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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 26 2013

**CLERK OF THE SUPERIOR COURT
By S. McMullen Deputy**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

LULU NYC LLC, et al.,)

Defendants.)

AND CONSOLIDATED CASES.)

Lead Case No. RG-09-459448

(Consolidated with Case Nos. RG 10-494289, RG 10-494513, RG 10-494517, RG 11-598595, RG 11-598596, RG 11-603764, and RG 12-658652)

**[PROPOSED] CONSENT
JUDGMENT AS TO BEBE STORES,
INC.**

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 Settling Defendant, or (b) distributed for resale 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 later of April 1, 2013 or the date on which this
2 Consent Judgment is entered by the Court.

3 1.4 “Fashion Accessories” means belts.

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 exists on
12 June 1, 2010.

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

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

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

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

27 ² As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
28 material, with or without a suspension of finely divided coloring matter, which changes to a solid

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 Bebe Stores, Inc. (“Settling Defendant”).

6 2.2 On or about May 9, 2011, CEH served a 60-Day Notice of Violation under
7 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
8 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by
9 exposing persons to Lead contained in belts, without first providing a clear and reasonable
10 Proposition 65 warning.

11 2.3 Settling Defendant manufactures, distributes or offers Fashion Accessories for
12 sale in the State of California or has done so in the past, and denies that Settling Defendant
13 violated Proposition 65 by exposing persons to Lead contained in belts, without first providing a
14 clear and reasonable Proposition 65 warning.

15 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*,
16 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
17 Proposition 65 violations as to wallets, handbags, purses and clutches. Since then, CEH has filed
18 several actions alleging Proposition 65 violations as to Lead in wallets, handbags, purses,
19 clutches, footwear and belts that have been consolidated for pre-trial purposes under Lead Case
20 No. RG 09-459448. These actions include *CEH v. Ashley Stewart Ltd., et al.*, Case No. RG_10-
21 494289, which CEH filed on January 15, 2010 and which alleges Proposition 65 violations as to
22 Lead in belts. CEH first named Settling Defendant in the *Ashley Stewart* case on July 26, 2011
23 by filing the operative Third Amended Complaint. On September 26, 2011, Settling Defendant

24
25
26 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other
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 filed its Answer to the Third Amended Complaint in *Ashley Stewart*, and paid its first appearance
2 and complex fee to the extent required.

3 2.5 On November 3, 2010, the Court approved an Amended Consent Judgment
4 between CEH and a large group of defendants, including Settling Defendant. The Amended
5 Consent Judgment (which was later modified by the Court on May 24, 2011) resolved CEH's
6 claims in these consolidated cases against Settling Defendant with respect to handbags, wallets,
7 purses, clutches and footwear. Because the Amended Consent Judgment does not apply to
8 Settling Defendant's sales of belts, CEH and Settling Defendant now seek to enter into this
9 Consent Judgment. The Amended Consent Judgment will continue to apply to Settling
10 Defendant with respect to handbags, wallets, purses, clutches and footwear.

11 2.6 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 Third Amended
13 Complaint in *Ashley Stewart* (the "Complaint") and personal jurisdiction over Settling Defendant
14 as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that
15 this Court has jurisdiction to enter this Consent Judgment.

16 2.7 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 **Notice to Vendors.** To the extent it has not already done so, no more than 30
26 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its Vendors of
27 Fashion Accessories and shall instruct each Vendor to use reasonable efforts to provide Settling
28 Defendant with Fashion Accessories that comply with the Lead Limits on a nationwide basis.

1 This Section 3.1 is not applicable with respect to Non-Suspect Materials.

2 **3.2 Lead Limits.**

3 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
4 million (“ppm”).

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

9 3.2.3 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

10 3.2.4 For all other Accessible Components other than cubic zirconia (sometimes
11 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

12 **3.3 Compliance Date.** Commencing on the Effective Date, Settling Defendant
13 shall not sell or offer for sale, purchase, import, Manufacture, or supply to an unaffiliated third
14 party any Covered Product that will be sold or offered for sale to California consumers that
15 exceeds the Lead Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling
16 Defendant’s direct customer sells or offers for sale to California consumers a Covered Product
17 after the Effective Date, Settling Defendant is deemed to “offer for sale in California” that
18 Covered Product.

19 **3.4 Warnings for Covered Products.**

20 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
21 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to
22 meeting the Lead Limits, be sold or offered for retail sale in California after the Effective
23 Date, with a Clear and Reasonable Warning that complies with the provisions of Section
24 3.4.2.

1 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
2 Consent Judgment shall state either:

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

6 Or

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

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

18 **3.5 Action Regarding Specific Products.**

19 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the
20 Bebe Patent Metal Buckle Belt in Red, SKU No. 17628302400016 (the “Section 3.5
21 Product”) in California. On or before the Effective Date, Settling Defendant shall also: (i)
22 cease shipping the Section 3.5 Product to any of its customers that resell the Section 3.5
23 Product in California, and (ii) send instructions to its customers that resell the Section 3.5
24 Product in California, if any, instructing them to cease offering such Section 3.5 Product
25 for sale in California.

26 3.5.2 Any destruction of Section 3.5 Product shall be in compliance with all
27 applicable laws.

28

1 3.5.3 As of the date of executing this Consent Judgment, Settling Defendant
2 represents that it has already complied with the requirements of Section 3.5.

3 **4. ENFORCEMENT**

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

8 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
9 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
10 Defendant on or after that date, for example, a unique brand name. Information provided to CEH
11 pursuant to this Section 4.2, including but not limited to the identities of parties to contracts
12 between Settling Defendant and third parties, may be designated by Settling Defendant as
13 competitively sensitive confidential business information, and if so designated shall not be
14 disclosed to any person without the written permission of Settling Defendant. Any motions or
15 pleadings or any other court filings that may reveal information designated as competitively
16 sensitive confidential business information pursuant to this Section shall be submitted in
17 accordance with California Rules of Court 8.46 and 2.550, *et seq.*

18 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
19 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

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

25 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
26 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
27 (b) the location at which the Covered Product was offered for sale, (c) a description of the
28 Covered Product giving rise to the alleged violation, and of each Accessible Component

1 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
2 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including
3 a picture of the Covered Product and all identifying information on tags and labels, and
4 (d) all test data obtained by CEH regarding the Covered Product and related supporting
5 documentation, including all laboratory reports, quality assurance reports and quality
6 control reports associated with testing of the Covered Products. Such Notice of Violation
7 shall be based at least in part upon total acid digest testing performed by an independent
8 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
9 themselves sufficient to support a Notice of Violation, although any such testing may be
10 used as additional support for a Notice. The Parties agree that the sample Notice of
11 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
12 subsections (c) and (d) of this Section 4.3.2.

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

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

28 (a) Multiple notices identifying Covered Products Manufactured for or

1 sold to Settling Defendant from the same Vendor; and

2 (b) A Notice of Violation that meets one or more of the conditions of
3 Section 4.4.3(b).

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

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

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

1 meet and confer before seeking the intervention of the Court to resolve the dispute. In
2 addition to the corrective action, Settling Defendant shall make a contribution to the
3 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
4 Section 4.4.3 applies.

5 **4.4.3 Limitations in Non-Contested Matters.**

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

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

10 (i) One thousand seven hundred fifty dollars (\$1750) if Settling
11 Defendant, prior to receiving and accepting for distribution or sale the
12 Covered Product identified in the Notice of Violation, obtained test results
13 demonstrating that all of the Accessible Components in the Covered
14 Product identified in the Notice of Violation complied with the applicable
15 Lead Limits, and further provided that such test results would be sufficient
16 to support a Notice of Violation and that the testing was performed within
17 two years prior to the date of the sales transaction on which the Notice of
18 Violation is based. Settling Defendant shall provide copies of such test
19 results and supporting documentation to CEH with its Notice of Election;
20 or

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

26 (iii) One thousand five hundred dollars (\$1500) if Settling
27 Defendant is in violation of Section 3.3 only insofar as that Section deems
28 Settling Defendant to have “offered for sale” a product sold at retail by

1 Settling Defendant's customer, provided however, that no contribution is
2 required or payable if Settling Defendant has already been required to pay
3 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This
4 subsection shall apply only to Covered Products that Settling Defendant
5 demonstrates were shipped prior to the applicable Shipping Compliance
6 Date specified in Section 3.2.

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

11 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If
12 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
13 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
14 exceeds any of the applicable Lead Limits ("Noncompliant Non-Covered Product"), then prior to
15 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
16 notice to Settling Defendant pursuant to this Section 4.5.

17 4.5.1 The notice shall contain the information required for a Notice of Violation
18 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the
19 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
20 further identifying information for the Noncompliant Non-Covered Product that is
21 reasonably available to it.

22 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
23 requested further information sufficient to identify the Noncompliant Non-Covered
24 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
25 The Notice of Election shall:

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

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

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

12 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
13 confidential business information, or (iii) other information that may be subject to a claim
14 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
15 or confidentiality, provided that the Party disclosing such information shall clearly
16 designate it as confidential. Any Party receiving information designated as confidential
17 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
18 or entity, and shall use such information solely for purposes of resolving any disputes
19 under this Consent Judgment.

20 4.5.4 No further action is required of Settling Defendant under this Consent
21 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
22 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
23 Covered Product by the terms of a separate settlement agreement or consent judgment
24 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

25 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
26 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may
27 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
28 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall

1 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

2 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
3 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
4 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
5 provisions of Section 4.4.3(b) applies, in which case the applicable amount specified in
6 Section 4.4.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one
7 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person
8 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
9 has a principal place of business located within the United States, and \$10,000 for all
10 other notices.

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

20 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
21 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
22 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
23 than a Settling Defendant.

24 **5. PAYMENTS**

25 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent
26 Judgment, Settling Defendant shall pay the total sum of \$36,000 as a settlement payment. The
27 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to
28 the offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San

1 Francisco, California 94117, and made payable and allocated as follows:

2 5.1.1 Settling Defendant shall pay the sum of \$4,730 as a civil penalty pursuant
3 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
4 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
5 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
6 Center For Environmental Health.

7 5.1.2 Settling Defendant shall also pay the sum of \$7,100 as a payment in lieu of
8 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
9 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and
10 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
11 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
12 funds to award grants to grassroots environmental justice groups working to educate and protect
13 people from exposures to toxic chemicals. The method of selection of such groups can be found
14 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
15 made payable to the Center For Environmental Health.

16 5.1.3 Settling Defendant shall also separately pay to the Lexington Law Group
17 the sum of \$24,170 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.
18 The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law
19 Group.

20 **6. MODIFICATION**

21 6.1 **Written Consent.** This Consent Judgment may be modified from time to
22 time by express written agreement of the Parties with the approval of the Court, or by an order of
23 this Court upon motion and in accordance with law.

24 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
25 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
26 modify the Consent Judgment.

27 **7. CLAIMS COVERED AND RELEASED**

28 7.1 This Consent Judgment is a full, final and binding resolution between CEH on

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

10 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
11 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered
12 Products.

13 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
14 action under Proposition 65 against any person other than a Settling Defendant, Defendant
15 Releasee, or Downstream Defendant Releasee.

16 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
17 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
18 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
19 California consumers that does not comply with the Lead Limits after the applicable Final Retail
20 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant
21 Proposition 65 warnings under this Consent Judgment.

22 **8. NOTICE**

23 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
24 notice shall be sent by first class and electronic mail to:

25 Howard Hirsch
26 Lexington Law Group
27 503 Divisadero Street
28 San Francisco, CA 94117
hhirsch@lexlawgroup.com

1 8.2 When Settling Defendant is entitled to receive any notice under this Consent
2 Judgment, the notice shall be sent by first class and electronic mail to:

3 Larry Smith
4 Jennifer Otter
5 Bebe Stores, Inc. – Legal Dept.
6 400 Valley Drive
7 Brisbane, CA 94005
8 lsmith@bebe.com
9 jotter@bebe.com

10 8.3 Any Party may modify the person and address to whom the notice is to be sent
11 by sending each other Party notice by first class and electronic mail.

12 **9. COURT APPROVAL**

13 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
14 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
15 shall support entry of this Consent Judgment.

16 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
17 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
18 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

19 **10. ATTORNEYS' FEES**

20 10.1 Should CEH prevail on any motion, application for an order to show cause or
21 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
22 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
23 Settling Defendant prevail on any motion application for an order to show cause or other
24 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
25 of such motion or application. upon a finding by the Court that CEH's prosecution of the motion
26 or application lacked substantial justification. For purposes of this Consent Judgment, the term
27 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
28 Code of Civil Procedure §§ 2016, *et seq.*

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

1 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
2 sanctions pursuant to law.

3 **11. TERMINATION**

4 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
5 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
6 termination shall be effective upon the subsequent filing of a notice of termination with Superior
7 Court of Alameda County.

8 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
9 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
10 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
11 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
12 7.1 and 12.1 shall survive any termination.

13 **12. OTHER TERMS**

14 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
15 of California.

16 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
17 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
18 assigns of any of them.

19 12.3 This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
22 merged herein and therein. There are no warranties, representations, or other agreements between
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
27 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
28 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent

1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

3 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
4 that any Settling Defendant might have against any other party, whether or not that party is a
5 Settling Defendant.

6 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 12.6 The stipulations to this Consent Judgment may be executed in counterparts
9 and by means of facsimile or portable document format (pdf), which taken together shall be
10 deemed to constitute one document.

11 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
12 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
13 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
14 Party.

15 12.8 The Parties, including their counsel, have participated in the preparation of
16 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
17 This Consent Judgment was subject to revision and modification by the Parties and has been
18 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
19 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
20 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
21 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
22 be resolved against the drafting Party should not be employed in the interpretation of this Consent
23 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

24 **IT IS SO ORDERED:**

25 26 Dated: MAR 26 2013 , 2013	27 28 STEVEN A. BRICK The Honorable Steven A. Brick Judge of the Superior Court
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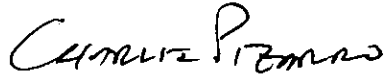
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CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

BEBE STORES, INC.

Signature

Printed Name

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BEBE STORES, INC.



Signature

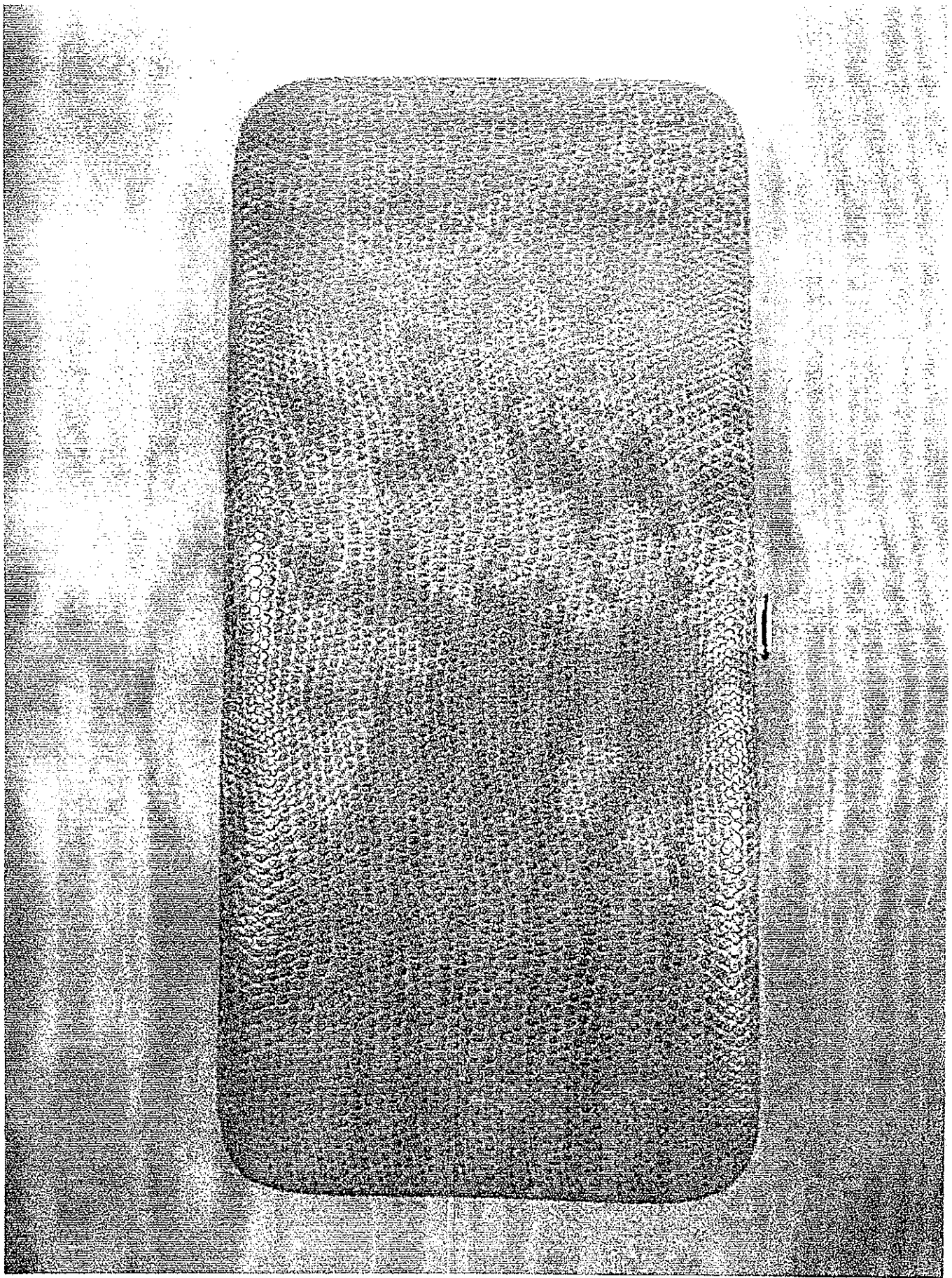
Larry Smith

Printed Name

Senior Vice President, General Counsel

Title

Exhibit A



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ORANGE

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



925-828-1440
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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. 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