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ENDORSED  
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ALAMEDA COUNTY

JUL 12 2010

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.

) Lead Case No. RG-09-459448

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

) ~~PROPOSED~~ <sup>KM</sup> CONSENT  
) JUDGMENT AS TO FANTAS-EYES,  
) INC.

\_\_\_\_\_  
AND CONSOLIDATED CASES.  
\_\_\_\_\_

1. INTRODUCTION

1.1 On June 24, 2009, the Center for Environmental Health (“CEH”) filed the action entitled *CEH v. LuLu NYC LLC, et al.*, Case No. RG 09-459448, in the Superior Court of California for Alameda County. In mid-January 2010, CEH filed its First Amended Complaint in the *Lulu* action, and also filed the following new actions: (i) *CEH v. Ashley Stewart Ltd., et al.*, Alameda County Superior Court Case No. RG 10-494289; (ii) *CEH v. Zappos.com, Inc., et al.*, Alameda County Superior Court Case No. RG 10-494513; and (iii) *CEH v. Bag Bazaar, Ltd., et al.*, Alameda County Superior Court Case No. RG 10-494517. All four of these cases are referred to collectively herein as the “Actions.” On March 3, 2010, the Court in the *Lulu* case

1 consolidated the Actions for pre-trial purposes. The Actions allege violations of the Safe  
2 Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") related to the sale of  
3 wallets, handbags, purses, clutches, totes, footwear or belts containing lead and lead compounds  
4 ("Lead). Lead is a chemical known to the State of California to cause cancer and reproductive  
5 harm.

6 1.2 The parties to this Consent Judgment ("Parties") are CEH and defendant Fantas-  
7 Eyes, Inc. (the "Settling Defendant").

8 1.3 Settling Defendant manufactures, distributes or offers belts for sale in the State of  
9 California or has done so in the past.

10 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
11 has jurisdiction over the allegations of violations contained in the operative complaints in the  
12 Actions and personal jurisdiction over Settling Defendant as to the acts alleged in the operative  
13 complaints in the Actions, that venue is proper in the County of Alameda, and that this Court has  
14 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were  
15 or could have been raised in the operative complaints in the Actions based on the facts alleged  
16 therein.

17 1.5 Nothing in this Consent Judgment is or shall be construed as an admission by the  
18 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
19 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
20 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
21 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
22 any other or future legal proceedings. This Consent Judgment is the product of negotiation and  
23 compromise and is accepted by the Parties for purposes of settling, compromising and resolving  
24 issues disputed in this action.

25 **2. DEFINITIONS**

26 2.1 "Covered Products" means belts.

27 2.2 "Effective Date" is the date on which this Consent Judgment is entered by the  
28 Court.

1           2.3     “Lead Limits” means the maximum concentrations of Lead by weight specified in  
2 Section 3.2.

3           2.4     “Manufactured” and “Manufactures” means to manufacture, produce, or assemble.

4           2.5     “Paints and Surface Coatings” means a fluid, semi-fluid, or other material, with or  
5 without a suspension of finely divided coloring matter, which changes to a solid film when a thin  
6 layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term  
7 does not include printing inks or those materials which actually become a part of the substrate,  
8 such as the pigment in a plastic article, or those materials which are actually bonded to the  
9 substrate, such as by electroplating or ceramic glazing.

10 **3.     INJUNCTIVE RELIEF**

11           3.1     **Specification Compliance Date.** No later than five days after the Effective Date,  
12 Settling Defendant shall provide the Lead Limits to its suppliers of Covered Products and shall  
13 request each Supplier to use best efforts to provide Covered Products that comply with the Lead  
14 Limits as soon as commercially practicable.

15           3.2     **Lead Limits.** As of September 1, 2010, Settling Defendant shall not Manufacture,  
16 import, distribute, ship, or sell or cause to be Manufactured, imported, distributed, shipped, or  
17 sold, any Covered Product that exceeds the following Lead Limits:

18                   3.2.1   **Paints and Surface coatings:** Paints and Surface Coatings of the Covered  
19 Products may not contain more than 90 parts per million (“ppm”) Lead by weight.

20                   3.2.2   **Polyvinyl Chloride:** No Covered Product may include any polyvinyl  
21 chloride (PVC) that contains more than 200 ppm Lead by weight.

22                   3.2.3   **Leather:** No Covered Product may include any leather component or be  
23 made of any leather material that contains more than 600 ppm Lead by weight. Commencing  
24 September 1, 2011, the Lead limit for any leather component or material in a Covered Product  
25 shall be 300 ppm Lead by weight.

26                   3.2.4   **Other Materials or Components:** Except as otherwise provided in  
27 Sections 3.2.1, 3.2.2, 3.2.3, and 3.2.5, no Product may contain any component or be made of any  
28 material that contains more than 300 ppm Lead by weight.

1                   3.2.5 **Glass and Crystal:** The Lead Limits shall not apply to any cubic zirconia  
2 (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones.

3                   3.3 **Certification of Compliance From Manufacturers.** As of September 1, 2010, at  
4 least once per year Settling Defendant shall obtain written certification with corresponding test  
5 results from the Manufacturer of each of the Products certifying that: (a) no lead chromate or  
6 other lead based coloring agent was used in the Manufacture of the Covered Products; and (b)  
7 that Lead was not intentionally added to any polyvinyl chloride used in the Manufacture of the  
8 Covered Products. These certifications shall be made available to CEH for inspection and  
9 copying upon request by CEH.

10                  3.4 **Market Withdrawal of Identified Products.** On or before the Effective Date,  
11 Settling Defendant shall cease selling and shipping the Rampage Black Belt with Multi-Color  
12 Peace Signs, as identified in CEH's 60-Day Notice of Violation to Settling Defendant (the  
13 "Identified Product"), to its stores and/or its customers that sell or offer for sale Covered Products  
14 to California consumers, and, at a minimum, send instructions to any of its stores and/or its  
15 customers that offer the Identified Product for sale in California to cease offering such Identified  
16 Products for sale in California and to either return all the Identified Products to the Settling  
17 Defendant for destruction, or to directly destroy the Identified Products. Any destruction of such  
18 Identified Products shall be in compliance with all applicable laws. Within sixty days of the  
19 Effective Date, Settling Defendant shall provide CEH with sufficient records to document its  
20 market withdrawal and destruction of such Identified Products.

21                  3.5 **Testing by CEH.** CEH intends to conduct periodic testing of Covered Products to  
22 ensure compliance with the Lead Limits.

23 **4. ENFORCEMENT**

24                  4.1 Any Party may, by motion or application for an order to show cause before this  
25 Court, enforce the terms and conditions contained in this Consent Judgment. Enforcement of the  
26 terms and conditions of Section 3 of this Consent Judgment shall be brought exclusively pursuant  
27 to Sections 4.2 through 4.3.

28                  4.2 **Notice of Violation.** In the event that CEH identifies one or more Covered

1 Products that it believes in good faith do not comply with an applicable Lead Limit, CEH may  
2 seek to enforce the requirements of Section 3 by issuing a Notice of Violation pursuant to this  
3 Section 4.2.

4           **4.2.1 Service of Notice.** The Notice of Violation shall be served on Settling  
5 Defendant. The Notice of Violation shall be sent to the person identified in Section 8.2, and must  
6 be served within 90 days of the date the alleged violation(s) was or were observed.

7           **4.2.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,  
8 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the  
9 location at which the Covered Product was offered for sale, (c) a description of the Covered  
10 Product giving rise to the alleged violation, including a picture of the Covered Product and any  
11 accompanying tags and labels, and (d) all test data obtained by CEH regarding the Covered  
12 Product and related supporting documentation, including all laboratory reports, quality assurance  
13 reports and quality control reports associated with testing of the Covered Products. Such Notice  
14 of Violation shall be based at least in part upon total acid digest testing performed by an  
15 independent accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by  
16 themselves sufficient to support a Notice of Violation, although any such testing may be used as  
17 additional support for a Notice. The Parties agree that the sample lab reports attached hereto as  
18 Exhibit A are sufficient in form to satisfy the requirements of subsections (c) and (d) of this  
19 Section 4.3.2.

20           **4.2.3 Multiple Notices.** If Settling Defendant has received more than three  
21 Notices of Violation from CEH under this Consent Judgment in any 12-month period that result  
22 in a contribution to the Fashion Accessory Testing Fund (either because they were not contested  
23 or because the contest by Settling Defendant was unsuccessful), then, at CEH's option, CEH may  
24 seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with  
25 the Consent Judgment. For purposes of determining the number of Notices of Violation pursuant  
26 to this Section 4.2.3, multiple notices identifying the same Covered Product, or a Covered  
27 Product differing only in size or color, that has been the subject of another Notice of Violation  
28 within the preceding 12 months shall be excluded.

1           4.3   **Notice of Election.** Within 30 days of receiving a Notice of Violation pursuant to  
2 Section 4.2, Settling Defendant shall provide written notice to CEH stating whether it elects to  
3 contest the allegations contained in the Notice of Violation (“Notice of Election”).

4           4.3.1   **Contested Notices.** If the Notice of Violation is contested, the Notice of  
5 Election shall include all then-available documentary evidence regarding the alleged violation,  
6 including any test data. Within 30 days the parties shall meet and confer to attempt to resolve  
7 their dispute. Should such attempts at meeting and conferring fail, CEH may file an enforcement  
8 motion or application pursuant to Section 4.1. If Settling Defendant withdraws its Notice of  
9 Election to contest the Notice of Violation before any motion concerning the violations alleged in  
10 the Notice of Violation is filed pursuant to Section 4.1, Settling Defendant shall make a  
11 contribution to the Fashion Accessory Testing Fund in the amount of \$12,500. If, at any time  
12 prior to reaching an agreement or obtaining a decision from the Court, CEH or Settling Defendant  
13 acquires additional test or other data regarding the alleged violation, it shall promptly provide all  
14 such data or information to the other Party.

15           4.3.2   **Non-Contested Notices.** If the Notice of Violation is not contested,  
16 Settling Defendant shall include in its Notice of Election a detailed description of corrective  
17 action that it has undertaken or proposes to undertake to address the alleged violation. Any such  
18 corrective action shall at a minimum include, but not be limited to, action sufficient to ensure  
19 market withdrawal of the Covered Products at issue that would be compliant with the Market  
20 Withdrawal requirement of Section 3.4 hereof. If there is a dispute over the sufficiency of the  
21 proposed corrective action, CEH shall promptly notify Settling Defendant in question thereof and  
22 the Parties shall meet and confer before seeking the intervention of the Court to resolve the  
23 dispute. In addition to the corrective action referenced in this Section 4.3.2, Settling Defendant  
24 shall make a contribution to the Fashion Accessory Testing Fund in the amount of \$10,000,  
25 unless the limitation of Section 4.3.3 applies.

26           4.3.3   **Limitations in Non-Contested Matters.** If Settling Defendant elects not  
27 to contest a Notice of Violation before any motion concerning the violation(s) at issue, Settling  
28 Defendant’s liability shall be limited to the contributions required by Section 4.3.

1       **5.       PAYMENTS**

2               **5.1       Payments by Settling Defendant.** Other than any money that may be payable  
3 after the Effective Date pursuant to the terms of Sections 4 or 10 hereof, the payment set forth in  
4 this Section 5 shall constitute the total monetary liability of Settling Defendant under this Consent  
5 Judgment. Within ten days after Entry of Judgment as stipulated, Settling Defendant shall pay the  
6 total sum of \$35,000 as a settlement payment. The total settlement amount for Settling Defendant  
7 shall be paid in four separate checks delivered to the offices of the Lexington Law Group (Attn:  
8 Howard Hirsch), 1627 Irving Street, San Francisco, California 94122 and made payable and  
9 allocated as follows:

10                       5.1.1       Settling Defendant shall pay the sum of \$1,000 pursuant to Health & Safety  
11 Code §25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety  
12 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental  
13 Health Hazard Assessment). The check shall be made payable to the Center For Environmental  
14 Health.

15                       5.1.2       Settling Defendant shall pay the sum of \$10,500 as payment to CEH in lieu  
16 of payment pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,  
17 title 11, §3202(b). CEH will use such funds to continue its work educating and protecting people  
18 from exposures to toxic chemicals, including heavy metals. In addition, as part of its Community  
19 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants  
20 to grassroots environmental justice groups working to educate and protect people from exposures  
21 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at  
22 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the  
23 Center For Environmental Health.

24                       5.1.3       Settling Defendant shall pay the sum of \$21,500 as reimbursement of  
25 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check  
26 shall be made payable to the Lexington Law Group.

27                       5.1.4       Settling Defendant shall make a contribution of \$2,000 to the Proposition  
28 65 Fashion Accessory Testing Fund. CEH shall use such funds to locate, purchase and test

1 Covered Products to verify compliance with the reformulation requirements of Section 3, to  
2 prepare, send and prosecute Notices of Violation as necessary to Settling Defendant pursuant to  
3 Section 4, and to reimburse attorneys' fees and costs incurred in connection with these activities.  
4 The Proposition 65 Fashion Accessory Testing Fund check shall be made payable to the  
5 Lexington Law Group Attorney Client Trust Account.

6 **6. MODIFICATION**

7 6.1 This Consent Judgment may be modified from time to time by express written  
8 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion  
9 and in accordance with law.

10 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
11 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
12 modify the Consent Judgment.

13 **7. CLAIMS COVERED AND RELEASED**

14 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
15 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
16 directors, officers, employees, and attorneys ("Defendant Releasees"), and each entity to whom it  
17 directly or indirectly distributes or sells Covered Products, including but not limited to  
18 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
19 ("Downstream Defendant Releasees") of any violation of Proposition 65 that was or could have  
20 been asserted in the operative complaints in the Actions against Settling Defendants, Defendant  
21 Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged  
22 exposure to Lead contained in Covered Products, with respect to any Covered Products  
23 manufactured, shipped, or sold by Settling Defendant prior to the Effective Date.

24 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant shall  
25 constitute compliance with Proposition 65 with respect to Lead in any Covered Products that are  
26 manufactured, shipped, or sold by Settling Defendant after the Effective Date.

27 7.3 Nothing in this Section 7 affects CEH's rights to commence or prosecute an action  
28 under Proposition 65 against any person other than Settling Defendant, Defendant Releasee, or

1 Downstream Releasee.

2 **8. NOTICE**

3 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
4 notice shall be sent by certified mail and electronic mail to:

5 Howard Hirsch  
6 Lexington Law Group  
7 1627 Irving St.  
8 San Francisco, CA 94122  
9 esomers@lexlawgroup.com

10 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
11 Judgment, the notice shall be sent by certified mail and electronic mail to:

12 Larry Kalina  
13 Fantas-Eyes, Inc.  
14 385 5<sup>th</sup> Avenue  
15 New York, NY 10016  
16 larry@fantas-eyes.com

17 8.3 Any Party may modify the person and address to whom the notice is to be sent by  
18 sending each other Party notice by certified mail and/or other verifiable form of written  
19 communication.

20 **9. COURT APPROVAL**

21 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
22 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
23 shall support approval of such Motion.

24 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
25 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
26 purpose other than to allow the Court to determine if there was a breach of Section 9.1.

27 **10. ATTORNEYS' FEES**

28 10.1 Should CEH prevail on any motion or application to enforce a violation of the  
Consent Judgment under this Section, CEH shall be entitled to reimbursement of its attorneys'  
fees and costs incurred as a result of such motion or application from Settling Defendant.

1           10.2   Except as otherwise provided in this Consent Judgment, each Party shall bear its  
2 own attorneys' fees and costs.

3           10.3   Nothing in this Section 10 shall preclude a Party from seeking an award of  
4 sanctions pursuant to law.

5       **11.   OTHER TERMS**

6           11.1   The terms of this Consent Judgment shall be governed by the laws of the State of  
7 California.

8           11.2   This Consent Judgment shall apply to and be binding upon CEH and Settling  
9 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
10 assigns of any of them.

11           11.3   This Consent Judgment contains the sole and entire agreement and understanding  
12 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
13 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
14 and therein. There are no warranties, representations, or other agreements between the Parties  
15 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
16 other than those specifically referred to in this Consent Judgment have been made by any Party  
17 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
18 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,  
19 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by  
20 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall  
21 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not  
22 similar, nor shall such waiver constitute a continuing waiver.

23           11.4   This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

25           11.5   The stipulations to this Consent Judgment may be executed in counterparts and by  
26 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
27 constitute one document.

28           11.6   Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
2 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

3 11.7 The Parties, including their counsel, have participated in the preparation of this  
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
7 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
8 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
9 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
10 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
11 this regard, the Parties hereby waive California Civil Code §1654.

12  
13 **IT IS SO STIPULATED:**

14 Dated: <sup>May</sup> <del>April</del> 5, 2010	15 <b>CENTER FOR ENVIRONMENTAL HEALTH</b> 16  17 _____ 18 CHARLIE PIZZANO 19 Printed Name 20 _____ 21 Associate Director 22 Title 23 _____ 24 _____ 25 _____ 26 _____ 27 _____ 28 _____
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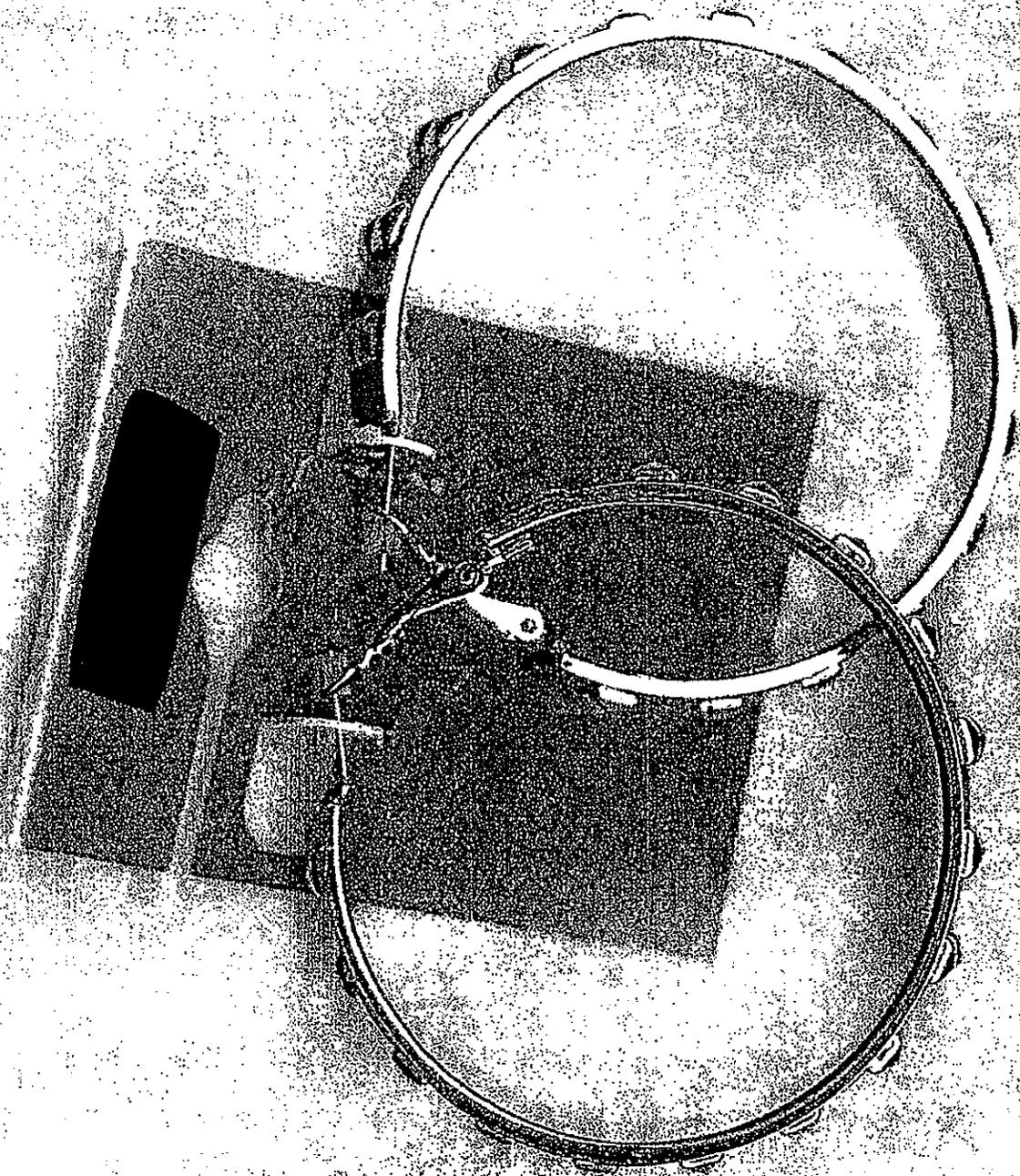
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Dated: April , 2010 May 5th, 2010	FANTAS-EYES, INC.  <u>Larry R. Kalina</u> Larry R. Kalina Printed Name  <u>President</u> Title
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IT IS SO ORDERED:

Dated: <del>JUL 1 2 2010</del> 2010	<b>STEVEN A. BRICK</b> <u>The Honorable Steven A. Brick</u> Judge of the Superior Court
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# EXHIBIT A





121463

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MFG: 05769 CLASS: 3122



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MADE IN CHINA





THE  
NATIONAL  
FOOD  
LAB

September 28, 2009

Center For Environmental Health  
2201 Broadway, Suite 302  
Oakland, CA 94612-3017

Analytical Report No.: CL1405-61

Listed below are the results of our analyses for sample(s) received on September 02, 2009.

**CEH ID: JCT1463b, [REDACTED] Earrings (black faux leather on hoops)**

**NFL ID AE10383**

Analyte	Result	Units
Lead	4140	ppm

**Method Reference**

Testing was conducted according to testing protocol outlined in exhibit D of the amended consent judgment, People of the State of California v. Burlington Coat Factory, June 15, 2006 and California Health Safety Code §25214.4. In summary, a portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

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.

Thank you for using the services of The National Food Laboratory.

Sincerely,

Grace Bandong, Laboratory Manager, Analytical Services - Chemistry Division

cc: Patrick Manning, Accounting

*where art meets science*

365 North Canyons Parkway, Suite 201, Livermore CA 94551 Tech Center: 2441 Constitution Drive, Livermore CA 94551  
925:828.1440 www.TheNFL.com

