



1 sold with clothing, without first providing a clear and reasonable warning pursuant to Proposition  
2 65.

3 1.3 Defendant is a corporation that manufactures, distributes and/or sells Covered  
4 Products (as defined herein) that are sold in the State of California.

5 1.4 For purposes of this Consent Judgment only, CEH and Defendant (the “Parties”)  
6 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
7 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that  
8 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
9 Consent Judgment as a full and final resolution of all claims which were or could have been raised  
10 in the Complaint based on the facts alleged therein with respect to Covered Products  
11 manufactured, distributed or sold by Defendant.

12 1.5 CEH and Defendant enter into this Consent Judgment as a full and final settlement  
13 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,  
14 arising out of the facts or conduct related to Defendant alleged therein. By execution of this  
15 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or  
16 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or  
17 demonstrating any violations of Proposition 65 relating to cadmium in jewelry. Nothing in this  
18 Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion  
19 of law, issue of law or violation of law, nor shall compliance with the Consent Judgment  
20 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of  
21 law, or violation of law. Defendant denies the material, factual and legal allegations in CEH’s  
22 Complaint and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment  
23 shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in  
24 this or any other pending or future legal proceedings. This Consent Judgment is the product of  
25 negotiation and compromise and is accepted by the Parties solely for purposes of settling,  
26 compromising, and resolving issues disputed in this action.

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1     **2.     DEFINITIONS**

2             2.1     The term “Cadmium Limit” means a concentration of 0.01 percent (100 parts per  
3 million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any material  
4 used in a Covered Product.

5             2.2     The term “Covered Product” means jewelry, including but not limited to necklaces,  
6 whether sold individually or as part of a set with a dress or other piece of clothing.

7             2.3     The term “Effective Date” means the date of entry of this Consent Judgment.

8     **3.     INJUNCTIVE RELIEF**

9             3.1     **Reformulation of Covered Products.** Defendant shall comply with the following  
10 requirements to achieve expeditious reformulation of the Covered Products to reduce or eliminate  
11 exposures to cadmium arising from the Covered Products:

12                 3.1.1     **Specification Compliance Date.** To the extent it has not already done  
13 so, no more than 30 days after the Effective Date, Defendant shall provide the Cadmium Limit to  
14 each of its suppliers of Covered Products and Covered Product components and shall instruct each  
15 such supplier to only deliver Covered Products and Covered Product components that are below  
16 the Cadmium Limit.

17                 3.1.2     **Reformulation Date.** As of the Effective Date, Defendant shall not  
18 manufacture, purchase, import, supply, sell or offer to sell any: (i) Covered Product that exceeds  
19 the Cadmium Limit or (ii) any Covered Product that contains a component that exceeds the  
20 Cadmium Limit.

21             3.2     **Market Withdrawal of Covered Products.** To the extent not already done, on or  
22 before the Effective Date, Defendant shall have: (i) ceased shipping the following specific  
23 products (“Recall Products”):

- 24                 • Ashley Collection Necklace & Earrings Set in Blue SKU No. 623916621, Item No. NE49-  
25 1662;

26 to stores and/or customers in California, (ii) withdrawn the Recall Products from the market in  
27 California, and (iii) if the Recall Products were not withdrawn from sale in California prior to the  
28 Effective Date, sent instructions to any of its stores and/or customers that offer the Recall Products

1 for sale in California to cease offering such Recall Products for sale and to either return all Recall  
2 Products to Defendant for destruction, or to directly destroy the Recall Products. Any destruction  
3 of the Recall Products shall be in compliance with all applicable laws. Defendant shall maintain  
4 electronic or written records (and with regard to actions taken prior to the date this Consent  
5 Judgment is fully executed, maintain such records to the extent available) demonstrating its  
6 compliance with its obligations under this Section and provide those to CEH with a report of the  
7 number of Recall Products returned or destroyed within ninety days of the Effective Date.

8 **4. ENFORCEMENT**

9 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an  
10 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
11 Judgment. Any action to enforce alleged violations of this Consent Judgment with respect to the  
12 Cadmium Limit by Defendant shall be brought exclusively pursuant to this Section 4.

13 4.2 **Enforcement of Materials Violation.**

14 4.2.1 **Notice of Violation.** In the event that, at any time following the Effective  
15 Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by  
16 Defendant that CEH believes in good faith exceed the Cadmium Limit, CEH may issue a Notice  
17 of Violation pursuant to this Section.

18 4.2.2 **Service of Notice of Violation and Supporting Documentation.**

19 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in  
20 Section 8 to receive notices for Defendant, and must be served within 75 days of the date the  
21 Covered Product at issue was purchased or otherwise acquired by CEH, provided, however, that:  
22 (i) CEH may have up to an additional 45 days to provide Defendant with the test data required by  
23 Section 4.2.2.3 below if it has not yet obtained it from its laboratory; and (ii) CEH may serve a  
24 subsequent Notice of Violation to a supplier of a Covered Product identified in a previous Notice  
25 of Violation so long as: (a) the identity of the supplier cannot be discerned from the labeling of the  
26 Covered Product; and (b) the Notice of Violation to the supplier is served within 75 days of the  
27 date the supplier is identified in writing to CEH by Defendant.

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1                   4.2.2.2     The Notice of Violation shall, at a minimum, set forth for each  
2 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the  
3 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the  
4 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and  
5 supporting documentation sufficient for validation of the test results. Such Notice of Violation  
6 shall be based upon total acid digest test data from an independent laboratory. Wipe, swipe, and  
7 swab testing are not sufficient to support a Notice of Violation.

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

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

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

1 provided by law for failure to comply with the Consent Judgment.

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

5           **4.2.6 Corrective Action in Non-Contested Matters.** If Defendant elects not to  
6 contest the allegation, it shall include in its Notice of Election a detailed description with  
7 supporting documentation of the corrective action that it has undertaken or proposes to undertake  
8 to address the alleged violation. Any such correction shall, at a minimum, provide reasonable  
9 assurance that the Covered Product will no longer be offered for sale in California. Corrective  
10 action must include instructions to Defendant’s customers that offer the Covered Product for sale  
11 to consumers to cease offering the Covered Product(s) identified in the Notice of Violation for sale  
12 in California as soon as practicable. The Notice of Election shall also include the name, address,  
13 telephone number, and other contact information, of Defendant’s supplier(s) of each Covered  
14 Product or Covered Product component identified in the Notice of Violation. Defendant shall  
15 make available to CEH for inspection and 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 serves a Notice of Election not to contest the  
23 allegations in the instant Notice of Violation, it shall be required to make a payment of \$10,000.  
24 This payment shall, however, be reduced to \$5,000 if Defendant produces with its Notice of  
25 Election test data showing that the Covered Product that is the subject of the Notice of Violation  
26 did not exceed the Cadmium Limit. For purposes of this Section 4.2.7.1 only, “test data” shall  
27 mean total cadmium by acid digest performed by an accredited laboratory on the same Covered  
28 Product that is the subject of the Notice of Violation. For purposes of this Section, the “same

1 Covered Product” must be a Covered Product that has a label attached that demonstrates that the  
2 Covered Product was produced at the same factory and on the same production date as that  
3 indicated on the label of the Covered Product tested by CEH that supports the Notice of Violation.

4 4.2.7.2 The payment shall be made by check payable to the Lexington Law  
5 Group and shall be paid within 15 days of service of a Notice of Election triggering a payment.

6 4.2.8 **Repeat Violations.** If Defendant has received three or more Notices of  
7 Violation that were not successfully contested or withdrawn in any 12-month period then, at  
8 CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other remedies  
9 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such  
10 relief, CEH shall meet and confer with Defendant for a period not to exceed 30 days (unless  
11 extended by mutual agreement) to determine if the parties can agree on measures Defendant can  
12 undertake to prevent future violations.

13 **5. PAYMENTS**

14 5.1 **Payments by Defendant.** On or before fifteen (15) days after the entry of this  
15 Consent Judgment, Defendant shall pay the total sum of \$47,500 as a settlement payment  
16 (“Settlement Payment”) as further set forth in this Section.

17 5.2 **Allocation of Payments.** The total Settlement Payment shall be paid in five (5)  
18 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
19 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be  
20 paid by Defendant in the amount of \$100 for each day the full payment is not received after the  
21 applicable payment due date set forth in Section 5.1. The late fees required under this Section  
22 shall be recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding  
23 brought pursuant to Section 4 of this Consent Judgment. The Settlement Payment paid by  
24 Defendant shall be allocated as set forth below between the following categories and made  
25 payable as follows:

26 5.2.1 Defendant shall pay \$6,384 as a civil penalty (“Civil Penalty”) pursuant  
27 to Health & Safety Code §25249.7(b). The Civil Penalty payment shall be apportioned in  
28 accordance with Health & Safety Code §25249.12 (25% to CEH and 75% to the State of

1 California's Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly,  
2 Defendant shall pay the OEHHA portion of the Civil Penalty payment for \$4,789 by check made  
3 payable to OEHHA and associated with taxpayer identification number 68-0284486. This  
4 payment shall be delivered as follows:

5 For United States Postal Service Delivery:

6 Attn: Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 P.O. Box 4010, MS #19B  
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Attn: Mike Gyurics  
13 Fiscal Operations Branch Chief  
14 Office of Environmental Health Hazard Assessment  
15 1001 I Street, MS #19B  
16 Sacramento, CA 95814

17 Defendant shall pay the CEH portion of the Civil Penalty payment for \$1,595 by check made  
18 payable to the Center for Environmental Health and associated with taxpayer identification  
19 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
20 Street, San Francisco, CA 94117.

21 5.2.2 Defendant shall pay \$4,788 as an Additional Settlement Payment  
22 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of  
23 Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics and Youth Fund  
24 and use them to support CEH programs and activities that seek to educate the public about  
25 cadmium and other toxic chemicals in consumer products that are marketed to youth, work with  
26 industries that market products to youth to reduce exposure to cadmium and other toxic chemicals,  
27 and thereby reduce the public health impacts and risks of exposure to cadmium and other toxic  
28 chemicals in consumer products that are marketed to youth in California. CEH shall obtain and  
maintain adequate records to document that ASPs are spent on these activities and CEH agrees to  
provide such documentation to the Attorney General within thirty days of any request from the  
Attorney General. The payment pursuant to this Section shall be made payable to the Center for



1 Environmental Health and associated with taxpayer identification number 94-3251981. This  
2 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
3 94117.

4 5.2.3 Defendant shall pay \$36,328 as a reimbursement of a portion of CEH's  
5 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in  
6 two separate checks as follows: (a) \$30,542 payable to the Lexington Law Group and associated  
7 with taxpayer identification number 94-3317175; and (b) \$5,786 payable to the Center For  
8 Environmental Health and associated with taxpayer identification number 94-3251981. Both of  
9 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
10 CA 94117.

11 5.2.4 To summarize, Defendant shall deliver checks made out to the payees  
12 and in the amounts set forth below:

13 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
14 OEHHA	Penalty	\$4,789	OEHHA per Section 5.2.1
15 Center For Environmental Health	Penalty	\$1,595	LLG
16 Center For Environmental Health	ASP	\$4,788	LLG
17 Lexington Law Group	Fee and Cost	\$30,542	LLG
18 Center For Environmental Health	Fee and Cost	\$5,786	LLG

19  
20 5.2.5 Notwithstanding the provisions of the Enforcement of Judgments Law  
21 and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully  
22 with its payment obligations under this Section 5, in addition to any other enforcement mechanism  
23 available to CEH, CEH may seek an order requiring Settling Defendant to submit to a debtor's  
24 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to  
25 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding  
26 Settling Defendant in contempt of Court.

27 **6. MODIFICATION AND DISPUTE RESOLUTION**

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1           6.1     **Modification.** This Consent Judgment may be modified from time to time by  
2 express written agreement of the Parties with the approval of the Court, or by an order of this  
3 Court upon motion and in accordance with law.

4           6.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
5 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
6 modify the Consent Judgment.

7     **7.       CLAIMS COVERED AND RELEASE**

8           7.1     This Consent Judgment is a full, final, and binding resolution between CEH and  
9 Defendant and Defendant’s parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
10 sister companies and their successors and assigns (“Defendant Releasees”), and all entities to  
11 whom they distribute or sell Covered Products, including, but not limited to, distributors,  
12 wholesalers, customers, retailers (including without limitation Ross Stores, Inc.), franchisees,  
13 cooperative members, and licensees (“Downstream Defendant Releasees”), of any violation of  
14 Proposition 65 that have been or could have been asserted in the public interest against Defendant,  
15 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about  
16 exposure to cadmium arising in connection with Covered Products manufactured, distributed, or  
17 sold by Defendant prior to the Effective Date.

18           7.2     CEH, for itself and acting on behalf of the public interest pursuant to Health &  
19 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against  
20 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation  
21 of Proposition 65 or any other statutory or common law claims that have been or could have been  
22 asserted in the public interest regarding the failure to warn about exposure to cadmium arising in  
23 connection with Covered Products manufactured, distributed or sold by Defendant prior to the  
24 Effective Date.

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

1 Effective Date.

2 **8. PROVISION OF NOTICE**

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

5 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notice  
6 pursuant to this Consent Judgment shall be:

7 Joshua A. Bloom  
8 Environmental General Counsel LLP  
9 2120 University Avenue  
10 Berkeley, CA 94704  
11 [jbloom@egcounsel.com](mailto:jbloom@egcounsel.com)

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

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

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

21 **9. COURT APPROVAL**

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

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

27 **10. GOVERNING LAW AND CONSTRUCTION**

28 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

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

14 **12. RETENTION OF JURISDICTION**

15 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify  
16 the Consent Judgment.

17 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
20 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

21 **14. NO EFFECT ON OTHER SETTLEMENTS**

22 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
23 against any other entity on terms that are different than those contained in this Consent Judgment.

24 **15. SUCCESSORS AND ASSIGNS**

25 This Consent Judgment shall apply to and be binding upon CEH and Settling Defendant,  
26 and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any  
27 of them.

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1 **16. EXECUTION IN COUNTERPARTS**

2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile, which taken together shall be deemed to constitute one document.

4 **IT IS SO ORDERED, ADJUDGED,  
5 AND DECREED**

6  
7 Dated: \_\_\_\_\_  
8 Judge of the Superior Court of the State of California

9 **IT IS SO STIPULATED:**

10 Dated: 9/27/19, 2019

**CENTER FOR ENVIRONMENTAL HEALTH**

*Michael Green*

*Michael Green*

Printed Name

*CEO*

Title

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Dated: \_\_\_\_\_, 2019

**DEFENDANT AMERICAN DREAM CLOTHING, INC.**



Jay Kwon

Printed Name

president

Title