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ENDORSED
FILED
ALAMEDA COUNTY

NOV 03 2011

K. McCoy, Exec. Off./Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

LULU NYC LLC, et al.,)

Defendants.)

AND CONSOLIDATED CASES.)
_____)

Lead Case No. RG-09-459448

(Consolidated with Case Nos. RG-10-494289, RG-10-494513, and RG-10-494517)

[Signature]
[PROPOSED] CONSENT
JUDGMENT AS TO EFASHION
SOLUTIONS, LLC

1. DEFINITIONS

1.1 "Accessible Component" means a component of a Covered Product that could be touched by a person during normal and reasonably foreseeable use.

1.2 "Covered Products" means Fashion Accessories that are (a) Manufactured by Settling Defendant, or (b) distributed for resale or sold for resale by Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by Settling Defendant where Settling Defendant is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity that is under common ownership of the Private Labeler of such product.

1 1.3 “Effective Date” means the date on which this Consent Judgment is entered by
2 the Court.

3 1.4 “Fashion Accessories” means: (i) wallets, handbags, purses, and clutches; (ii)
4 belts; and (iii) footwear.

5 1.5 “Lead Limits” means the maximum concentrations of lead and lead
6 compounds (“Lead”) by weight specified in Section 3.2.

7 1.6 “Manufactured” and “Manufactures” have the meaning defined in Section
8 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended
9 from time to time.

10 1.7 “Non-Suspect Materials” means natural materials other than leather that have
11 been determined not to exceed Lead limits for children’s products by the final rule of the
12 Consumer Product Safety Commission set forth at 16 C.F.R. § 1500.91(d) and (e), as it existed on
13 June 1, 2010.

14 1.8 “Private Label Covered Product” means a Fashion Accessory that bears a
15 private label where (i) the product (or its container) is labeled with the brand or trademark of a
16 person other than a manufacturer of the product, (ii) the person with whose brand or trademark
17 the product (or container) is labeled has authorized or caused the product to be so labeled, and
18 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

19 1.9 “Private Labeler” means an owner or licensee of a brand or trademark on the
20 label of a consumer product which bears a private label; provided, however, that Settling
21 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
22 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s
23 brand or trademark.

24 1.10 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.
25 § 1303.2(b)², as amended from time to time.

26
27 _____
28 ¹ As of May 1, 2011, the term “Manufactured” and “Manufactures” means to manufacture,
produce, or assemble.

1 1.11 “Vendor” means a person or entity that Manufactures, imports, distributes, or
2 supplies a Fashion Accessory to Settling Defendant.

3 **2. INTRODUCTION**

4 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
5 Environmental Health (“CEH”) and defendant eFashion Solutions, LLC (“Settling Defendant”).

6 2.2 Commencing in April 2009, the CEH served multiple 60-Day Notices of
7 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
8 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that the entities named in those
9 notices violated Proposition 65 by exposing persons to Lead contained in wallets, handbags,
10 purses, clutches, totes, belts and footwear, without first providing a clear and reasonable
11 Proposition 65 warning.

12 2.3 Settling Defendant manufactures, distributes or offers Fashion Accessories for
13 sale in the State of California or has done so in the past.

14 2.4 Settling Defendant represents that as of the date it executes this Consent
15 Judgment: (a) no public enforcer is diligently prosecuting an action related to Lead in its Fashion
16 Accessories; and (b) it does not have a pending 60-Day Notice of Violation of Proposition 65 as
17 to Lead in its Fashion Accessories (as defined herein) from any entity that predates the 60-Day
18 Notice of Violation of Proposition 65 issued by CEH for Lead in such Fashion Accessories.
19 “Pending” in the prior sentence means that such 60-Day Notice has not been withdrawn, resolved
20 by judgment or resolved by settlement agreement.

21 2.5 On June 24, 2009, CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*,
22 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
23 Proposition 65 violations as to wallets, handbags, purses and clutches. On or about January 15,
24 2010, CEH filed its First Amended Complaint, and also filed the following new actions alleging

25 ² As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
26 material, with or without a suspension of finely divided coloring matter, which changes to a solid
27 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other
28 surface. This term does not include printing inks or those materials which actually become a part
of the substrate, such as the pigment in a plastic article, or those materials which are actually
bonded to the substrate, such as by electroplating or ceramic glazing.

1 Proposition 65 violations as to Lead in Fashion Accessories: *CEH v. Ashley Stewart Ltd., et al.*,
2 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,
3 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,
4 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court
5 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448.

6 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this
7 Court has jurisdiction over the allegations of violations contained in the operative Complaint
8 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling
9 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
10 and that this Court has jurisdiction to enter this Consent Judgment.

11 2.7 Nothing in this Consent Judgment is or shall be construed as an admission by
12 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
13 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
14 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
15 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
16 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
17 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
18 this action.

19 **3. INJUNCTIVE RELIEF**

20 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
21 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
22 Vendors of Fashion Accessories that will be sold or offered for sale to California consumers and
23 shall instruct each Vendor to use reasonable efforts to provide Fashion Accessories that comply
24 with the Lead Limits on a nationwide basis. This Section 3.1 is not applicable with respect to
25 Non-Suspect Materials.

26 3.2 **Lead Limits.**

27 Settling Defendant shall not purchase, import, Manufacture, or supply to an
28 unaffiliated third party any Covered Product that will be sold or offered for sale to California

1 consumers that exceeds the following Lead Limits:

2 3.2.1 Commencing on the Effective Date, Paint or other Surface Coatings on
3 Accessible Components: 90 parts per million (“ppm”).

4 3.2.2 Commencing on the Effective Date, leather (including composited leather)
5 Accessible Components: 600 ppm; and commencing on December 1, 2011: 300 ppm. In
6 the alternative, Covered Products containing multiple patches of different scrap leathers
7 may be sold with a clear and reasonable warning provided pursuant to the requirements of
8 Section 3.4.

9 3.2.3 Commencing on the Effective Date, polyvinyl chloride (“PVC”)
10 Accessible Components: 300 ppm, and commencing on December 1, 2011, PVC
11 Accessible Components: 200 ppm.

12 3.2.4 Commencing on the Effective Date, for all other Accessible Components
13 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones:
14 300 ppm.

15 3.3 **Final Retail Compliance Date.** Commencing on December 1, 2011, Settling
16 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead
17 Limits specified in Section 3.2 as being effective on the Effective Date. Commencing on
18 December 1, 2012, Settling Defendant shall not sell or offer for sale in California any Covered
19 Product that exceeds the Lead Limits specified in Section 3.2 as being effective December 1,
20 2011. For purposes of this Section 3.3, when Settling Defendant’s direct customer sells or offers
21 for sale to California consumers a Covered Product after the applicable Final Retail Compliance
22 Date, Settling Defendant is deemed to “offer for sale in California” that Covered Product.

23 3.4 **Warnings for Covered Products.**

24 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
25 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to
26 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,
27 2011, with a Clear and Reasonable Warning that complies with the provisions of Section
28 3.4.2.

1 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
2 Consent Judgment shall state either:

3 WARNING: This product contains lead, a chemical known to the State of
4 California to cause birth defects or other reproductive harm. Do not allow children
5 to mouth or chew.

6 Or

7 WARNING: This product contains lead, a chemical known to the State of
8 California to cause birth defects or other reproductive harm. Do not mouth or
9 chew.

10 This statement shall be prominently displayed on the Covered Product or the packaging of
11 the Covered Product with such conspicuousness, as compared with other words,
12 statements or designs as to render it likely to be read and understood by an ordinary
13 individual prior to sale. For internet, catalog or any other sale where the consumer is not
14 physically present and cannot see a warning displayed on the Covered Product or the
15 packaging of the Covered Product prior to purchase or payment, the warning statement
16 shall be displayed in such a manner that it is likely to be read and understood prior to the
17 authorization of or actual payment.

18 3.5 **Action Regarding Specific Products.**

19 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the
20 following specific products in California: (i) RocaWear Carry Me Quilted Tote – Yellow,
21 SKU No. 8-41590-10939-7, Style No. RB4350, (ii) Baby Phat Lysette Small Gold
22 Handbag, SKU No. 7-62657-97808-7, Style No. BP5198-GLD-BP, (iii) Dereon Dazzle
23 Satchel Handbag, SKU No. 04717-02087-0, Style No. 2087, and (iv) Red by Marc Ecko
24 Pleated Pleasure Hobo Handbag – Gold, SKU No. 8-82640-06851-6, Style No.
25 H0800113RED, Item No. 3326999 (collectively, the “Section 3.5 Products”). On or
26 before the Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.5
27 Products to any of its customers that resell the Section 3.5 Products in California, and (ii)
28 send instructions to its customers that resell the Section 3.5 Products in California

1 instructing them to cease offering such Section 3.5 Products for sale in California.

2 3.5.2 If Settling Defendant has not complied with Section 3.5.1 prior to
3 executing this Consent Judgment, it shall instruct its California stores and/or customers
4 that resell the Section 3.5 Products either to (i) return all the Section 3.5 Products to the
5 Settling Defendant for destruction; or (ii) directly destroy the Section 3.5 Products; or (iii)
6 sell the Section 3.5 Products with a Clear and Reasonable Warning that complies with the
7 provisions of Section 3.4.2.

8 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all
9 applicable laws.

10 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide
11 CEH with written certification from Settling Defendant confirming compliance with the
12 requirements of this Section 3.5.

13 3.6 **Deadlines for Belts and Footwear.** With respect to Covered Products that
14 are belts or footwear, each of the dates set forth in Sections 3.2, 3.3 and 3.4 is extended by one
15 year, except that any requirement in Section 3.2 that takes effect on the Effective Date shall take
16 effect on December 1, 2011 for Covered Products that are belts or footwear.

17 **4. ENFORCEMENT**

18 4.1 Any Party may, after meeting and conferring, by motion or application for an
19 order to show cause before this Court, enforce the terms and conditions contained in this Consent
20 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent
21 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

22 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
23 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
24 Defendant on or after that date, for example, a unique brand name or characteristic system of
25 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,
26 including but not limited to the identities of parties to contracts between Settling Defendant and
27 third parties, may be designated by Settling Defendant as competitively sensitive confidential
28 business information, and if so designated shall not be disclosed to any person without the written

1 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
2 reveal information designated as competitively sensitive confidential business information
3 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.160
4 and 2.550, *et seq.*

5 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
6 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

7 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
8 Defendant within 45 days of the date the alleged violation(s) was or were observed,
9 provided, however, that CEH may have up to an additional 45 days to provide Settling
10 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it
11 from its laboratory.

12 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
13 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
14 (b) the location at which the Covered Product was offered for sale, (c) a description of the
15 Covered Product giving rise to the alleged violation, and of each Accessible Component
16 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
17 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including
18 a picture of the Covered Product and all identifying information on tags and labels, and
19 (d) all test data obtained by CEH regarding the Covered Product and related supporting
20 documentation, including all laboratory reports, quality assurance reports and quality
21 control reports associated with testing of the Covered Products. Such Notice of Violation
22 shall be based at least in part upon total acid digest testing performed by an independent
23 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
24 themselves sufficient to support a Notice of Violation, although any such testing may be
25 used as additional support for a Notice. The Parties agree that the sample Notice of
26 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
27 subsections (c) and (d) of this Section 4.3.2.

28

1 **4.3.3 Additional Documentation.** CEH shall promptly make available for
2 inspection and/or copying upon request by and at the expense of Settling Defendant, all
3 supporting documentation related to the testing of the Covered Products and associated
4 quality control samples, including chain of custody records, all laboratory logbook entries
5 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
6 from all analytical instruments relating to the testing of Covered Product samples and any
7 and all calibration, quality assurance, and quality control tests performed or relied upon in
8 conjunction with the testing of the Covered Products, obtained by or available to CEH that
9 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
10 any exemplars of Covered Products tested.

11 **4.3.4 Multiple Notices.** If Settling Defendant has received more than four
12 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
13 fines, costs, penalties, or remedies are provided by law for failure to comply with the
14 Consent Judgment. For purposes of determining the number of Notices of Violation
15 pursuant to this Section 4.3.4, the following shall be excluded:

- 16 (a) Multiple notices identifying Covered Products Manufactured for or
17 sold to Settling Defendant from the same Vendor; and
- 18 (b) A Notice of Violation that meets one or more of the conditions of
19 Section 4.4.3(c).

20 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation
21 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant
22 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
23 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
24 deemed an election to contest the Notice of Violation.

25 **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
26 Election shall include all then-available documentary evidence regarding the alleged
27 violation, including any test data. Within 30 days the parties shall meet and confer to
28 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,

1 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
2 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
3 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
4 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
5 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
6 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or
7 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
8 other data regarding the alleged violation, it shall promptly provide all such data or
9 information to the other Party.

10 **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested,
11 Settling Defendant shall include in its Notice of Election a detailed description of
12 corrective action that it has undertaken or proposes to undertake to address the alleged
13 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
14 Covered Product will no longer be offered by Settling Defendant or its customers for sale
15 in California. If there is a dispute over the sufficiency of the proposed corrective action or
16 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
17 meet and confer before seeking the intervention of the Court to resolve the dispute. In
18 addition to the corrective action, Settling Defendant shall make a contribution to the
19 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
20 Section 4.4.3 applies.

21 **4.4.3 Limitations in Non-Contested Matters.**

22 (a) If it elects not to contest a Notice of Violation before any motion
23 concerning the violation(s) at issue has been filed, the monetary liability of Settling
24 Defendant shall be limited to the contributions required by this Section 4.4.3, if any.

25 (b) If more than one Settling Defendant has manufactured, sold, offered
26 for sale or distributed a Covered Product identified in a non-contested Notice of Violation,
27 only one required contribution may be assessed against all Settling Defendants as to the
28 noticed Covered Product.

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(c) The contribution to the Fashion Accessory Testing Fund shall be:

(i) One thousand seven hundred fifty dollars (\$1750) if Settling Defendant, prior to receiving and accepting for distribution or sale the Covered Product identified in the Notice of Violation, obtained test results demonstrating that all of the Accessible Components in the Covered Product identified in the Notice of Violation complied with the applicable Lead Limits, and further provided that such test results would be sufficient to support a Notice of Violation and that the testing was performed within two years prior to the date of the sales transaction on which the Notice of Violation is based. Settling Defendant shall provide copies of such test results and supporting documentation to CEH with its Notice of Election; or

(ii) Not required or payable, if the Notice of Violation concerns a Non-Suspect Material; provided, however, that the foregoing exemption shall not apply if Settling Defendant has received more than three Notices of Violation in an 18-month period for the same Non-Suspect Material that was supplied by more than one Vendor; or

(iii) One thousand five hundred dollars (\$1500) if Settling Defendant is in violation of Section 3.3 only insofar as that Section deems Settling Defendant to have "offered for sale" a product sold at retail by Settling Defendant's customer, provided however, that no contribution is required or payable if Settling Defendant has already been required to pay a total of ten thousand dollars (\$10,000) pursuant to this subsection. This subsection shall apply only to Covered Products that Settling Defendant demonstrates were shipped prior to the applicable Shipping Compliance Date specified in Section 3.2.

(iv) Not required or payable, if the Notice of Violation identifies the same Covered Product or Covered Products, differing only in size or

1 color, that have been the subject of another Notice of Violation within the
2 preceding 12 months.

3 4.5 **Additional Enforcement for Noncompliant Non-Covered Products.** If
4 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
5 Fashion Accessory: (i) that is not a Covered Product, (ii) that contains Lead in an amount that
6 exceeds any of the applicable Lead Limits, and (iii) for which Settling Defendant did not provide
7 a clear and reasonable warning as required by Proposition 65 (“Noncompliant Non-Covered
8 Product”), then prior to CEH serving a 60-Day Notice under Proposition 65 on Settling
9 Defendant, CEH shall provide notice to Settling Defendant pursuant to this Section 4.5.

10 4.5.1 The notice shall contain the information required for a Notice of Violation
11 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the
12 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
13 further identifying information for the Noncompliant Non-Covered Product that is
14 reasonably available to it.

15 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
16 requested further information sufficient to identify the Noncompliant Non-Covered
17 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
18 The Notice of Election shall:

19 (a) Identify to CEH (by proper name, address of principal place of
20 business and telephone number) the person or entity that sold the Noncompliant Non-
21 Covered Product to Settling Defendant;

22 (b) Identify the manufacturer and other distributors in the chain of
23 distribution of the Noncompliant Non-Covered Product, provided that such information is
24 reasonably available; and

25 (c) Include either: (i) a statement that Settling Defendant elects not to
26 proceed under this Section 4.5, in which case CEH may take further action including
27 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant
28 elects to proceed under this Section 4.5, with a description of corrective action that meets

1 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund
2 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant
3 contends that the Noncompliant Non-Covered Product is released from liability by a
4 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

5 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
6 confidential business information, or (iii) other information that may be subject to a claim
7 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
8 or confidentiality, provided that the Party disclosing such information shall clearly
9 designate it as confidential. Any Party receiving information designated as confidential
10 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
11 or entity, and shall use such information solely for purposes of resolving any disputes
12 under this Consent Judgment.

13 4.5.4 No further action is required of Settling Defendant under this Consent
14 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
15 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
16 Covered Product by the terms of a separate settlement agreement or consent judgment
17 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

18 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
19 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may
20 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
21 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall
22 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

23 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
24 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
25 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
26 provisions of Section 4.4.3(c) applies, in which case the applicable amount specified in
27 Section 4.4.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
28 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person

1 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
2 has a principal place of business located within the United States, and \$10,000 for all
3 other notices.

4 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a
5 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
6 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
7 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
8 settlement amount paid by such Vendor. If the settlement or consent judgment between
9 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
10 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
11 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
12 settlement payment.

13 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
14 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
15 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
16 than a Settling Defendant.

17 5. PAYMENTS

18 5.1 **Payments by Settling Defendant.** Within twenty (20) days of entry of this
19 Consent Judgment, Settling Defendant shall pay the total sum of \$75,000 as a settlement
20 payment. The total settlement amount for Settling Defendant shall be paid in four separate
21 checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero
22 Street, San Francisco, California 94117, and made payable and allocated as follows:

23 5.1.1 Settling Defendant shall pay the sum of \$10,500 as a civil penalty pursuant
24 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
25 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
26 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
27 Center For Environmental Health.

28 5.1.2 Settling Defendant shall also pay the sum of \$17,500 as a payment in lieu

1 of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
2 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and
3 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
4 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
5 funds to award grants to grassroots environmental justice groups working to educate and protect
6 people from exposures to toxic chemicals. The method of selection of such groups can be found
7 at the CEH web site at www.keh.org/justicefund. The payment pursuant to this Section shall be
8 made payable to the Center For Environmental Health.

9 5.1.3 Settling Defendant shall pay the sum of \$2,000 as a contribution to the
10 Proposition 65 Fashion Accessory Testing Fund. CEH shall use such funds to locate, purchase
11 and test Covered Products to verify compliance with the reformulation requirements of Section 3,
12 to prepare, send and prosecute Notices of Violation as necessary to Settling Defendant pursuant to
13 Section 4, and to reimburse attorneys' fees and costs incurred in connection with these activities.
14 The Proposition 65 Fashion Accessory Testing Fund check shall be made payable to the
15 Lexington Law Group Attorney-Client Trust Account.

16 5.1.4 Settling Defendant shall also separately pay to the Lexington Law Group
17 the sum of \$45,000 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.
18 The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law
19 Group.

20 **6. MODIFICATION**

21 6.1 **Written Consent.** This Consent Judgment may be modified from time to
22 time by express written agreement of the Parties with the approval of the Court, or by an order of
23 this Court upon motion and in accordance with law.

24 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
25 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
26 modify the Consent Judgment.

27 **7. CLAIMS COVERED AND RELEASED**

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

1 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
2 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
3 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
4 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
5 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)
6 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
7 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
8 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
9 Settling Defendant prior to the Effective Date.

10 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
11 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered
12 Products.

13 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
14 action under Proposition 65 against any person other than a Settling Defendant, Defendant
15 Releasee, or Downstream Defendant Releasee.

16 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
17 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
18 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
19 California consumers that does not comply with the Lead Limits after the applicable Final Retail
20 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant
21 Proposition 65 warnings under this Consent Judgment.

22 8. NOTICE

23 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
24 notice shall be sent by first class and electronic mail to:

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

1 8.2 When Settling Defendant is entitled to receive any notice under this Consent
2 Judgment, the notice shall be sent by first class and electronic mail to:

3 Martin H. Orlick
4 Matthew S. Kenefick
5 Jeffer Mangels Butler & Mitchell
6 Two Embarcadero Center, Fifth Floor
7 San Francisco, CA 94111
8 mho@jmbm.com
9 msk@jmbm.com

10 8.3 Any Party may modify the person and address to whom the notice is to be sent
11 by sending each other Party notice by first class and electronic mail.

12 **9. COURT APPROVAL**

13 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
14 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
15 shall support entry of this Consent Judgment.

16 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
17 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
18 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

19 **10. ATTORNEYS' FEES**

20 10.1 Should CEH prevail on any motion, application for an order to show cause or
21 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
22 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
23 Settling Defendant prevail on any motion application for an order to show cause or other
24 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
25 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
26 or application lacked substantial justification. For purposes of this Consent Judgment, the term
27 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
28 Code of Civil Procedure §§ 2016, *et seq.*

 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
its own attorneys' fees and costs.

1 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
2 sanctions pursuant to law.

3 **11. TERMINATION**

4 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
5 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
6 termination shall be effective upon the subsequent filing of a notice of termination with Superior
7 Court of Alameda County.

8 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
9 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
10 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
11 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
12 7.1 and 12.1 shall survive any termination.

13 **12. OTHER TERMS**

14 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
15 of California.

16 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
17 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
18 assigns of any of them.

19 12.3 This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
22 merged herein and therein. There are no warranties, representations, or other agreements between
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
27 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
28 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent

1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

3 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
4 that any Settling Defendant might have against any other party, whether or not that party is a
5 Settling Defendant.


6 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 12.6 The stipulations to this Consent Judgment may be executed in counterparts
9 and by means of facsimile or portable document format (pdf), which taken together shall be
10 deemed to constitute one document.

11 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
12 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
13 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
14 Party.

15 12.8 The Parties, including their counsel, have participated in the preparation of
16 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
17 This Consent Judgment was subject to revision and modification by the Parties and has been
18 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
19 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
20 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
21 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
22 be resolved against the drafting Party should not be employed in the interpretation of this Consent
23 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

24 **IT IS SO ORDERED:**

25 26 Dated: <u>11/3</u> , 2011	27 28  The Honorable Steven A. Brick Judge of the Superior Court
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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

MICHAEL GREEN

Printed Name

EXECUTIVE DIRECTOR

Title

EFASHION SOLUTIONS, LLC

Signature

Printed Name

Title

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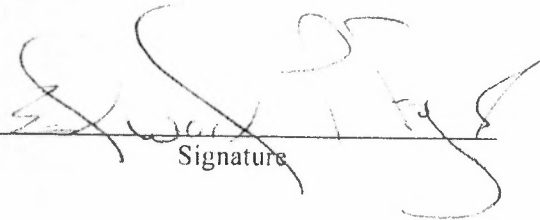
CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

EFASHION SOLUTIONS, LLC

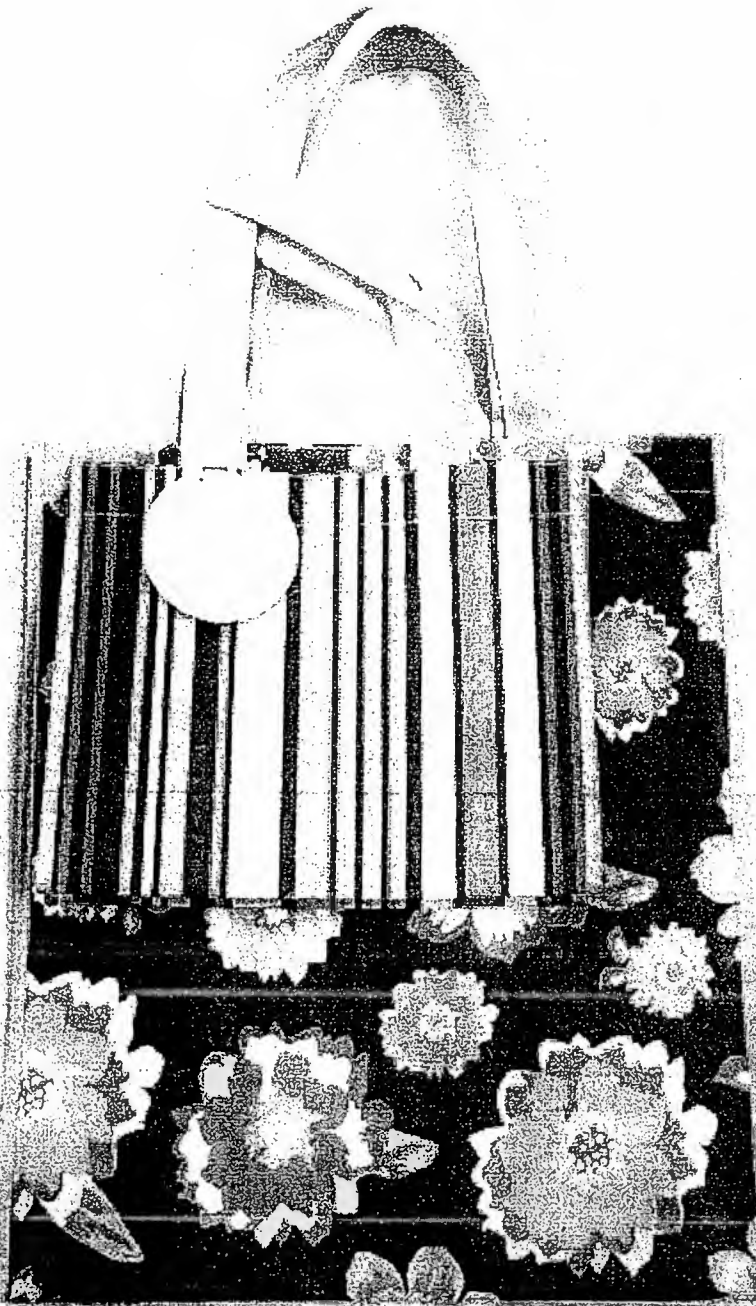


Signature

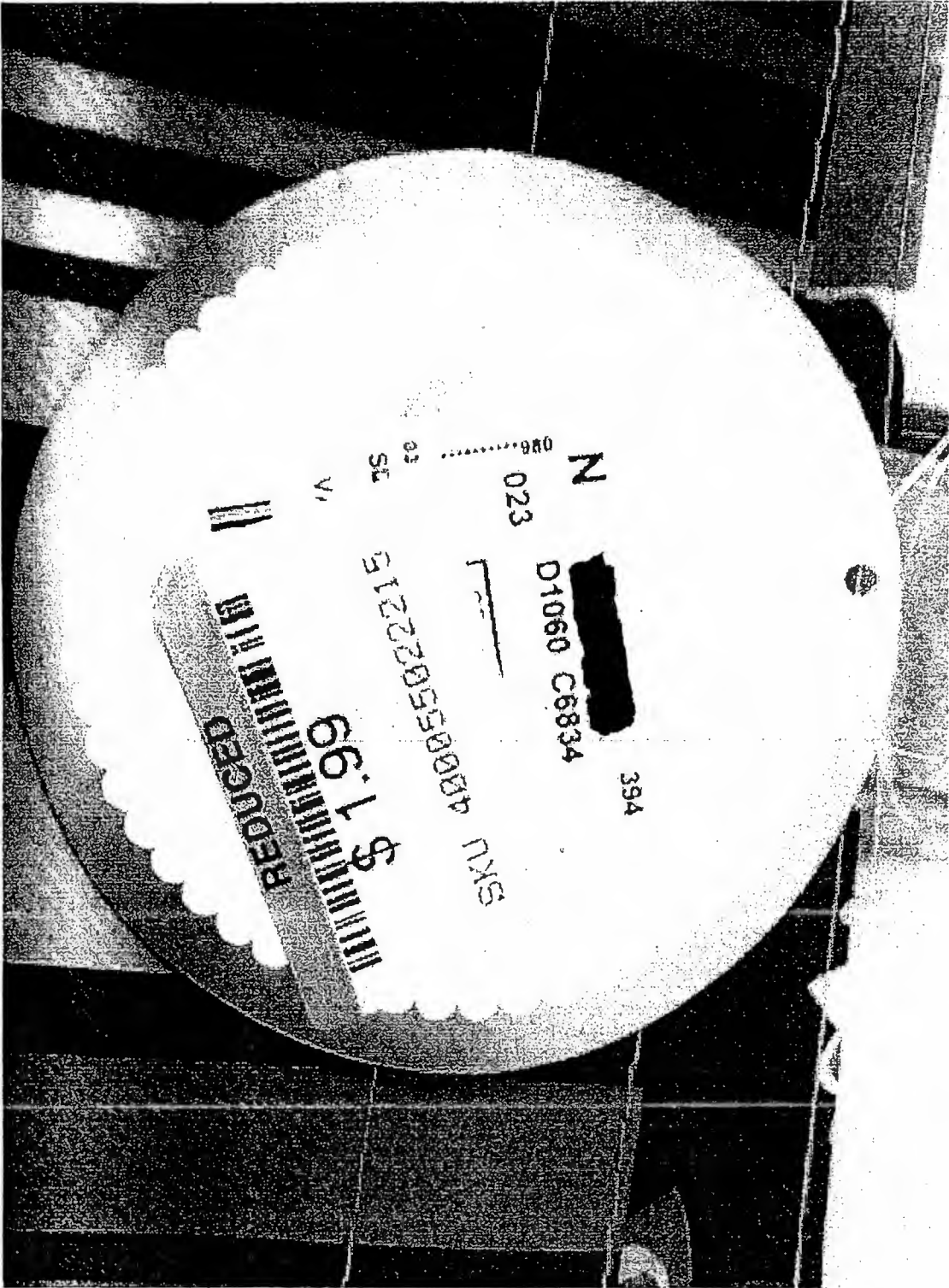
Printed Name

Title

Exhibit A







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V,

365 North Canyons Parkway, Suite 201
Tech Center, 2441 Constitution Drive
Livermore CA 94551



925-828-1440
www.TheNFL.com

Analytical Report

February 09, 2011

Lexington Law Group
1627 Irving Street
San Francisco, CA 94122

Analytical Report No.: CL3184-8
Analysis Dates: 01/26/11 - 02/09/11

Listed below are the results of our analyses for sample(s) received on January 26, 2011.

CEH ID#RB057, [REDACTED] Floral Re-usable Shopping Bag, (Brown Surface Mat'l)

NFL ID AE78115

Analyte	Result	Units	Method Ref.
Lead	2840	ppm	NIOSH 7082

A portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

Sample(s) were received in good condition unless and results are reported based on the sample(s) as received, unless otherwise noted. Please note that these results apply only to the sample(s) submitted for this report. Samples from a different portion of the same lot may produce different results.

The National Food Lab services are provided subject to our standard terms and conditions, which can be found on our website, www.TheNFL.com. Should you have any questions concerning these results, please do not hesitate to contact us. Thank you for using the services of the National Food Lab.

Sincerely,

Grace Bandong, Division Manager, Food Contaminants -Chemistry

cc: The NFL's Accounts Receivable