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
4 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
5 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

7 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
8 against an entity that is not Defendants on terms that are different than those contained in this  
9 Consent Judgment.

10 **16. EXECUTION IN COUNTERPARTS**

11 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
12 means of facsimile, which taken together shall be deemed to constitute one document.

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

15 Dated:

\_\_\_\_\_  
16 Honorable Steven A. Brick  
17 Judge of the Superior Court of the State of California

18 **IT IS SO STIPULATED:**

19 Dated: JAN 22, 2013

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
20 *Charlie Pizarro*

\_\_\_\_\_  
21 *CHARLIE PIZARRO*

22 Printed Name

\_\_\_\_\_  
23 *ASSOCIATE DIRECTOR*

24 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: January 23, 2013

**BLUEFLY, INC.**

  
\_\_\_\_\_

JAMES Gallagher  
Printed Name

CHIEF FINANCIAL OFFICER  
Title

Dated: \_\_\_\_\_, 2013

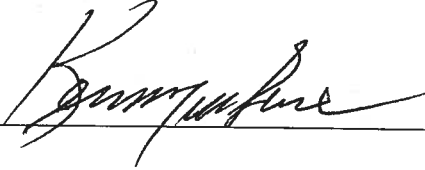
**KENNETH JAY LANE, INC.**

\_\_\_\_\_

\_\_\_\_\_  
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: _____, 2013	<b>BLUEFLY, INC.</b>  <hr/> <hr/> Printed Name  <hr/> Title
Dated: <u>JAN. 17</u> , 2013	<b>KENNETH JAY LANE, INC.</b>  <hr/> KENNETH JAY LANE Printed Name <hr/> PRESIDENT 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**  
**(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. Ana Accessories Corporation; Ana Trading Company
5. Andrea Bijoux
6. Ann 2 La Moda, Inc.
7. Art Box
8. Artini Accessories Inc.
9. Athenian Fashions, Inc.
10. AZ3, Inc.; BCBG Max Azria Group, Inc.
11. B&J Accessories
12. Banana Republic, LLC
13. Barnes & Noble, Inc.
14. Bastiat Santa Monica, Inc.
15. Bien Bien, Inc.
16. Big A Drug Stores, Inc.
17. Bijou International Corporation
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. Forever NYC Fashion Accessory Import LLC
- 3 27. Forplay, Inc.; For Play Catalog, Inc.
- 4 28. Georgiou Studio, Inc.
- 5 29. Ginerva SRL
- 6 30. GTG Collection
- 7 31. Halloween Express
- 8 32. I Love Bracelets, Inc.
- 9 33. INVU Accessories
- 10 34. Ivorette-Texas, Inc. dba Upstart Crow Trading Company
- 11 35. Jacadi USA, Inc.
- 12 36. Jones Jewelry Group, Inc.
- 13 37. Legoland California LLC
- 14 38. Long Rap, Inc.
- 15 39. M&P Central, Inc.
- 16 40. Marin Beauty Company
- 17 41. Max Rave, LLC
- 18 42. Nima Accessories, Inc.
- 19 43. Pink Ice, Inc.
- 20 44. Precious Accessories, Inc.
- 21 45. Rite Aid Corporation
- 22 46. Royal Love, Inc.
- 23 47. Safeway, Inc.
- 24 48. Scorpio Accessories LLC
- 25 49. Screamers Costumers
- 26 50. Scünci International, Inc.
- 27 51. Sea World, Inc.
- 28 52. Seta Corporation of Boca, Inc.

- 1           53.    Shoe Pavilion Corporation; Shoe Pavilion, Inc.
- 2           54.    Shop Bloc Inc.
- 3           55.    Simply You
- 4           56.    Six Flags Theme Parks, Inc.
- 5           57.    Sonsi, Inc.
- 6           58.    Spirit Halloween Superstores, LLC
- 7           59.    Toscana Accessories Inc.
- 8           60.    Triple Accessories, Inc.
- 9           61.    Unbeatable Sale.Com Inc.
- 10          62.    Windsor Fashions, Inc.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28