

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)],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.

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26 ¹ As of June 1, 2010, the term “Manufactured” and “Manufactures” means to manufacture,
produce, or assemble.

27 ² As of June 1, 2010, “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 a Settling Defendant, and that is not itself a 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 Big Buddha, Inc. (“Settling Defendant”).

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

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

14 2.4 Settling Defendant represents that as of the date it executes this Consent
15 Judgment: (a) no public enforcer is diligently prosecuting an action related to Lead in its Fashion
16 Accessories; and (b) it does not have a pending 60-Day Notice of Violation of Proposition 65 as
17 to Lead in its Fashion Accessories (as defined below) 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.*,

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28 surface. This term does not include printing inks or those materials which actually become a part
of the substrate, such as the pigment in a plastic article, or those materials which are actually
bonded to the substrate, such as by electroplating or ceramic glazing.

1 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 Settling Defendant is a wholly-owned subsidiary of Steve Madden, Ltd.,
6 which was an original party to the Consent Judgment approved by the Court in the *Lulu* action on
7 June 1, 2010. Because Steve Madden, Ltd.'s acquisition of Settling Defendant was not complete
8 until after the June 1, 2010 Consent Judgment was executed, Settling Defendant now seeks to
9 enter into this Consent Judgment with CEH on the same terms as the Consent Judgment entered
10 into by Steve Madden, Ltd.

11 2.7 For purposes of this Consent Judgment only, the Parties stipulate that this
12 Court has jurisdiction over the allegations of violations contained in the operative Complaint
13 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling
14 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
15 and that this Court has jurisdiction to enter this Consent Judgment.

16 2.8 Nothing in this Consent Judgment is or shall be construed as an admission by
17 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
18 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
19 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
20 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
21 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
22 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
23 this action.

24 3. INJUNCTIVE RELIEF

25 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
26 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to
27 their Vendors of Fashion Accessories that will be sold or offered for sale to California consumers
28 and shall instruct each Vendor to use reasonable efforts to provide Fashion Accessories that

1 comply with the Lead Limits on a nationwide basis. This Section 3.1 is not applicable with
2 respect to Non-Suspect Materials.

3 **3.2 Lead Limits.**

4 Settling Defendant shall not purchase, import, Manufacture, or supply to an
5 unaffiliated third party any Covered Product that will be sold or offered for sale to California
6 consumers that exceeds the following Lead Limits:

7 3.2.1 Commencing on December 1, 2010, Paint or other Surface Coatings on
8 Accessible Components: 90 parts per million (“ppm”).

9 3.2.2 Commencing on December 1, 2010, leather (including composited leather)
10 Accessible Components: 600 ppm; and commencing on December 1, 2011: 300 ppm. In
11 the alternative, Covered Products containing multiple patches of different scrap leathers
12 may be sold with a clear and reasonable warning provided pursuant to the requirements of
13 Section 3.4.

14 3.2.3 Commencing on December 1, 2010, polyvinyl chloride (“PVC”)
15 Accessible Components: 300 ppm, and commencing on December 1, 2011, PVC
16 Accessible Components: 200 ppm.

17 3.2.4 Commencing December 1, 2010, for all other Accessible Components
18 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones:
19 300 ppm.

20 **3.3 Final Retail Compliance Date.** Commencing on December 1, 2011, Settling
21 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead
22 Limits specified in Section 3.2 as being effective December 1, 2010. Commencing on December
23 1, 2012, Settling Defendant shall not sell or offer for sale in California any Covered Product that
24 exceeds the Lead Limits specified in Section 3.2 as being effective December 1, 2011. For
25 purposes of this Section 3.3, when Settling Defendant’s direct customer sells or offers for sale to
26 California consumers a Covered Product after the applicable Final Retail Compliance Date,
27 Settling Defendant is deemed to “offer for sale in California” that Covered Product.

28 **3.4 Warnings for Covered Products.**

1 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
2 Manufactured by Settling Defendant before December 1, 2010, may, as an alternative to
3 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,
4 2011, with a Clear and Reasonable Warning that complies with the provisions of Section
5 3.4.2.

6 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
7 Consent Judgment shall state either:

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

11 Or

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

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

23 3.5 **Action Regarding Specific Products.**

24 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the
25 following specific products in California: (i) Big Buddha Large Green Tote Bag, SKU No.
26 4-04100-91664-1, and (ii) Big Buddha Orange Bag, SKU No. 4-04100-91664-1
27 (collectively, the "Section 3.5 Products"). On or before the Effective Date, Settling
28 Defendant shall also: (i) cease shipping the Section 3.5 Products to any of its customers

1 that resell the Section 3.5 Products in California, and (ii) send instructions to its customers
2 that resell the Section 3.5 Products in California instructing them to cease offering such
3 Section 3.5 Products for sale in California.

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

10 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all
11 applicable laws.

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

15 **4. ENFORCEMENT**

16 4.1 Any Party may, after meeting and conferring, by motion or application for an
17 order to show cause before this Court, enforce the terms and conditions contained in this Consent
18 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent
19 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

20 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
21 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
22 Defendant on or after that date, for example, a unique brand name or characteristic system of
23 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,
24 including but not limited to the identities of parties to contracts among Settling Defendant or
25 between Settling Defendant and third parties, may be designated by Settling Defendant as
26 competitively sensitive confidential business information, and if so designated shall not be
27 disclosed to any person, including but not limited to any Settling Defendant, without the written
28 permission of the Settling Defendant who provided the information. Any motions or pleadings or

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

4 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
5 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

6 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on the Settling
7 Defendant(s) that CEH alleges to have violated Sections 3.2 or 3.3 within 45 days of the
8 date the alleged violation(s) was or were observed, provided, however, that CEH may
9 have up to an additional 45 days to provide the Settling Defendant with the test data
10 required by Section 4.3.2(d) below if it has not yet obtained it from its laboratory.

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

27 4.3.3 **Additional Documentation.** CEH shall promptly make available for
28 inspection and/or copying upon request by and at the expense of the Settling Defendant,

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

9 **4.3.4 Multiple Notices.** If the Settling Defendant has received more than four
10 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
11 fines, costs, penalties, or remedies are provided by law for failure to comply with the
12 Consent Judgment. For purposes of determining the number of Notices of Violation
13 pursuant to this Section 4.3.4, the following shall be excluded:

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

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

18 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation
19 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), the Settling
20 Defendant shall provide written notice to CEH stating whether it elects to contest the allegations
21 contained in the Notice of Violation ("Notice of Election"). Failure to provide a Notice of
22 Election shall be deemed an election to contest the Notice of Violation.

23 **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
24 Election shall include all then-available documentary evidence regarding the alleged
25 violation, including any test data. Within 30 days the parties shall meet and confer to
26 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
27 CEH may file an enforcement motion or application pursuant to Section 4.1. If the
28 Settling Defendant withdraws its Notice of Election to contest the Notice of Violation

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

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

19 4.4.3 **Limitations in Non-Contested Matters.**

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

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

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

28 (i) One thousand seven hundred fifty dollars (\$1750) if the Settling

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

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

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

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

1 4.5 **Additional Enforcement for Noncompliant Non-Covered Products.** If
2 CEH alleges that a Settling Defendant sold or offered for retail sale to California consumers a
3 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
4 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to
5 CEH serving a 60-Day Notice under Proposition 65 on such Settling Defendant, CEH shall
6 provide notice to the Settling Defendant pursuant to this Section 4.5.

7 4.5.1 The notice shall contain the information required for a Notice of Violation
8 in Section 4.3. If the information is insufficient to allow the Settling Defendant to identify
9 the Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide
10 any further identifying information for the Noncompliant Non-Covered Product that is
11 reasonably available to it.

12 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
13 requested further information sufficient to identify the Noncompliant Non-Covered
14 Product, whichever is later, the Settling Defendant shall serve a Notice of Election on
15 CEH. The Notice of Election shall:

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

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

22 (c) Include either: (i) a statement that the Settling Defendant elects not
23 to proceed under this Section 4.5, in which case CEH may take further action including
24 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that the Settling
25 Defendant elects to proceed under this Section 4.5, with a description of corrective action
26 that meets the conditions of Section 4.4.2., and a contribution to the Fashion Accessory
27 Testing Fund in the amount required under Section 4.5.6, or (iii) a statement that the
28 Settling Defendant contends that the Noncompliant Non-Covered Product is released from

1 liability by a Qualified Settlement under Section 4.5.4 along with a copy of such Qualified
2 Settlement.

3 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
4 confidential business information, or (iii) other information that may be subject to a claim
5 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
6 or confidentiality, provided that the Party disclosing such information shall clearly
7 designate it as confidential. Any Party receiving information designated as confidential
8 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
9 or entity, and shall use such information solely for purposes of resolving any disputes
10 under this Consent Judgment.

11 4.5.4 No further action is required of the Settling Defendant under this Consent
12 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
13 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
14 Covered Product by the terms of a separate settlement agreement or consent judgment
15 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

16 4.5.5 If the Settling Defendant elects not to proceed under Section 4.5, then
17 neither the Settling Defendant nor CEH has any further duty under this Section 4.5 and
18 either may pursue any available remedies under Proposition 65 or otherwise. If the
19 Settling Defendant elects to proceed under Section 4.5.2(c)(ii), then compliance with that
20 Section shall constitute compliance with Proposition 65 as to that Noncompliant Non-
21 Covered Product.

22 4.5.6 If the Settling Defendant elects to proceed under this Section 4.5 and is not
23 relieved of liability under Section 4.5.4, the Settling Defendant shall make a contribution
24 to the Fashion Accessory Testing Fund in the amounts that follow unless one of the
25 provisions of Section 4.4.3(c) applies, in which case the applicable amount specified in
26 Section 4.4.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
27 of the person(s) identified by the Settling Defendant pursuant to Section 4.5.2 (i) is a
28 person in the course of doing business as defined in Health & Safety Code § 25249.11(b)

1 and (ii) has a principal place of business located within the United States, and \$10,000 for
2 all other notices.

3 4.5.7 If a Settling Defendant makes a contribution pursuant to this Section and at
4 a later date CEH resolves the alleged violation with the direct or indirect Vendor of the
5 Noncompliant Non-Covered Product, CEH shall notify the Settling Defendant and the
6 Settling Defendant shall be entitled to a refund of the lesser amount of its contribution or
7 the settlement amount paid by such Vendor. If the settlement or consent judgment
8 between CEH and the direct or indirect Vendor of the Noncompliant Non-Covered
9 Product does not provide for the refund to be paid directly by the Vendor to the Settling
10 Defendant, then CEH shall pay the refund to the Settling Defendant within 15 days of
11 receiving the Vendor's settlement payment.

12 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
13 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
14 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
15 than a Settling Defendant.

16 5. PAYMENTS

17 5.1 **Payments by Settling Defendant.** Other than any money that may be payable
18 after the Effective Date pursuant to the terms of Sections 4 or 10 hereof, the payment set forth in
19 this Section 5 shall constitute the total monetary liability of Settling Defendant under this Consent
20 Judgment. Within ten days after Entry of Judgment as stipulated, Settling Defendant shall pay the
21 total sum of \$32,500 as a settlement payment. The total settlement amount for Settling Defendant
22 shall be paid in four separate checks delivered to the offices of the Lexington Law Group (Attn:
23 Eric Somers), 1627 Irving Street, San Francisco, California 94122 and made payable and
24 allocated as follows:

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

1 Health.

2 5.1.2 Settling Defendant shall pay the sum of \$9,700 as payment to CEH in lieu
3 of payment pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,
4 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting people
5 from exposures to toxic chemicals, including heavy metals. In addition, as part of its Community
6 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants
7 to grassroots environmental justice groups working to educate and protect people from exposures
8 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at
9 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
10 Center For Environmental Health.

11 5.1.3 Settling Defendant shall pay the sum of \$19,800 as reimbursement of a
12 portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost
13 reimbursement check shall be made payable to the Lexington Law Group.

14 5.1.4 Settling Defendant shall make a contribution of \$2,000 to the Proposition
15 65 Fashion Accessory Testing Fund. CEH shall use such funds to locate, purchase and test
16 Covered Products to verify compliance with the reformulation requirements of Section 3, to
17 prepare, send and prosecute Notices of Violation as necessary to Settling Defendant pursuant to
18 Section 4, and to reimburse attorneys' fees and costs incurred in connection with these activities.
19 The Proposition 65 Fashion Accessory Testing Fund check shall be made payable to the
20 Lexington Law Group Attorney Client Trust Account.

21 **6. MODIFICATION**

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

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

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1 **7. CLAIMS COVERED AND RELEASED**

2 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
3 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
4 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
5 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
6 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
7 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)
8 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
9 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
10 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
11 Settling Defendant prior to the Effective Date.

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

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

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

24 **8. NOTICE**

25 8.1 When any Party is entitled to receive any notice under this Consent Judgment,
26 the notice shall be sent by certified mail and electronic mail.

27 8.1.1 The person for CEH to receive Notices pursuant to this Consent Judgment
28 shall be:

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Eric S. Somers
Lexington Law Group
1627 Irving Street
San Francisco, California 94122
esomers@lexlawgroup.com

8.1.2 The person for Settling Defendant to receive Notices pursuant to this Consent Judgment shall be:

Matthew R. Orr
Call & Jensen
610 Newport Center Drive, Suite 700
Newport Beach, California 92660
morr@calljensen.com

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

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 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.

10. ATTORNEYS' FEES

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

1 Code of Civil Procedure §§ 2016, *et seq.*

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

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

6 **11. TERMINATION**

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

11 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
12 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
13 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
14 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
15 7.1 and 12.1 shall survive any termination.

16 **12. OTHER TERMS**

17 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
18 of California.

19 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
20 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
21 assigns of any of them.

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

1 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
2 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
3 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
4 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
5 whether or not similar, nor shall such waiver constitute a continuing waiver.

6 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
7 that any Settling Defendant might have against any other party, whether or not that party is a
8 Settling Defendant.

9 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 12.6 The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile or portable document format (pdf), which taken together shall be
13 deemed to constitute one document.

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

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

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IT IS SO ORDERED:

Dated: <u>SEP 08 2011</u> ^{KM} 2010	<u>STEVEN A. BRICK</u> The Honorable Steven A. Brick Judge of the Superior Court
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IT IS SO STIPULATED:

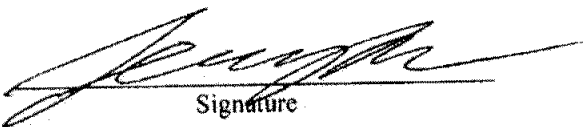
CENTER FOR ENVIRONMENTAL HEALTH


Signature

CHARLIE PIZARDI
Printed Name

ASSOCIATE DIRECTOR
Title

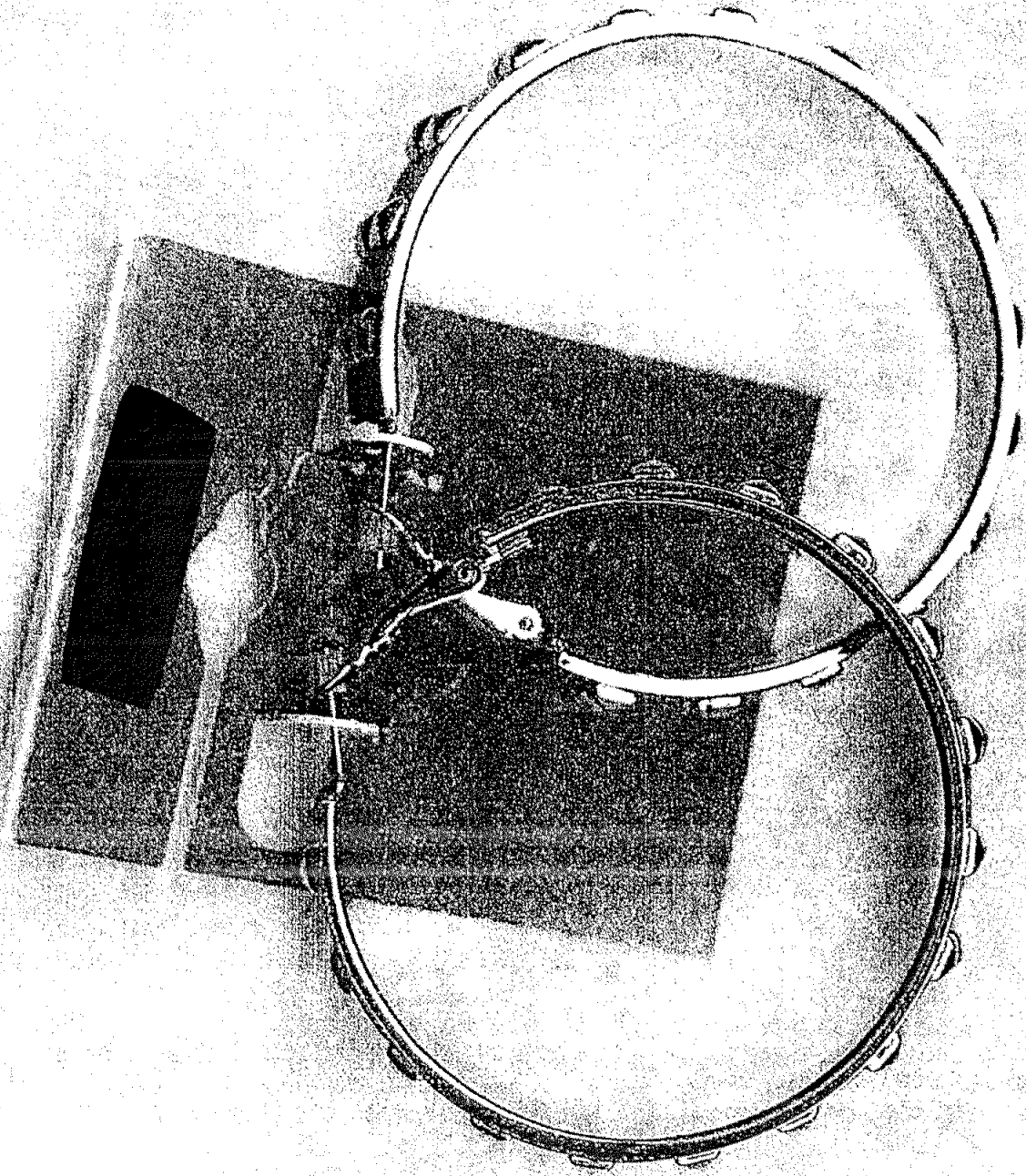
BIG BUDDHA, INC.


Signature

Jeremy H Bassan
Printed Name

President
Title

Exhibit A



151463

SEAR WK: 22 STYLE: 9688
MFG: 05769 CLASS: 3122



\$5.99

MADE IN CHINA



THE
NATIONAL
FOOD
LAB

September 28, 2009

Analytical Report No.: CL1405-61

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

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

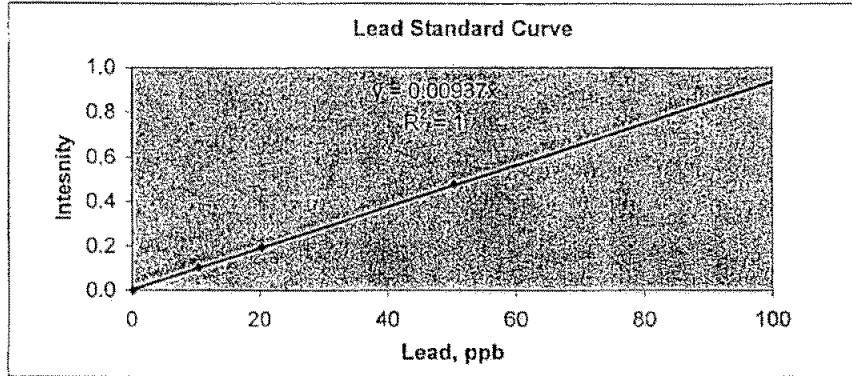
Lead

Client: Centersh
 Project No.: CL1405-61
 Analysis Date: 9/23/2009
 Analyst: C. Ng
 Method: CM5013.1
 QC data with: CL1405-60 CEH

Standards			
internal std	analyte Intensity	Conc (ppb)	ai / is
1540801	289	0.2	0.000187565
1515494	157023	10.39	0.10361176
1531282	298037	20.3	0.19463107
1539419	735139	50.37	0.477543151
1567844	1471950	100.57	0.938837027

NIST Values	19.89
NFL NIST Range:	19.50 ± 1.90
NIST Range:	19.63 ± 0.21

Instrument: Perkin Elmer Elan 9000 ICP-MS
 Plasma: Argon
 Run Time: 1min 20 sec per sample
 Isotopes: Pb 206, Pb207, Pb 208
 Standards: 1029G-14-01, 1029G-14-02
 1029G-14-03, 1029G-14-04,
 Internal Standard: 1033B-01-04



Regression	
slope	0.00937
y-intercept	0

	Conc. Spike (ppm)	Amt. Spike (ul)	Spike Level (ppb)	Smp Weight (g)	Final Volume (ml)	Conc. ppb	% Recovery
NA	NA	NA	NA	NA	NA	NA	NA
NA	NA	NA	NA	NA	NA	NA	NA

Sample Number	CEH ID	Description	Weight, g	Volume, ml	Dilution Factor	. ng/g	ppm of Lead	MDL
blank		MV blank	0.10	50		31.92		
AE10383	JCT1463b	Earrings (black faux leather on hoops)	0.0520	50	200	20706.51	4141	0.010 ppm

Sample Calc: ppm = (ng/g calculated by instrument*dilution factor)/1000