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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 BASTIAT SANTA MONICA, 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 Bastiat Santa Monica, Inc. (“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 July 16, 2012, CEH provided a “Notice of Violation of Proposition 65” to the

1 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 3, 2013, CEH amended the *Two's Company* complaint to name Bastiat Santa Monica, Inc.
6 as Doe 18.

7 1.4 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
8 stipulate that this Court has jurisdiction over the allegations of violations contained in the
9 Complaint and personal jurisdiction over Defendant 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 Defendant.

14 1.5 CEH and Defendant 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 Defendant 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. Defendant denies
24 the material, factual and legal allegations in CEH's Complaint and expressly denies 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, Defendant shall
10 not manufacture, ship, sell or offer for sale in California or anywhere else in the United States any
11 Covered Product 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 Defendant shall cease shipping (i) the Necklace with Skull Pendant in Black, SKU No.
26 R0101000001, and (ii) the Silver Necklace with Circular Pendant & Ivory Embellishments, SKU
27 No. NE K4677-12, Style No. EN117, as identified in CEH’s pre-suit Notice of Violation to
28 Defendant (the “Recall Covered Products”), to stores and/or customers in California, and

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

10 **4. ENFORCEMENT**

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

18 **5. PAYMENTS**

19 5.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
20 Judgment, Defendant shall pay the total sum of \$48,000 as a settlement payment.

21 5.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
22 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric S.
23 Somers), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
24 as follows:

25 5.2.1 Defendant shall pay the sum of \$6,300 as a penalty pursuant to Health &
26 Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with Health &
27 Safety Code §25249.12. The penalty check shall be made payable to the Center For
28 Environmental Health.

1 5.2.2 Defendant shall pay the sum of \$9,500 as payment to CEH in lieu of
2 penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
3 11, §3203(b). CEH will use such funds to continue its work educating and protecting people from
4 exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds
5 to monitor compliance with the reformulation requirements of this and other similar Consent
6 Judgments and to purchase and test Covered Products to confirm compliance with such
7 reformulation requirements. In addition, as part of its Community Environmental Action and
8 Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental
9 justice groups working to educate and protect people from exposures to toxic chemicals. The
10 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
11 The payment in lieu of penalty check shall be made payable to the Center For Environmental
12 Health.

13 5.2.3 Defendant shall pay the sum of \$32,200 as reimbursement of reasonable
14 attorneys' fees and costs. The attorneys fees and cost reimbursement check shall be made payable
15 to the Lexington Law Group.

16 **6. MODIFICATION AND DISPUTE RESOLUTION**

17 6.1 **Modification.** This Consent Judgment may be modified from time to time by
18 express written agreement of the Parties, with the approval of the Court, or by an order of this
19 Court upon motion and in accordance with law.

20 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
21 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
22 modify the Consent Judgment.

23 **7. CLAIMS COVERED AND RELEASE**

24 7.1 This Consent Judgment is a full, final, and binding resolution between CEH acting
25 in the public interest and Defendant and Defendant's parents, shareholders, subsidiaries and their
26 successors and assigns ("Defendant Releasees"), and all entities other than those entities listed on
27 Exhibit A to whom they distribute or sell Covered Products including, but not limited to,
28 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees

1 (“Downstream Defendant Releasees”), of any violation of Proposition 65 up through the Effective
2 Date based on the failure to warn about exposure to lead in Covered Products manufactured,
3 distributed, or sold by Defendant prior to the Effective Date as set forth in the Notice of Violation.

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

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

14 **8. PROVISION OF NOTICE**

15 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
16 notice shall be sent by first class and electronic mail as follows:

17 8.1.1 **Notices to Defendant.** The person for Defendant to receive notices
18 pursuant to this Consent Judgment shall be:

19 Norman S. Wisnicki
20 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
21 11400 W. Olympic Blvd., 9th Floor
22 Los Angeles, CA 90064
23 nwisnicki@wrslawyers.com

24 8.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
25 this Consent Judgment shall be:

26 Eric S. Somers
27 Lexington Law Group
28 503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

1 8.2 Any Party may modify the person and address to whom the notice is to be sent by
2 sending the other Party notice by first class and electronic mail.

3 **9. COURT APPROVAL**

4 9.1 This Consent Judgment shall become effective on the Effective Date, provided
5 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
6 Defendant shall support approval of such Motion.

7 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
8 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California.

12 **11. ATTORNEYS' FEES**

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

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

24 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
25 sanctions pursuant to law.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
2 and therein. There are no warranties, representations, or other agreements between the Parties
3 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
4 other than those specifically referred to in this Consent Judgment have been made by any Party
5 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
6 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
7 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
8 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent Judgment.

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

17 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
19 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

21 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
22 against an entity that is not Defendant on terms that are different than those contained in this
23 Consent Judgment.

24 **16. EXECUTION IN COUNTERPARTS**

25 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
26 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

IT IS SO STIPULATED:


<p>Dated: <u>5/20</u>, 2013</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>_____</p> <p><i>Corinne P. Remno</i></p> <p>_____</p> <p>Printed Name</p> <p><i>Associate Director</i></p> <p>_____</p> <p>Title</p>
<p>Dated: _____, 2013</p>	<p>BASTIAT SANTA MONICA, INC.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>_____</p> <p>Title</p>

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

3 Dated:

4 _____
5 Honorable Steven A. Brick
6 Judge of the Superior Court of the State of California

7 **IT IS SO STIPULATED:**

8 Dated: _____, 2013 9 10 11 12 13 14 15 16	CENTER FOR ENVIRONMENTAL HEALTH _____ _____ Printed Name _____ Title
17 Dated: <u>May 8</u> , 2013 18 19 20 21 22 23 24 25 26	BASTIAT SANTA MONICA, INC.  _____ STEPHAN MARSAN Printed Name _____ PRESIDENT Title

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

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