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ALAMEDA COUNTY

AUG 22 2012

K. McCoy, Exec. Off./Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,	)	Lead Case No. RG 09-459448
	)	
Plaintiff,	)	(Consolidated with Case Nos. RG 10-
	)	494289, RG 10-494513, RG 10-494517,
v.	)	RG 11-598595, RG 11-598596, and RG
	)	11-603764)
LULU NYC LLC, et al.,	)	<i>sdg</i>
	)	<b>[PROPOSED] CONSENT</b>
Defendants.	)	<b>JUDGMENT AS TO HOT TOPIC,</b>
	)	<b>INC. AND HOT TOPIC</b>
_____	)	<b>MERCHANDISING, INC.</b>
	)	
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 or reasonably foreseeable use.

1.2 "Covered Products" means Fashion Accessories that are (a) Manufactured by a Settling Defendant (as defined in Section 2.1), or (b) distributed or sold for resale by a Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by a Settling Defendant where the Settling Defendant is (i) the Private Labeler or (ii) a sister, parent,

1 subsidiary, or affiliated entity that is under common ownership of the Private Labeler of such  
2 product.

3 1.3 "Effective Date" means the date on which this Consent Judgment is entered by  
4 the Court.

5 1.4 "Fashion Accessories" means (i) wallets, handbags, purses, and clutches;  
6 (ii) belts; and (iii) footwear.

7 1.5 "Lead Limits" means the maximum concentrations of lead and lead  
8 compounds ("Lead") by weight specified in Section 3.2.

9 1.6 "Manufactured" and "Manufactures" have the meaning defined in Section  
10 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)],<sup>1</sup> as amended  
11 from time to time.

12 1.7 "Private Label Covered Product" means a Fashion Accessory that bears a  
13 private label where (i) the product (or its container) is labeled with the brand or trademark of a  
14 person other than a manufacturer of the product, (ii) the person with whose brand or trademark  
15 the product (or container) is labeled has authorized or caused the product to be so labeled, and  
16 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

17 1.8 "Private Labeler" means an owner or licensee of a brand or trademark on the  
18 label of a consumer product which bears a private label; provided, however, that Settling  
19 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
20 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party's  
21 brand or trademark.

22 1.9 "Paint or other Surface Coatings" has the meaning defined in 16 C.F.R.  
23 § 1303.2(b)<sup>2</sup>, as amended from time to time.

24  
25 <sup>1</sup> As of May 1, 2011, the term "Manufactured" and "Manufactures" means to manufacture,  
26 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  
surface. This term does not include printing inks or those materials which actually become a part

1           1.10       “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 defendants Hot Topic, Inc. and Hot Topic Merchandising,  
6 Inc. (“Settling Defendants”).

7           2.2       On or around August 4, 2009, September 25, 2009, January 11, 2011, and  
8 May 9, 2011, CEH served 60-Day Notices of Violation under Proposition 65 (The Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*),  
10 alleging that Settling Defendants violated Proposition 65 by exposing persons to Lead contained  
11 in Fashion Accessories, without first providing a clear and reasonable Proposition 65 warning.

12          2.3       Settling Defendants offer Fashion Accessories for sale in the State of  
13 California.

14          2.4       On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
15 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging  
16 Proposition 65 violations as to wallets, handbags, purses and clutches. On July 26, 2011, CEH  
17 filed the Third Amended Complaint in *CEH v. Zappos.com, Inc.*, Case No. RG 10-494513,  
18 alleging Proposition 65 violations as to Lead in footwear, and naming Settling Defendants as  
19 defendants in that action. On October 5, 2011, CEH filed the operative Complaint in *CEH v.*  
20 *Bioworld Merchandising, Inc.*, Case No. RG 11-598596, alleging Proposition 65 violations as to  
21 Lead in wallets, handbags, purses and clutches, and naming Settling Defendants as defendants in  
22 that action. On November 9, 2011, CEH filed the operative Complaint in *CEH v. Armani*  
23 *Exchange*, Case No. RG 11-603764, alleging Proposition 65 violations as to Lead in belts and  
24 naming Settling Defendants as defendants in that action. The *Zappos.com*, *Bioworld*, and *Armani*  
25 *Exchange* actions have been consolidated for pre-trial purposes with the *Lulu* consolidated cases,  
26 along with other related actions pending in Alameda County Superior Court.

27 \_\_\_\_\_  
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           2.5           Commencing in April 2011, Settling Defendants assert that they began  
2 providing Proposition 65 warnings for potential exposure to listed chemicals in Fashion  
3 Accessories at the point of sale in each of their stores in California.

4           2.6           For purposes of this Consent Judgment only, the Parties stipulate that this  
5 Court has jurisdiction over the allegations of violations contained in the operative Complaints  
6 applicable to Settling Defendants (the "Complaints") and personal jurisdiction over Settling  
7 Defendant as to the acts alleged in the Complaints, that venue is proper in the County of  
8 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

9           2.7           Nothing in this Consent Judgment is or shall be construed as an admission by  
10 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
11 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
12 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
13 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
14 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
15 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
16 this action.

17 **3.    INJUNCTIVE RELIEF**

18           3.1           **Specification Compliance Date.** To the extent they have not already done so,  
19 no more than 30 days after the Effective Date, Settling Defendants shall provide the Lead Limits  
20 to their Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts  
21 to provide Fashion Accessories that comply with the Lead Limits on a nationwide basis.

22           3.2           **Lead Limits.**

23                       Commencing on January 1, 2013, Settling Defendants shall not purchase, import,  
24 Manufacture, or supply to an unaffiliated third party any Covered Product that will be sold or  
25 offered for sale to California consumers that exceeds the following Lead Limits:

26                       3.2.1   Paint or other Surface Coatings on Accessible Components: 90 parts per  
27 million ("ppm").

28                       3.2.2   Leather (including composited leather) Accessible Components: 300 ppm.

1                   3.2.3 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

2                   3.2.4 All other Accessible Components other than cubic zirconia (sometimes  
3 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

4                   3.3           **Final Retail Compliance Date.** Commencing on May 1, 2013, Settling  
5 Defendants shall not sell or offer for sale in California to California consumers any Covered  
6 Product that exceeds the Lead Limits specified in Section 3.2.

7                   3.4           **Action Regarding Specific Products.**

8                   3.4.1 On or before the Effective Date, Settling Defendants shall cease selling the  
9 following products (the “Section 3.4 Products”) in California:

- 10                   • Black & Red Patent Quilted Handbag, SKU No. 544580-000
- 11                   • Lux De Ville Snakeskin Purse in Red, SKU No. 525334-000
- 12                   • Torrid H-Red FLW Peep Flat, SKU No. 564931-003
- 13                   • Draven Sneaker High Tops in Green and Pink, SKU No. 317372-010
- 14                   • Torrid Snakeskin Wedge in Green, SKU No. 599429-002
- 15                   • Hello Kitty Foldable Ballet Flat in Red with Carrying Bag, SKU No. 555697-001
- 16                   • T.U.K. Pump in Red, SKU No. 536911-001
- 17                   • Torrid Belt in Red, SKU No. 581555-004
- 18                   • Hot Topic Smiley Face Belt, SKU No. 142632-001

19                   3.4.2 If Settling Defendants have not complied with Section 3.3.1 prior to  
20 executing this Consent Judgment, they shall instruct their California stores either to (i)  
21 return all the Section 3.4 Products to Settling Defendants for destruction; or (ii) directly  
22 destroy the Section 3.4 Products.

23                   3.4.3 Any destruction of Section 3.4 Products shall be in compliance with all  
24 applicable laws.

25                   3.4.4 Within sixty days of the Effective Date, Settling Defendants shall provide  
26 CEH with written certification from Settling Defendants confirming compliance with the  
27 requirements of this Section 3.4.

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 Sections 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 Defendants shall notify CEH  
7 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling  
8 Defendants on or after that date, for example, a unique brand name or characteristic system of  
9 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,  
10 including but not limited to the identities of parties to contracts between Settling Defendants and  
11 third parties, may be designated by Settling Defendants as competitively sensitive confidential  
12 business information, and if so designated shall not be disclosed to any person, without the  
13 written permission of Settling Defendants. Any motions or pleadings or any other court filings  
14 that may reveal information designated as competitively sensitive confidential business  
15 information pursuant to this Section shall be submitted in accordance with California Rules of  
16 Court 8.46 and 2.550, *et seq.*

17             4.3             **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
18 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

19                     4.3.1     **Service of Notice.** CEH shall serve the Notice of Violation on a Settling  
20 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
21 provided, however, that CEH may have up to an additional 45 days to provide the Settling  
22 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it  
23 from its laboratory.

24                     4.3.2     **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
25 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
26 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
27 Covered Product giving rise to the alleged violation, and of each Accessible Component  
28 that is alleged not to comply with the Lead Limits, including a picture of the Covered

1 Product and all identifying information on tags and labels, and (d) all test data obtained by  
2 CEH regarding the Covered Product and related supporting documentation, including all  
3 laboratory reports, quality assurance reports and quality control reports associated with  
4 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
5 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
6 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
7 Notice of Violation, although any such testing may be used as additional support for a  
8 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
9 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
10 4.3.2.

11 **4.3.3 Additional Documentation.** CEH shall promptly make available for  
12 inspection and/or copying upon request by and at the expense of the Settling Defendant,  
13 all supporting documentation related to the testing of the Covered Products and associated  
14 quality control samples, including chain of custody records, all laboratory logbook entries  
15 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
16 from all analytical instruments relating to the testing of Covered Product samples and any  
17 and all calibration, quality assurance, and quality control tests performed or relied upon in  
18 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
19 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
20 any exemplars of Covered Products tested.

21 **4.3.4 Multiple Notices.** If a Settling Defendant has received more than four  
22 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
23 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
24 Consent Judgment. For purposes of determining the number of Notices of Violation  
25 pursuant to this Section 4.3.4, the following shall be excluded:

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

28 (b) A Notice of Violation that meets one or more of the conditions of

1 Section 4.4.3(b).

2 4.4 **Notice of Election.** Within 30 days of receiving a Notice of Violation  
3 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), the Settling  
4 Defendant shall provide written notice to CEH stating whether it elects to contest the allegations  
5 contained in the Notice of Violation ("Notice of Election"). Failure to provide a Notice of  
6 Election shall be deemed an election to contest the Notice of Violation.

7 4.4.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of  
8 Election shall include all then-available documentary evidence regarding the alleged  
9 violation, including any test data. Within 30 days the parties shall meet and confer to  
10 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
11 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
12 Defendants withdraw their Notice of Election to contest the Notice of Violation before  
13 any motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
14 Section 4.1, Settling Defendants shall make a contribution to the Proposition 65 Fashion  
15 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
16 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or  
17 obtaining a decision from the Court, CEH or a Settling Defendant acquires additional test  
18 or other data regarding the alleged violation, it shall promptly provide all such data or  
19 information to the other Party.

20 4.4.2 **Non-Contested Notices.** If the Notice of Violation is not contested, the  
21 Settling Defendant shall include in its Notice of Election a detailed description of  
22 corrective action that it has undertaken or proposes to undertake to address the alleged  
23 violation. Any such correction shall, at a minimum, provide reasonable assurance that the  
24 Covered Product will no longer be offered by the Settling Defendant for sale in California.  
25 If there is a dispute over the sufficiency of the proposed corrective action or its  
26 implementation, CEH shall promptly notify the Settling Defendant and the Parties shall  
27 meet and confer before seeking the intervention of the Court to resolve the dispute. In  
28 addition to the corrective action, the Settling Defendant shall make a contribution to the



1 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of  
2 Section 4.4.3 applies.

3 **4.4.3 Limitations in Non-Contested Matters.**

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

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

8 (i) One thousand seven hundred fifty dollars (\$1750) if the Settling  
9 Defendant, prior to receiving and accepting for distribution or sale the  
10 Covered Product identified in the Notice of Violation, obtained test data  
11 demonstrating that all of the Accessible Components in the Covered  
12 Product identified in the Notice of Violation complied with the applicable  
13 Lead Limits. For purposes of this Section 4.4.3(b)(i) only, "test data" shall  
14 mean either: (a) test results that meet the same quality criteria to support a  
15 Notice of Violation as set forth in Section 4.3.2; or (b) total lead by X-ray  
16 fluorescence (XRF) performed on the Covered Product alleged to be in  
17 violation of the Lead Limits by the Settling Defendant pursuant to an  
18 existing written screening policy for lead in Covered Products. In either  
19 case, the testing must have been received by the Settling Defendant or  
20 performed within two years prior to the date of the sales transaction on  
21 which the Notice of Violation is based. The Settling Defendant shall  
22 provide copies of such test results and supporting documentation to CEH  
23 with its Notice of Election; or

24 (ii) Not required or payable, if the Notice of Violation identifies the  
25 same Covered Product or Covered Products, differing only in size or color,  
26 that have been the subject of another Notice of Violation to the Settling  
27 Defendant within the preceding 12 months.

28

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 Settling Defendants, CEH shall provide  
6 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 a 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 Settling Defendants;

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

22 4.5.6 If a Settling Defendant elect 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(b) applies, in which case the applicable amount specified in  
26 Section 4.4.3(b) 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 Defendants.** Within five (5) days of entry of this Consent  
18 Judgment, Settling Defendants shall pay the total sum of \$75,000 as a settlement payment. The  
19 total settlement amount for Settling Defendants shall be paid in three separate checks delivered to  
20 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San  
21 Francisco, California 94117. The funds paid by Settling Defendants shall be allocated between  
22 the following categories:

23 5.1.1 \$9,930 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),  
24 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12  
25 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard  
26 Assessment). The civil penalty check shall be made payable to the Center For Environmental  
27 Health.

28 5.1.2 \$14,900 as a payment in lieu of civil penalty to CEH pursuant to Health &

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

9           5.1.3 \$50,170 as reimbursement of a portion of CEH's reasonable attorneys' fees  
10 and costs. The attorneys' fees and cost reimbursement check shall be made payable to the  
11 Lexington Law Group.

## 12 **6. MODIFICATION**

13           6.1 **Written Consent.** This Consent Judgment may be modified from time to  
14 time by express written agreement of the Parties with the approval of the Court, or by an order of  
15 this Court upon motion and in accordance with law.

16           6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
18 modify the Consent Judgment.

## 19 **7. CLAIMS COVERED AND RELEASED**

20           7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
21 behalf of itself and the public interest and Settling Defendants, and their parents, subsidiaries,  
22 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
23 ("Defendant Releasees") of any violation of Proposition 65 that was or could have been asserted  
24 in the Complaints against Settling Defendants and Defendant Releasees based on failure to warn  
25 about alleged exposure to Lead contained in Fashion Accessories that were sold by Settling  
26 Defendants prior to the Effective Date.

27           7.2 Compliance with the terms of this Consent Judgment by Settling Defendants  
28 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendants' 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 Settling Defendants and Defendant  
4 Releasees.

5 **8. NOTICE**

6 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
7 notice shall be sent by first class and electronic mail to:

8 Eric S. Somers  
9 Lexington Law Group  
10 503 Divisadero Street  
11 San Francisco, CA 94117  
12 esomers@lexlawgroup.com

13 8.2 When Settling Defendants are entitled to receive any notice under this Consent  
14 Judgment, the notice shall be sent by first class and electronic mail to:

15 Jonathan L. Block  
16 General Counsel  
17 HOT TOPIC, INC.  
18 18305 E. San Jose Ave.  
19 City of Industry, CA 91748  
20 jblock@hottopic.com

21 With a copy to:

22 Jeffrey B. Margulies  
23 Fulbright & Jaworski L.L.P.  
24 555 South Flower Street, 41st Floor  
25 Los Angeles, CA 90071  
26 jmargin@fulbright.com

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

29 **9. COURT APPROVAL**

30 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
31 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants  
32 shall support entry of this Consent Judgment.

1           9.2           If this Consent Judgment is not entered by the Court, it shall be of no force or  
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4       **10.   ATTORNEYS' FEES**

5           10.1           Should CEH prevail on any motion, application for an order to show cause or  
6 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
7 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should a  
8 Settling Defendant prevail on any motion application for an order to show cause or other  
9 proceeding, the Settling Defendant may be awarded its reasonable attorneys' fees and costs as a  
10 result of such motion or application upon a finding by the Court that CEH's prosecution of the  
11 motion or application lacked substantial justification. For purposes of this Consent Judgment, the  
12 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of  
13 1986, Code of Civil Procedure §§ 2016, *et seq.*

14           10.2           Except as otherwise provided in this Consent Judgment, each Party shall bear  
15 its own attorneys' fees and costs.

16           10.3           Nothing in this Section 10 shall preclude a Party from seeking an award of  
17 sanctions pursuant to law.

18       **11.   TERMINATION**

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

23           11.2           Should this Consent Judgment be terminated pursuant to this Section, it shall  
24 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
25 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
26 provided further that if a Settling Defendant is the terminating Party, the provisions of Sections 5,  
27 7.1 and 12.1 shall survive any termination.

28

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 Defendants, and their 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 Settling Defendants might have against any other party, whether or not that party is a Settling  
21 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

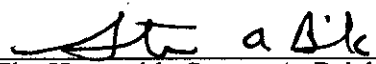


1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
2 Party.

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.

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**IT IS SO ORDERED:**

Dated: <u>August 22</u> 2012	 The Honorable Steven A. Brick Judge of the Superior Court
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**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**



Signature

CHARLIE PIZARRO

Printed Name

Associate Director

Title

**HOT TOPIC, INC. AND HOT TOPIC  
MERCHANDISING, INC.**

Signature

Printed Name

Title

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**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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Signature

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Title

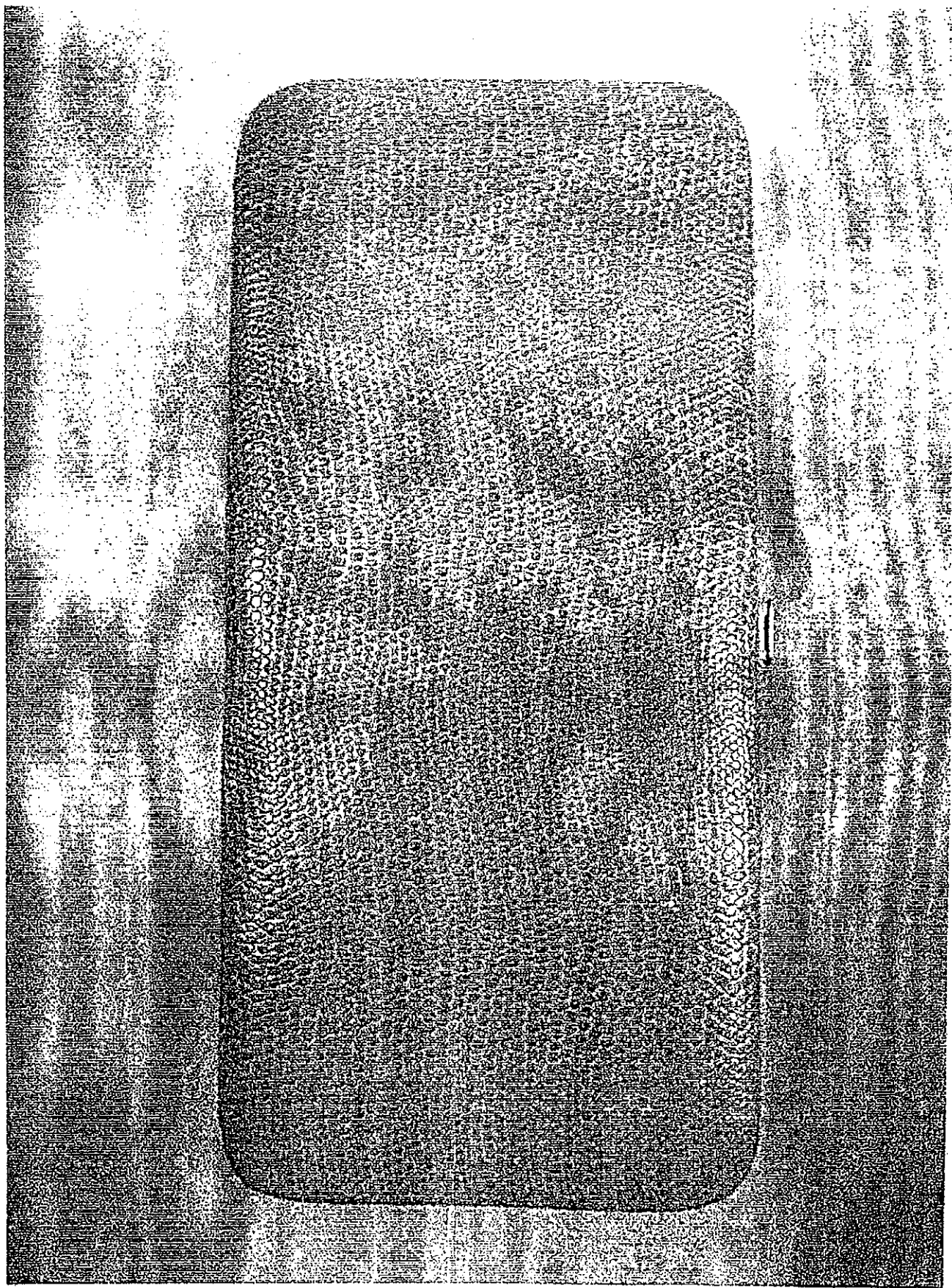
**HOT TOPIC, INC. AND HOT TOPIC  
MERCHANDISING, INC.**

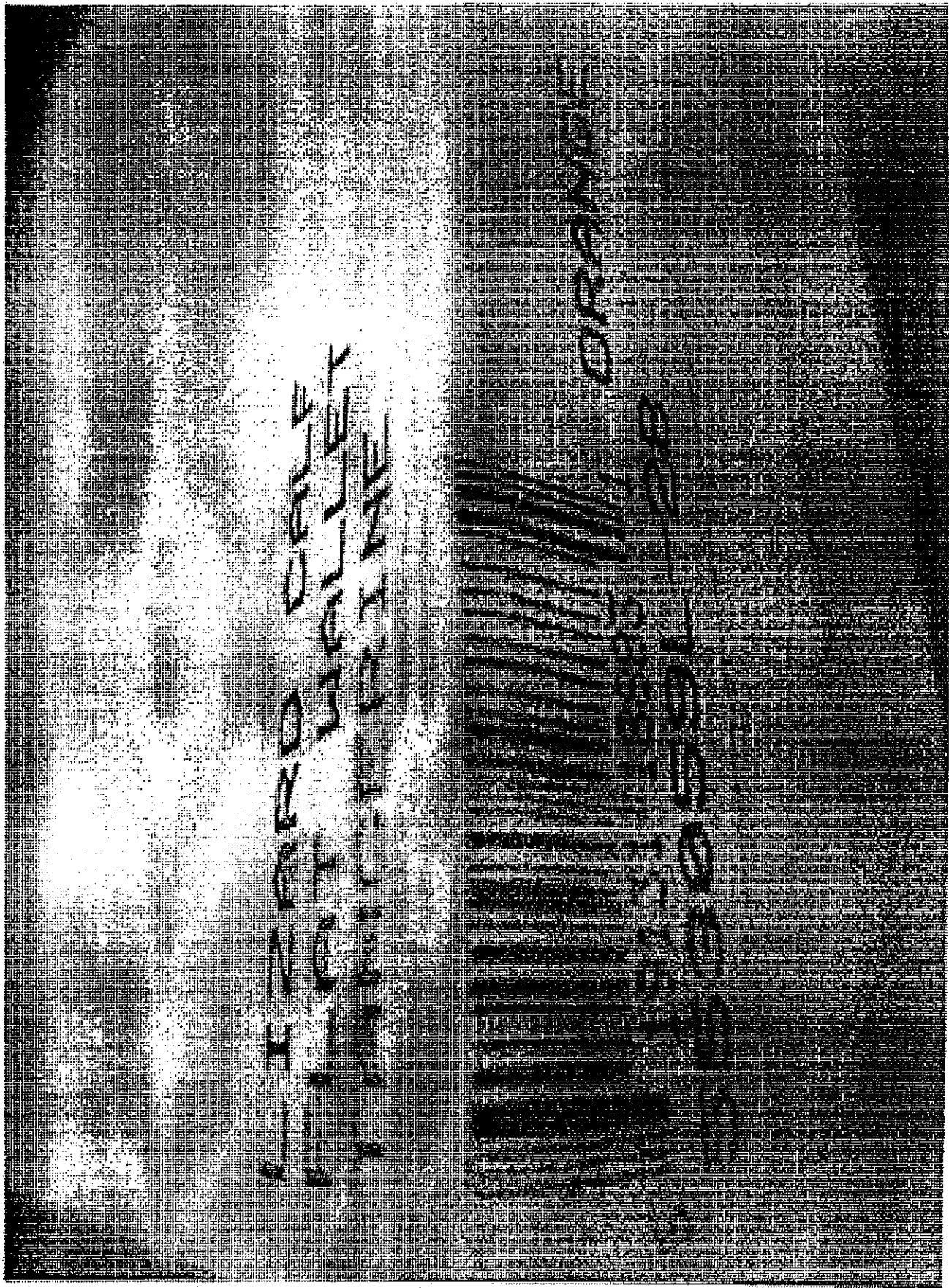
  
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Signature

*Jonathan Block*  
\_\_\_\_\_  
Printed Name

*VP*  
\_\_\_\_\_  
Title

# **Exhibit A**





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 otherwise noted 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