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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.)

Lead Case No. RG-09-459448

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

JAB
**[PROPOSED] CONSENT
JUDGMENT AS TO SMAC, INC.**

AND CONSOLIDATED CASES.

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 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 footwear.

4 1.5 “Lead Limits” means the maximum concentrations of lead and lead
5 compounds (“Lead”) by weight specified in Section 3.2.

6 1.6 “Manufactured” and “Manufactures” have the meaning defined in Section
7 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended
8 from time to time.

9 1.7 “Non-Suspect Materials” means natural materials other than leather that have
10 been determined not to exceed Lead limits for children’s products by the final rule of the
11 Consumer Product Safety Commission set forth at 16 C.F.R. § 1500.91(d) and (e), as it existed on
12 June 1, 2010.

13 1.8 “Private Label Covered Product” means a Fashion Accessory that bears a
14 private label where (i) the product (or its container) is labeled with the brand or trademark of a
15 person other than a manufacturer of the product, (ii) the person with whose brand or trademark
16 the product (or container) is labeled has authorized or caused the product to be so labeled, and
17 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

18 1.9 “Private Labeler” means an owner or licensee of a brand or trademark on the
19 label of a consumer product which bears a private label; provided, however, that Settling
20 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
21 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s
22 brand or trademark.

23 1.10 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.
24 § 1303.2(b)², as amended from time to time.

25
26 ¹ As of May 1, 2011, the term “Manufactured” and “Manufactures” means to manufacture,
produce, or assemble.

27 ² As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
28 material, with or without a suspension of finely divided coloring matter, which changes to a solid
film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other

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 SMAC, Inc. (“Settling Defendant”).

6 2.2 Commencing in April 2009, 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, belts and footwear, without first providing a clear and reasonable Proposition 65
11 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 Proposition 65 violations as to Lead in Fashion Accessories: *CEH v. Ashley Stewart Ltd., et al.*,

26
27 surface. This term does not include printing inks or those materials which actually become a part
28 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 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,
2 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,
3 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court
4 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448.

5 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this
6 Court has jurisdiction over the allegations of violations contained in the operative Complaint
7 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling
8 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
9 and that this Court has jurisdiction to enter this Consent Judgment.

10 2.7 Nothing in this Consent Judgment is or shall be construed as an admission by
11 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
12 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
14 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
15 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
16 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
17 this action.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
20 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
21 Vendors of Fashion Accessories that will be sold or offered for sale to California consumers and
22 shall instruct each Vendor to use reasonable efforts to provide Fashion Accessories that comply
23 with the Lead Limits on a nationwide basis. This Section 3.1 is not applicable with respect to
24 Non-Suspect Materials.

25 3.2 **Lead Limits.** Settling Defendant shall not purchase, import, Manufacture, or
26 supply to an unaffiliated third party any Covered Product that will be sold or offered for sale to
27 California consumers that exceeds the following Lead Limits:
28

1 3.2.1 Commencing on December 1, 2011, Paint or other Surface Coatings on
2 Accessible Components: 90 parts per million (“ppm”).

3 3.2.2 Commencing on December 1, 2011, leather (including composited leather)
4 Accessible Components: 600 ppm; and commencing on December 1, 2012: 300 ppm. In
5 the alternative, Covered Products containing multiple patches of different scrap leathers
6 may be sold with a clear and reasonable warning provided pursuant to the requirements of
7 Section 3.4.

8 3.2.3 Commencing on December 1, 2011, polyvinyl chloride (“PVC”)
9 Accessible Components: 300 ppm, and commencing on December 1, 2012, PVC
10 Accessible Components: 200 ppm.

11 3.2.4 Commencing on December 1, 2011, for all other Accessible Components
12 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or
13 rhinestones: 300 ppm.

14 3.3 **Final Retail Compliance Date.** Commencing on December 1, 2012, Settling
15 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead
16 Limits specified in Section 3.2 as being effective on December 1, 2011. Commencing on
17 December 1, 2013, Settling Defendant shall not sell or offer for sale in California any Covered
18 Product that exceeds the Lead Limits specified in Section 3.2 as being effective December 1,
19 2012. For purposes of this Section 3.3. when Settling Defendant’s direct customer sells or offers
20 for sale to California consumers a Covered Product after the applicable Final Retail Compliance
21 Date, Settling Defendant is deemed to “offer for sale in California” that Covered Product.

22 3.4 **Warnings for Covered Products.**

23 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
24 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to
25 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,
26 2012, with a Clear and Reasonable Warning that complies with the provisions of Section
27 3.4.2.

28

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 Miss Me Sandals – Yellow, Style No. CARMEN-3 (the “Section 3.5 Product”) in
21 California. On or before the Effective Date, Settling Defendant shall also: (i) cease
22 shipping the Section 3.5 Product to any of its customers that resell the Section 3.5 Product
23 in California, and (ii) send instructions to its customers that resell the Section 3.5 Product
24 in California instructing them to cease offering such Section 3.5 Products for sale in
25 California.

26 3.5.2 If Settling Defendant has not complied with Section 3.5.1 prior to
27 executing this Consent Judgment, it shall instruct its California stores and/or customers
28 that resell the Section 3.5 Product either to (i) return all the Section 3.5 Products to the

1 Settling Defendant for destruction; or (ii) directly destroy the Section 3.5 Products; or (iii)
2 sell the Section 3.5 Products with a Clear and Reasonable Warning that complies with the
3 provisions of Section 3.4.2.

4 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all
5 applicable laws.

6 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide
7 CEH with written certification from Settling Defendant confirming compliance with the
8 requirements of this Section 3.5.

9 **4. ENFORCEMENT**

10 4.1 Any Party may, after meeting and conferring, by motion or application for an
11 order to show cause before this Court, enforce the terms and conditions contained in this Consent
12 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent
13 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

14 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
15 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
16 Defendant on or after that date, for example, a unique brand name or characteristic system of
17 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,
18 including but not limited to the identities of parties to contracts between Settling Defendant and
19 third parties, may be designated by Settling Defendant as competitively sensitive confidential
20 business information, and if so designated shall not be disclosed to any person without the written
21 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
22 reveal information designated as competitively sensitive confidential business information
23 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.160
24 and 2.550, *et seq.*

25 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
26 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

27 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
28 Defendant within 45 days of the date the alleged violation(s) was or were observed,

1 provided, however, that CEH may have up to an additional 45 days to provide Settling
2 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it
3 from its laboratory.

4 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
5 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
6 (b) the location at which the Covered Product was offered for sale, (c) a description of the
7 Covered Product giving rise to the alleged violation, and of each Accessible Component
8 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
9 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including
10 a picture of the Covered Product and all identifying information on tags and labels, and
11 (d) all test data obtained by CEH regarding the Covered Product and related supporting
12 documentation, including all laboratory reports, quality assurance reports and quality
13 control reports associated with testing of the Covered Products. Such Notice of Violation
14 shall be based at least in part upon total acid digest testing performed by an independent
15 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
17 used as additional support for a Notice. The Parties agree that the sample Notice of
18 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
19 subsections (c) and (d) of this Section 4.3.2.

20 **4.3.3 Additional Documentation.** CEH shall promptly make available for
21 inspection and/or copying upon request by and at the expense of Settling Defendant, all
22 supporting documentation related to the testing of the Covered Products and associated
23 quality control samples, including chain of custody records, all laboratory logbook entries
24 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
25 from all analytical instruments relating to the testing of Covered Product samples and any
26 and all calibration, quality assurance, and quality control tests performed or relied upon in
27 conjunction with the testing of the Covered Products, obtained by or available to CEH that
28

1 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
2 any exemplars of Covered Products tested.

3 **4.3.4 Multiple Notices.** If Settling Defendant has received more than four
4 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
5 fines, costs, penalties, or remedies are provided by law for failure to comply with the
6 Consent Judgment. For purposes of determining the number of Notices of Violation
7 pursuant to this Section 4.3.4, the following shall be excluded:

8 (a) Multiple notices identifying Covered Products Manufactured for or
9 sold to Settling Defendant from the same Vendor; and

10 (b) A Notice of Violation that meets one or more of the conditions of
11 Section 4.4.3(c).

12 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation
13 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant
14 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
15 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
16 deemed an election to contest the Notice of Violation.

17 **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
18 Election shall include all then-available documentary evidence regarding the alleged
19 violation, including any test data. Within 30 days the parties shall meet and confer to
20 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
21 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
22 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
23 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
24 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
25 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
26 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or
27 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
28 other data regarding the alleged violation, it shall promptly provide all such data or

1 information to the other Party.

2 4.4.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
3 Settling Defendant shall include in its Notice of Election a detailed description of
4 corrective action that it has undertaken or proposes to undertake to address the alleged
5 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
6 Covered Product will no longer be offered by Settling Defendant or its customers for sale
7 in California. If there is a dispute over the sufficiency of the proposed corrective action or
8 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
9 meet and confer before seeking the intervention of the Court to resolve the dispute. In
10 addition to the corrective action, Settling Defendant shall make a contribution to the
11 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
12 Section 4.4.3 applies.

13 4.4.3 **Limitations in Non-Contested Matters.**

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

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

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

22 (i) One thousand seven hundred fifty dollars (\$1750) if Settling
23 Defendant, prior to receiving and accepting for distribution or sale the
24 Covered Product identified in the Notice of Violation, obtained test results
25 demonstrating that all of the Accessible Components in the Covered
26 Product identified in the Notice of Violation complied with the applicable
27 Lead Limits, and further provided that such test results would be sufficient
28 to support a Notice of Violation and that the testing was performed within

1 two years prior to the date of the sales transaction on which the Notice of
2 Violation is based. Settling Defendant shall provide copies of such test
3 results and supporting documentation to CEH with its Notice of Election;
4 or

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

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

19 (iv) Not required or payable, if the Notice of Violation identifies
20 the same Covered Product or Covered Products, differing only in size or
21 color, that have been the subject of another Notice of Violation within the
22 preceding 12 months.

23 4.5 **Additional Enforcement for Noncompliant Non-Covered Products.** If
24 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
25 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
26 exceeds any of the applicable Lead Limits ("Noncompliant Non-Covered Product"), then prior to
27 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
28 notice to Settling Defendant pursuant to this Section 4.5.

1 4.5.1 The notice shall contain the information required for a Notice of Violation
2 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the
3 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
4 further identifying information for the Noncompliant Non-Covered Product that is
5 reasonably available to it.

6 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
7 requested further information sufficient to identify the Noncompliant Non-Covered
8 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
9 The Notice of Election shall:

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

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

16 (c) Include either: (i) a statement that Settling Defendant elects not to
17 proceed under this Section 4.5, in which case CEH may take further action including
18 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant
19 elects to proceed under this Section 4.5, with a description of corrective action that meets
20 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund
21 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant
22 contends that the Noncompliant Non-Covered Product is released from liability by a
23 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

24 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
25 confidential business information, or (iii) other information that may be subject to a claim
26 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
27 or confidentiality, provided that the Party disclosing such information shall clearly
28 designate it as confidential. Any Party receiving information designated as confidential

1 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
2 or entity, and shall use such information solely for purposes of resolving any disputes
3 under this Consent Judgment.

4 4.5.4 No further action is required of Settling Defendant under this Consent
5 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
6 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
7 Covered Product by the terms of a separate settlement agreement or consent judgment
8 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

9 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
10 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may
11 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
12 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall
13 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

14 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
15 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
16 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
17 provisions of Section 4.4.3(c) applies, in which case the applicable amount specified in
18 Section 4.4.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
19 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person
20 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
21 has a principal place of business located within the United States, and \$10,000 for all
22 other notices.

23 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a
24 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
25 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
26 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
27 settlement amount paid by such Vendor. If the settlement or consent judgment between
28 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does

1 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
2 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
3 settlement payment.

4 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
5 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
6 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
7 than a Settling Defendant.

8 5. PAYMENTS

9 5.1 **Payments by Settling Defendant.** On or before August 1, 2011, Settling
10 Defendant shall pay the sum of \$27,500, and, on or before September 15, 2011, Settling
11 Defendant shall pay the sum of \$27,500, for a total sum of \$55,000 as a settlement payment. The
12 payment due on August 1st shall be paid in two separate checks as follows: (a) \$24,750 made
13 payable to the Center for Environmental Health; and (b) \$2,750 made payable to Lexington Law
14 Group. The \$27,500 payment due on September 15th shall be made by check payable to
15 Lexington Law Group. All of these payments shall be delivered to the offices of the Lexington
16 Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California 94117-2212,
17 and allocated as set forth below between the following categories:

18 5.1.1 \$9,100 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
19 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
20 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
21 Assessment).

22 5.1.2 \$13,650 as a payment in lieu of civil penalty to CEH pursuant to Health &
23 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
24 such funds to continue its work educating and protecting people from exposures to toxic
25 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
26 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
27 environmental justice groups working to educate and protect people from exposures to toxic
28 chemicals. The method of selection of such groups can be found at the CEH web site at

1 www.ceh.org/justicefund.

2 5.1.3 \$2,000 as a contribution to the Proposition 65 Fashion Accessory Testing
3 Fund. CEH shall use such funds to locate, purchase and test Covered Products to verify
4 compliance with the reformulation requirements of Section 3, to prepare, send and prosecute
5 Notices of Violation as necessary to Settling Defendant pursuant to Section 4, and to reimburse
6 attorneys' fees and costs incurred in connection with these activities.

7 5.1.4 \$30,250 as reimbursement of a portion of reasonable attorneys' fees and
8 costs.

9 **6. MODIFICATION**

10 6.1 **Written Consent.** This Consent Judgment may be modified from time to
11 time by express written agreement of the Parties with the approval of the Court, or by an order of
12 this Court upon motion and in accordance with law.

13 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
14 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
18 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
19 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
20 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
21 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
22 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")
23 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
24 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
25 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
26 Settling Defendant prior to the Effective Date.

27 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
28 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered

1 Products.

2 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
3 action under Proposition 65 against any person other than a Settling Defendant, Defendant
4 Releasee, or Downstream Defendant Releasee.

5 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action
6 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
7 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
8 California consumers that does not comply with the Lead Limits after the applicable Final Retail
9 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant
10 Proposition 65 warnings under this Consent Judgment.

11 **8. NOTICE**

12 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by first class and electronic mail to:

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

19 8.2 When Settling Defendant is entitled to receive any notice under this Consent
20 Judgment, the notice shall be sent by first class and electronic mail to:

21 Justin J. Shrenger
22 Law Offices of Justin J. Shrenger, APC
23 3440 Wilshire Blvd., Suite 810
24 Los Angeles, CA 90010
25 mail@shrenger.com

26 8.3 Any Party may modify the person and address to whom the notice is to be sent
27 by sending each other Party notice by first class and electronic mail.

28 **9. COURT APPROVAL**

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

1 shall support entry of this Consent Judgment.

2 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
3 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
4 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

5 **10. ATTORNEYS' FEES**

6 10.1 Should CEH prevail on any motion, application for an order to show cause or
7 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
8 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
9 Settling Defendant prevail on any motion application for an order to show cause or other
10 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
11 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
12 or application lacked substantial justification. For purposes of this Consent Judgment, the term
13 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
14 Code of Civil Procedure §§ 2016, *et seq.*

15 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
16 its own attorneys' fees and costs.

17 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
18 sanctions pursuant to law.

19 **11. TERMINATION**

20 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
21 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
22 termination shall be effective upon the subsequent filing of a notice of termination with Superior
23 Court of Alameda County.

24 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
25 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
26 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
27 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
28 7.1 and 12.1 shall survive any termination.

1 **12. OTHER TERMS**

2 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
5 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
6 assigns of any of them.

7 12.3 This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
9 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
10 merged herein and therein. There are no warranties, representations, or other agreements between
11 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
12 implied, other than those specifically referred to in this Consent Judgment have been made by any
13 Party hereto. No other agreements not specifically contained or referenced herein, oral or
14 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
15 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
16 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
17 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
18 whether or not similar, nor shall such waiver constitute a continuing waiver.

19 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
20 that any Settling Defendant might have against any other party, whether or not that party is a
21 Settling Defendant.

22 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

24 12.6 The stipulations to this Consent Judgment may be executed in counterparts
25 and by means of facsimile or portable document format (pdf), which taken together shall be
26 deemed to constitute one document.

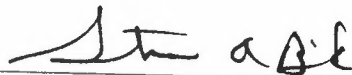
27 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into

1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
2 Party.

3 12.8 The Parties, including their counsel, have participated in the preparation of
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
5 This Consent Judgment was subject to revision and modification by the Parties and has been
6 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
10 be resolved against the drafting Party should not be employed in the interpretation of this Consent
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
12
13

14 **IT IS SO ORDERED:**

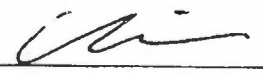
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16 Dated: 11 / 3, 2011

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18 _____
19 The Honorable Steven A. Brick
20 Judge of the Superior Court
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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZZANO

Printed Name

Accounting Director

Title

SMAC, INC.

Signature

Printed Name

Title

1 IT IS SO STIPULATED:

2

3 CENTER FOR ENVIRONMENTAL HEALTH

4

5

6 _____
Signature

7

8 _____
Printed Name

9

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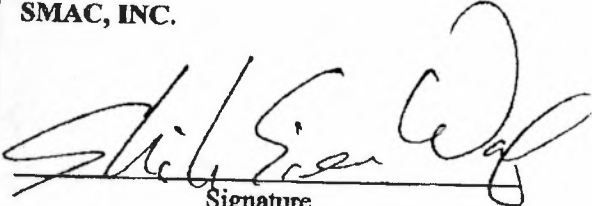
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Title

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13 SMAC, INC.

14

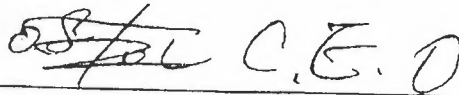
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16 
Signature

17

18 SHIH STIEN WANG
Printed Name

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Title

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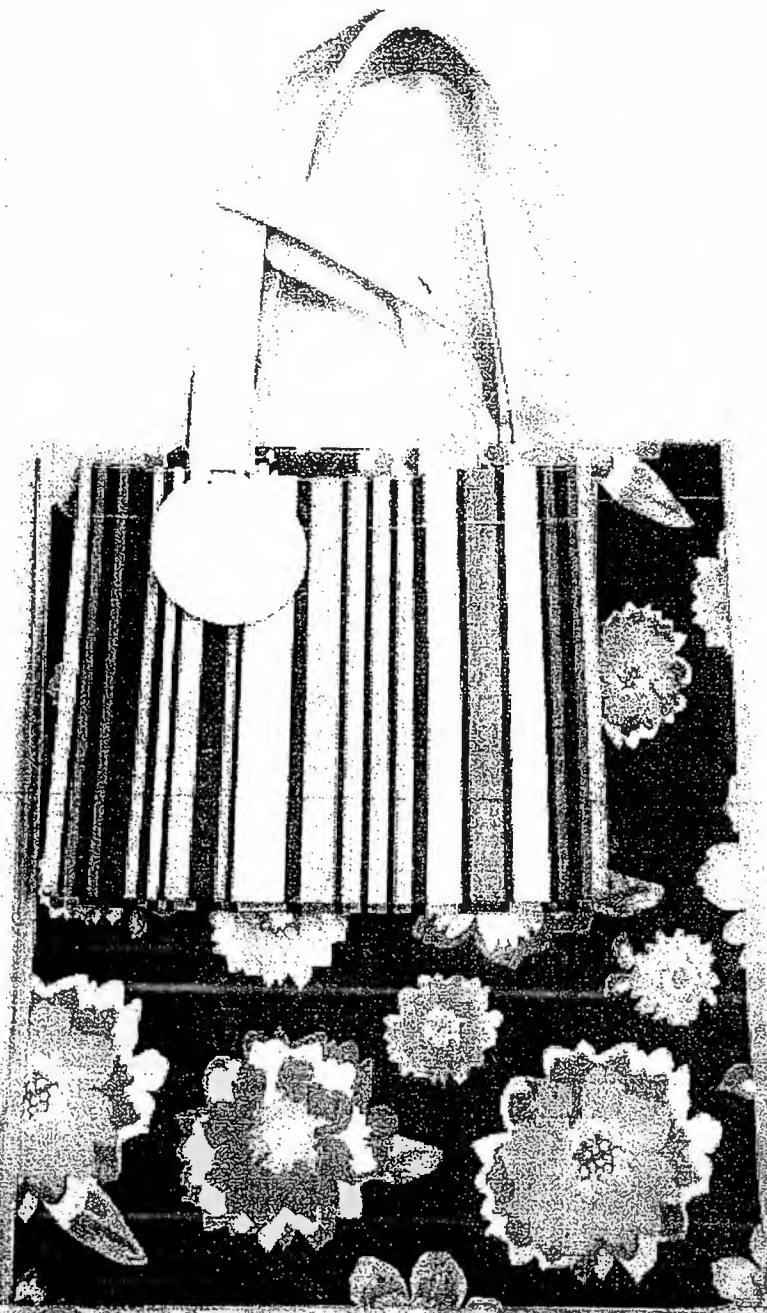
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Exhibit A







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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