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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
San Francisco County Superior Court

FEB 26 2009

GORDON PARK-LI, Clerk  
BY: \_\_\_\_\_  
Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

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14 CENTER FOR ENVIRONMENTAL HEALTH, a  
15 non-profit corporation,

16 Plaintiff,

17 v.

18 A.D. SUTTON & SONS, INC.; ACCESSORY  
NETWORK GROUP, INC.; E.S. ORIGINALS,  
19 INC.; GLOBAL DESIGNS CONCEPTS, INC.;  
LEGENT INTERNATIONAL LTD.; and  
20 Defendant DOES 1 through 200, inclusive,

21 Defendants.

Case No. CGC-08-476552

~~[PROPOSED]~~ CONSENT JUDGMENT

RE: Fashion Accessory Bazaar

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**1. INTRODUCTION**

**1.1** On June 19, 2008, plaintiff the Center for Environmental Health (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco County Superior Court, entitled *Center for Environmental Health v. A.D. Sutton & Sons, Inc., et al.*, San Francisco County Superior Court Case Number CGC-08-476552 (the “CEH Action”), for civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code §25249.5 et seq. (“Proposition 65”). On November 3, 2008, CEH amended its complaint to add Fashion Accessory Bazaar, LLC as a defendant.

**1.2** Defendant Fashion Accessory Bazaar, LLC and its affiliates and subsidiaries including without limitation Clicks and FAB/Starpoint (individually and collectively “FAB”) (hereinafter referred to as “FAB” or “Settling Defendants”) are entities that employ 10 or more persons and manufactured, distributed and/or sold (directly or indirectly) personal carrying products, such as, without limitation, bags, backpacks, tote bags, satchels, purses, sacks, wallets, handbags, coin purses, luggage, duffels, messenger bags, totes, plush backpacks, cosmetic bags, toiletry cases, and /or train cases for all ages (the “Products”) in the State of California.

**1.3** On or about November 12, 2007, March 17, 2008, and June 5, 2008, CEH served FAB and public enforcement agencies with the requisite 60-day notices alleging that FAB was in violation of Proposition 65 (the “Notices”). CEH’s Notices and the Complaint in this Action allege that FAB exposes people who use or otherwise handle the Products to lead and/or lead compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer, birth defects and other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notices and Complaint allege that FAB’s conduct violates Proposition 65, including Cal. Health & Safety Code §25249.6. FAB disputes such allegations and asserts that all of its Products are safe and comply with all applicable laws, including Consumer Product Safety Commission and Federal Food and Drug Administration standards.

**1.4** Upon receipt of CEH’s Notices, Settling Defendants took immediate measures to address the allegations set forth therein and to investigate the substance of CEH’s

1 allegations.

2           **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this  
3 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and  
4 personal jurisdiction over Settling Defendant as to the acts alleged in CEH's Complaint, that venue  
5 is proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
6 Judgment as a full and final resolution of all claims which were or could have been raised in the  
7 Complaint and Notices based on the facts alleged therein.

8           **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of  
9 certain disputed claims between the Parties as alleged in the Notices and/or Complaint. By  
10 executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. Nothing  
11 in this Consent Judgment is or shall be construed as an admission by the Parties of any fact,  
12 conclusion of law, issue of law or violation of law, nor shall any act or omission related to this  
13 Consent Judgment constitute or be construed as an admission of any fact, conclusion of law, issue  
14 of law, or violation of law.

15           **2. COMPLIANCE – REFORMULATION**

16           **2.1 Level.** After one hundred eighty (180) days of entry of this Consent  
17 Judgment (the "Compliance Date"), Settling Defendants shall not manufacture, distribute, ship, or  
18 sell, or cause to be manufactured, distributed, or sold:

19           A) any Product that is comprised of any fabric with Lead concentrations exceeding 200 parts  
20 per million ("ppm") or for which the exterior surface coating contains Lead  
21 concentrations exceeding 600 ppm, and

22           B) in addition to A above, for any Children's Product as defined in the Consumer Products  
23 Safety Improvement Act of 2008 (the "Act") with lead concentrations exceeding any  
24 more stringent levels required by the Act, as may from time to time be modified.

25 These standards are individually and collectively referred to herein as the "Reformulation  
26 Standard". The Reformulation Standard shall only apply to materials that are accessible  
27 ("Materials") and not to those materials that are not accessible through reasonably foreseeable use  
28 and abuse ("Non-Accessible Materials"). Consequently, the Reformulation Standard excludes Non-

1 Accessible Materials.

2           **2.2 Certification of level from suppliers.** As of the Compliance Date FAB shall  
3 obtain written certification from its suppliers certifying that the Products do not contain Lead  
4 concentrations exceeding the Reformulation Standard. Such supplier certifications shall be  
5 obtained annually for three successive years. If FAB begins purchasing Products from a new  
6 supplier, certifications shall be obtained annually from that supplier for three consecutive years after  
7 the Settling Defendant's initial purchase order from that supplier.

8           **2.3 Testing.** In order to ensure compliance with the requirements of Section 2.1,  
9 each Settling Defendant shall conduct (or cause to be conducted) testing to confirm that the  
10 Products do not contain Lead concentrations exceeding the Reformulation Standard. All testing  
11 pursuant to this Section shall be performed by an independent laboratory in accordance with either  
12 EPA Method 3050B for fabric or ASTM F963 for exterior surface coatings (the "Test Protocol").  
13 The results of all testing performed pursuant to this Section 2 shall be made available to CEH on a  
14 confidential basis, upon request.

15           **2.3.1 Random Testing.** Testing pursuant to this Section 2 shall be  
16 performed on randomly selected units in accordance with FAB's usual testing practices. FAB's  
17 usual testing practices include testing as required by their various retailers. At a minimum, during  
18 each calendar year, FAB shall randomly select and test the greater of 0.1% (one-tenth of one  
19 percent) or two, but in no case more than four, of the total Products purchased from each supplier of  
20 the Products intended for sale in California.

21           **2.3.2 Products that exceed stipulated levels pursuant to Settling**  
22 **Defendants' Testing.** If the results of the testing required pursuant to Section 2.3 show levels of  
23 lead exceeding the Reformulation Standard, the Settling Defendant shall: (1) refuse to accept all of  
24 the Products that were purchased under the particular purchase order; (2) send a notice to the  
25 supplier explaining that such Products do not comply with the supplier's certification; and (3) for  
26 the next two orders of Products intended for sale in California that are purchased from that supplier,  
27 randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case more  
28

1 than four, of the total Products purchased in each purchase order. Following those two orders, the  
2 Settling Defendant shall apply the testing frequency set forth in Section 2.3.1.

3           **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing of  
4 the Products. Any such testing will be conducted by CEH at an independent laboratory, in  
5 accordance with the Test Protocol. In the event that CEH's testing in accord with the Test Protocol  
6 demonstrates Lead levels in excess of the Reformulation Standard for two or more Products, CEH  
7 shall inform the Settling Defendant at issue of the test results, including information sufficient to  
8 permit the Settling Defendant to identify the Product(s). Within thirty (30) days following such  
9 notice, the Settling Defendant shall provide CEH, at the address listed in Section 12, with the  
10 certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this  
11 Consent Judgment. If the Settling Defendant fails to provide CEH with certification and testing  
12 information demonstrating that it complied with Sections 2.2 and/or 2.3, the Settling Defendant  
13 shall be liable for stipulated payments in lieu of penalties for Products for which CEH produces  
14 tests demonstrating Lead levels exceeding the Reformulation Standard, as set forth below. In  
15 addition, the Settling Defendant shall then apply the testing frequency set forth in Section 2.3.2 for  
16 the next two orders of Products from the supplier(s) of the Products at issue. The payments shall be  
17 made to CEH and used for the purposes described in Section 4.1.

18           **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments in  
19 lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows:

20	First Occurrence:	\$1,250
21	Second Occurrence:	\$1,500
22	Third Occurrence:	\$1,750
23	Thereafter:	\$2,500

24 Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year,  
25 regardless of the number of units of Settling Defendants' Products tested by CEH with exceedances  
26 of the Lead levels set forth in this Consent Judgment, shall be \$3,500.

27           **2.4.2 Products in the stream of commerce.** Settling Defendants' Products  
28 that have been manufactured, shipped, sold, or that are otherwise in the stream of commerce prior to

1 the Compliance Date shall be released from any claims that were brought or that could have been  
2 brought by CEH in its Complaint, as though they were Covered Claims within the meaning of  
3 Section 8, below.

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5 **3. SETTLEMENT PAYMENTS**

6 **3.1. Monetary Payment in Lieu of Penalty:** Settling Defendant shall pay to  
7 CEH fifteen thousand dollars (\$15,000) in lieu of any penalty pursuant to Health and Safety Code  
8 §25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to  
9 toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as  
10 set forth in section 2.4.

11 **3.2 Attorneys' Fees and Costs:** Settling Defendant shall pay thirty thousand  
12 dollars (\$30,000) to reimburse CEH and its attorneys for their reasonable investigation fees and  
13 costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter  
14 to Defendant' attention, litigating and negotiating a settlement in the public interest. The payment  
15 required under this section shall be made payable to the Lexington Law Group, LLP.

16 **3.3 Timing of payments.** All payments required under Sections 3.1 and 3.2  
17 above, shall be delivered to the Lexington Law Group at the address set forth in section 12 below  
18 within ten (10) days after this Consent Judgment is entered by the Court unless the Consent  
19 Judgment is entered over an objection filed with the Court in advance of the hearing on Court  
20 approval of the Consent Judgment. Should the Court enter the Consent Judgment over such an  
21 objection, the payments required under Sections 3.1 and 3.2 shall be due within 5 days after the  
22 judgment becomes final, including any appeal. However, should the parties revise the Consent  
23 Judgment prior to its entry by the Court in response to an objection such that the objection is  
24 withdrawn prior to entry of the Consent Judgment, the timing of the payments shall be due as if no  
25 objection had been filed.

26 **4. MODIFICATION OF CONSENT JUDGMENT**

27 **4.1** This Consent Judgment may be modified by written agreement of CEH and  
28 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

1           **4.2**     CEH intends to enter into agreements with other entities that manufacture,  
2 distribute and/or sell Products. Should Settling Defendant determine that the provisions of any such  
3 Consent Judgment with a similarly situated manufacturer or distributor of Products are less  
4 stringent, Settling Defendant may request a modification of this Consent Judgment to conform with  
5 the terms of the later entered Consent Judgment. Upon 30 days prior written notice of a Settling  
6 Defendant's request for a modification, CEH shall inform the Settling Defendant whether it will  
7 agree to such modification. If CEH does not agree, the Settling Defendant may move the Court for  
8 a modification pursuant to this Section.

9           **4.3**     In the event that new legislation relating to lead content of the Products is  
10 enacted on either the federal or California state level, either party may seek a modification to  
11 conform the requirements of this Consent Judgment to such new requirements, provided that such  
12 requirements are either: (a) at least as restrictive as those set forth herein; or (b) completely  
13 preemptive of Proposition 65 as adjudged by final order of an appellate court. Should either party  
14 reasonably determine that a modification pursuant to this section is warranted, such party shall  
15 request a modification from the non-requesting party. Upon 30 days prior written notice of a  
16 request for a modification, the non-requesting party shall inform the requesting party whether it will  
17 agree to such modification. If the non-requesting party does not agree, the requesting party may  
18 move the Court for a modification pursuant to this Section.

19           **5.       ENFORCEMENT OF CONSENT JUDGMENT**

20           **5.1**     CEH or FAB may, by motion or application for an order to show cause,  
21 enforce the terms and conditions contained in this Consent Judgment. The prevailing Party on any  
22 motion or application shall be entitled to its reasonable investigation fees and costs, attorneys' fees,  
23 and any other costs associated with such motion or application.

24           **6.       APPLICATION OF CONSENT JUDGMENT**

25           **6.1**     This Consent Judgment shall apply to and be binding upon the Parties hereto,  
26 their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

27           **7.       CLAIMS COVERED**

28           **7.1**     This Consent Judgment is a full, final and binding resolution between CEH

1 and Settling Defendant of any violation of Proposition 65 that was or could have been asserted in  
2 the Notices or Complaint against Settling Defendants (including any claims that could be asserted in  
3 connection with any of the Products covered by this Consent Judgment) or their parents,  
4 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, manufacturers, licensors  
5 distributors, retailers, or customers (collectively, "Defendant Releasees") based on failure to warn  
6 about alleged Proposition 65 exposures, with respect to any Products manufactured, distributed or  
7 sold by Settling Defendants ("Covered Claims") on or prior to the Compliance Date. Compliance  
8 with the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of  
9 Lead exposures from the Products.

10           **7.2** CEH hereby releases all manufacturers, retailers, distributors, and licensors  
11 of Settling Defendants' Products from any claims related to the Notices, the Complaint and this  
12 Judgment and CEH agrees to dismiss any such claims that it has asserted or could assert against any  
13 manufacturers, retailers, distributors, or licensors of Settling Defendant's Products. As to each of  
14 Settling Defendants' manufacturers, retailers, distributors, or licensors which have not been served  
15 with a 60-day Notice letter or a complaint by CEH, CEH agrees not to serve a 60-day notice on said  
16 manufacturers, retailer, distributor, or licensor which includes within its scope, whether directly or  
17 indirectly, any of Settling Defendants' Products provided that such Products are in compliance with  
18 the terms of this Consent Judgment. For purposes of the release provided in this Section, the term  
19 "manufacturer, retailer, distributor, or licensor" shall include their respective related entities,  
20 predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, partners, directors,  
21 stockholders, shareholders, attorneys, representatives, agents and employees, past, present and  
22 future.

23           **8. SEVERABILITY**

24           **8.1** In the event that any of the provisions of this Consent Judgment are held by a  
25 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

26           **9. GOVERNING LAW**

27           **9.1** The terms of this Consent Judgment shall be governed by the laws of the State of  
28 California.



1           **10.     CONSENT JUDGMENT TERMINATION AND RETENTION OF**  
2 **JURISDICTION**

3           **10.1**   This Consent Judgment will automatically terminate and be of no further  
4 force, validity or affect as of August 1, 2013.

5           **10.2**   This Court shall retain jurisdiction of this matter to implement and enforce  
6 the terms this Consent Judgment, while it is in effect.

7           **11.     PROVISION OF NOTICE**

8           **11.1**   All notices required pursuant to this Consent Judgment and correspondence  
9 shall be sent to the following:

10 For CEH:

11                   Mark N. Todzo  
12                   Lexington Law Group, LLP  
13                   1627 Irving Street  
14                   San Francisco, CA 94122

15 For Settling Defendants:

16                   Malcolm Weiss, Esq.  
17                   Hunton & Williams LLP  
18                   550 South Hope, 20<sup>th</sup> Floor  
19                   Los Angeles, CA 90071

20 and

21                   Mike Hassan, Esq.  
22                   Wachtel & Masyr, LLP  
23                   110 East 59th St.  
24                   New York, NY 10022

25           **12.     COURT APPROVAL**

26           **12.1**   CEH will comply with the settlement notice provisions of Health and Safety  
27 Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

28           **12.2**   If this Consent Judgment is not approved by the Court, it shall be of no

1 further force or effect. If this Consent Judgment is appealed, with the exception of the injunctive  
2 relief provisions in Section 2, above, which remain in effect during any appeal, it does not become  
3 effective and has no force or effect until all issues on appeal are resolved.

4 **13. EXECUTION AND COUNTERPARTS**

5 **13.1** The stipulations to this Consent Judgment may be executed in counterparts  
6 and by means of facsimile, which taken together shall be deemed to constitute one document.

7 **14. AUTHORIZATION**

8 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully  
9 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
10 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.  
11 The undersigned have read, understand and agree to all of the terms and conditions of this Consent  
12 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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14

15 **AGREED TO:**

16 CENTER FOR ENVIRONMENTAL HEALTH

17   
18 \_\_\_\_\_

19 Michael Green, Executive Director  
20 Center for Environmental Health

Dated: 12/12/08

21 FASHION ACCESSORY BAZAAR, LLC

22   
23 \_\_\_\_\_

24 Jack Margaretten  
25 Chief Operating Officer

Dated: 12/9/2008

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