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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JAN 30 2012**

**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] CONSENT  
JUDGMENT AS TO THE  
CALIFORNIA BAG, LLC**

\_\_\_\_\_  
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 wallets, handbags, purses, and clutches.

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)],<sup>1</sup> 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)<sup>2</sup>, as amended from time to time.

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

27 <sup>2</sup> 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 The California Bag, LLC (“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.**

26                       Commencing on the Effective Date, Settling Defendant shall not purchase, import,  
27 Manufacture, supply to an unaffiliated third party, sell or offer for sale in California any Covered  
28 Product that exceeds the following Lead Limits:

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

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

7           3.2.3 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

8           3.2.4 All other Accessible Components other than cubic zirconia (sometimes  
9 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

10          3.3           **Final Retail Compliance Date.** For purposes of Section 3.2, when Settling  
11 Defendant’s direct customer sells or offers for sale to California consumers a Covered Product  
12 after the Effective Date Date, Settling Defendant is deemed to “offer for sale in California” that  
13 Covered Product.

14          3.4           **Warnings for Covered Products.**

15           3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or  
16 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to  
17 meeting the Lead Limits, be sold or offered for retail sale in California after the Effective  
18 Date, with a Clear and Reasonable Warning that complies with the provisions of Section  
19 3.4.1.

20           3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
21 Consent Judgment shall state either:

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

25           Or

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

1 This statement shall be prominently displayed on the Covered Product or the packaging of  
2 the Covered Product with such conspicuousness, as compared with other words,  
3 statements or designs as to render it likely to be read and understood by an ordinary  
4 individual prior to sale. For internet, catalog or any other sale where the consumer is not  
5 physically present and cannot see a warning displayed on the Covered Product or the  
6 packaging of the Covered Product prior to purchase or payment, the warning statement  
7 shall be displayed in such a manner that it is likely to be read and understood prior to the  
8 authorization of or actual payment.

9 **3.5 Action Regarding Specific Products.**

10 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the  
11 Ed Hardy City Slicker Setty 7829 Melrose Handbag, SKU No. 8-44179-01092-3, Item  
12 No. SLSET3302 (the "Section 3.5 Product") in California. On or before the Effective  
13 Date, Settling Defendant shall also: (i) cease shipping the Section 3.5 Product to any of its  
14 customers that resell the Section 3.5 Product in California, and (ii) send instructions to its  
15 customers that resell the Section 3.5 Product in California instructing them to cease  
16 offering the Section 3.5 Product for sale in California.

17 3.5.2 If Settling Defendant has not complied with Section 3.5.1 prior to  
18 executing this Consent Judgment, it shall instruct its California stores and/or customers  
19 that resell the Section 3.5 Product either to (i) return all the Section 3.5 Product to the  
20 Settling Defendant for destruction; or (ii) directly destroy the Section 3.5 Product; or (iii)  
21 sell the Section 3.5 Product with a Clear and Reasonable Warning that complies with the  
22 provisions of Section 3.4.2.

23 3.5.3 Any destruction of Section 3.5 Product shall be in compliance with all  
24 applicable laws.

25 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide  
26 CEH with written certification from Settling Defendant confirming compliance with the  
27 requirements of this Section 3.5.  
28

1     **4.     ENFORCEMENT**

2             4.1             Any Party may, after meeting and conferring, by motion or application for an  
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
4 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent  
5 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

6             4.2             Within 30 days after the Effective Date, Settling Defendant shall notify CEH  
7 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling  
8 Defendant on or after that date, for example, a unique brand name or characteristic system of  
9 product numbering or labeling. Upon written request by CEH, but no more than once in any  
10 calendar year, Settling Defendants shall, within 30 days of receiving a request from CEH, update  
11 the information provided to CEH pursuant to this Section 4.2 by notifying CEH of a means  
12 sufficient to allow CEH to identify Covered Products currently supplied or offered by that  
13 Settling Defendant. If CEH is unable to determine whether a particular product is a Covered  
14 Product as to a Settling Defendant based on the information provided to CEH pursuant to this  
15 Section 4.2, Settling Defendants shall cooperate in good faith with CEH in determining whether  
16 the product at issue is a Covered Product and, if so, the identity of the Settling Defendant  
17 responsible for selling the product. 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.** Within 5 days of entry of this Consent  
10 Judgment, Settling Defendant shall pay the sum of \$26,250, and, within sixty (60) days of entry  
11 of this Consent Judgment, Settling Defendant shall pay the sum of \$26,250, for a total sum of  
12 \$52,500 as a settlement payment. The payment due upon entry shall be paid in two separate  
13 checks as follows: (a) \$17,400 made payable to the Center for Environmental Health; and (b)  
14 \$8,850 made payable to Lexington Law Group. The \$26,250 payment due within sixty (60) days  
15 of entry shall be made by check payable to Lexington Law Group. All of these payments shall be  
16 delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street,  
17 San Francisco, California 94117, and allocated as follows:

18 5.1.1 Settling Defendant shall pay the sum of \$6,800 as a civil penalty pursuant  
19 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in  
20 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of  
21 California's Office of Environmental Health Hazard Assessment).

22 5.1.2 Settling Defendant shall also pay the sum of \$10,600 as a payment in lieu  
23 of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California  
24 Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work  
25 educating and protecting people from exposures to toxic chemicals, including heavy  
26 metals. In addition, as part of its Community Environmental Action and Justice Fund,  
27 CEH will use four percent of such funds to award grants to grassroots environmental  
28 justice groups working to educate and protect people from exposures to toxic chemicals.

1 The method of selection of such groups can be found at the CEH web site at  
2 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

3 5.1.3 Settling Defendant shall also separately pay to the Lexington Law Group  
4 the sum of \$35,100 as reimbursement of a portion of CEH's reasonable attorneys' fees  
5 and costs.

6 **6. MODIFICATION**

7 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
8 time by express written agreement of the Parties with the approval of the Court, or by an order of  
9 this Court upon motion 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 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
17 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell  
18 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
19 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")  
20 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
21 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
22 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by  
23 Settling Defendant prior to the Effective Date.

24 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
25 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered  
26 Products.

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

1 Releasee, or Downstream Defendant Releasee.

2 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action  
3 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
4 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to  
5 California consumers that does not comply with the Lead Limits after the applicable Final Retail  
6 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant  
7 Proposition 65 warnings under this Consent Judgment.

8 **8. NOTICE**

9 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
10 notice shall be sent by first class and electronic mail to:

11 Eric S. Somers  
12 Lexington Law Group  
13 503 Divisadero Street  
14 San Francisco, CA 94117  
15 esomers@lexlawgroup.com

16 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
17 Judgment, the notice shall be sent by first class and electronic mail to:

18 Matthew Orr  
19 Call & Jensen  
20 610 Newport Center Drive, Suite 700  
21 Newport Beach, CA 92660  
22 morr@calljensen.com

23 8.3 Any Party may modify the person and address to whom the notice is to be sent  
24 by sending each other Party notice by first class and electronic mail.

25 **9. COURT APPROVAL**

26 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
27 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
28 shall support entry of this Consent Judgment.

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



1     **10. ATTORNEYS' FEES**

2           10.1       Should CEH prevail on any motion, application for an order to show cause or  
3 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
5 Settling Defendant prevail on any motion application for an order to show cause or other  
6 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
7 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
8 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
9 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
10 Code of Civil Procedure §§ 2016, *et seq.*

11           10.2       Except as otherwise provided in this Consent Judgment, each Party shall bear  
12 its own attorneys' fees and costs.

13           10.3       Nothing in this Section 10 shall preclude a Party from seeking an award of  
14 sanctions pursuant to law.

15     **11. TERMINATION**

16           11.1       This Consent Judgment shall be terminable by CEH or by Settling Defendant  
17 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such  
18 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
19 Court of Alameda County.

20           11.2       Should this Consent Judgment be terminated pursuant to this Section, it shall  
21 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
22 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
23 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
24 7.1 and 12.1 shall survive any termination.

25     **12. OTHER TERMS**

26           12.1       The terms of this Consent Judgment shall be governed by the laws of the State  
27 of California.

28           12.2       This Consent Judgment shall apply to and be binding upon CEH and Settling

1 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
2 assigns of any of them.

3       12.3       This Consent Judgment contains the sole and entire agreement and  
4 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
5 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
6 merged herein and therein. There are no warranties, representations, or other agreements between  
7 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
8 implied, other than those specifically referred to in this Consent Judgment have been made by any  
9 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
10 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
11 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
12 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
13 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
14 whether or not similar, nor shall such waiver constitute a continuing waiver.

15       12.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
16 that any Settling Defendant might have against any other party, whether or not that party is a  
17 Settling Defendant.

18       12.5       This Court shall retain jurisdiction of this matter to implement or modify the  
19 Consent Judgment.

20       12.6       The stipulations to this Consent Judgment may be executed in counterparts  
21 and by means of facsimile or portable document format (pdf), which taken together shall be  
22 deemed to constitute one document.

23       12.7       Each signatory to this Consent Judgment certifies that he or she is fully  
24 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
25 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
26 Party.

27       12.8       The Parties, including their counsel, have participated in the preparation of  
28 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

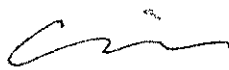
1 This Consent Judgment was subject to revision and modification by the Parties and has been  
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
4 Party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

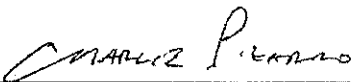
9 **IT IS SO ORDERED:**

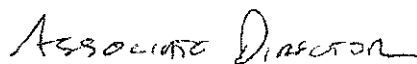
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| Dated: <b>JAN 30 2012</b> , <del>2011</del> <i>km</i> | <b>STEVEN A. BRICK</b><br>The Honorable Steven A. Brick<br>Judge of the Superior Court |
|---|--|

13 **IT IS SO STIPULATED:**

14 **CENTER FOR ENVIRONMENTAL HEALTH**

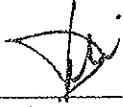
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THE CALIFORNIA BAG, LLC



Signature

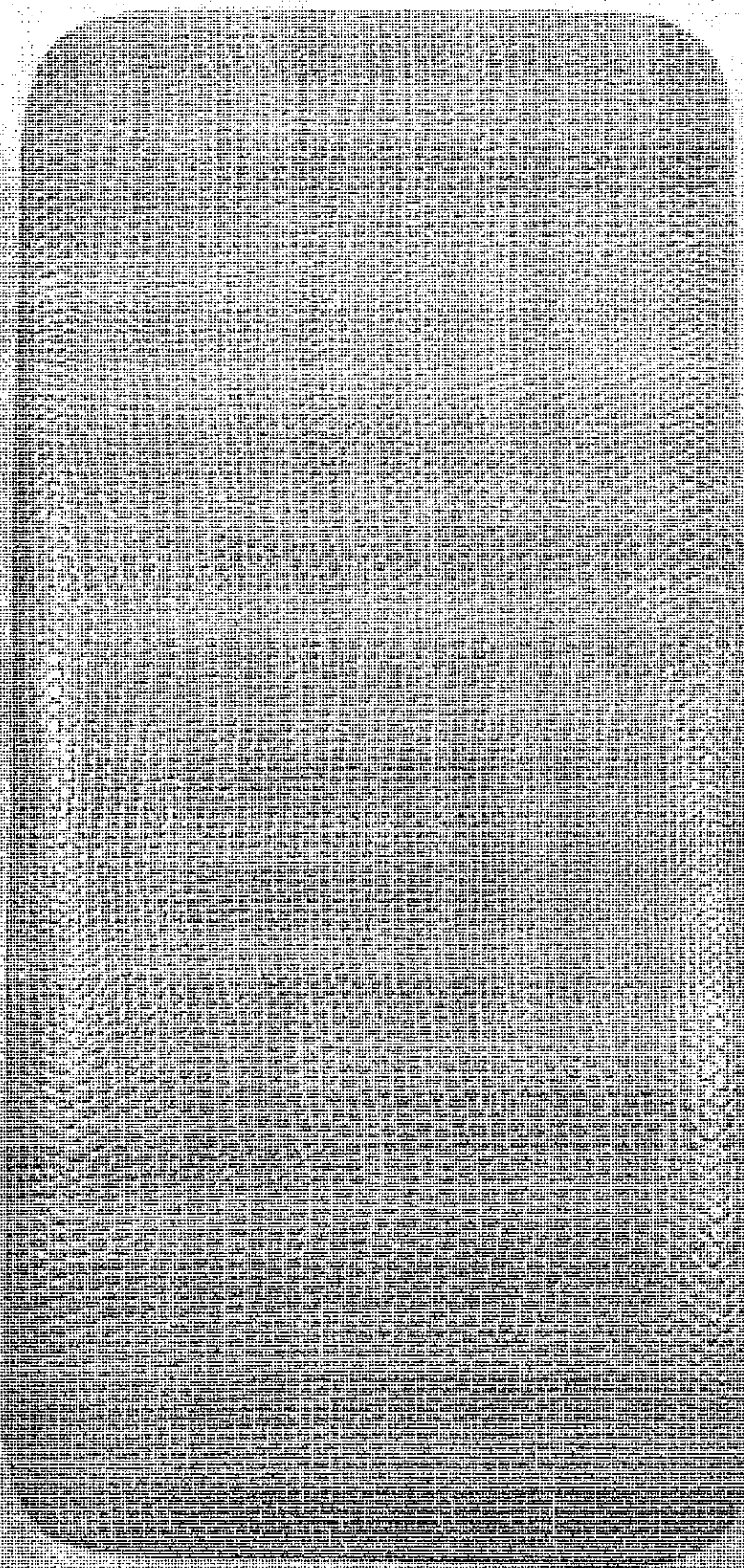


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Title

# **Exhibit A**



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



925-828-1440  
www.TheNFL.com

## Analytical Report

August 03, 2011

Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117

Analytical Report No.: CL3573-33  
Analysis Dates: 07/26/11 - 08/03/11

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

**CEH ID#AB789L, [REDACTED] Wallet (Orange Surface Material On Main Part Of W**  
**NFL ID AF02363**

| Analyte | Result | Units | Method Ref. |
|---------|--------|-------|-------------|
| Lead    | 67500  | 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](http://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