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ALAMEDA COUNTY

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K. McCoy, Exec. Off./Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)
)
) Plaintiff,)
)
) v.)
)
) LULU NYC LLC, et al.,)
)
) Defendants.)

Lead Case No. RG 09-459448
(Consolidated with Case Nos. RG 10-494289, RG 10-494513, RG 10-494517, RG 11-598595, RG 11-598596, RG 11-603764 and RG 12-658652)
NM
~~PROPOSED~~ CONSENT JUDGMENT AS TO FOREIGN EXCHANGE, INC.

AND CONSOLIDATED CASES.

1. DEFINITIONS

1.1 "Accessible Component" means a component of a Covered Product that could be touched by a person during normal and reasonably foreseeable use.

1.2 "Covered Products" means Fashion Accessories that are (a) Manufactured by Settling Defendant, or (b) distributed or sold for resale by Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by Settling Defendant where Settling Defendant is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity that is under common ownership of the Private Labeler of such product.

1 1.3 “Effective Date” means the date on which this Consent Judgment is entered by
2 the Court.

3 1.4 “Fashion Accessories” means belts and footwear.

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

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

9 1.7 “Non-Suspect Materials” means natural materials other than leather that have
10 been determined not to exceed lead limits for children’s products by the final rule of the
11 Consumer Product Safety Commission set forth at 16 C.F.R. § 1500.91(d) and (e), as it 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 24, 2013, the term “Manufactured” and “Manufactures” means to manufacture,
produce, or assemble.

27 ² As of May 24, 2013, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
28 material, with or without a suspension of finely divided coloring matter, which changes to a solid
film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other

1 1.11 “Vendor” means a person or entity that Manufactures, imports, distributes, or
2 supplies a Fashion Accessory to Settling Defendant.

3 **2. INTRODUCTION**

4 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
5 Environmental Health (“CEH”) and defendant Foreign Exchange, Inc. (“Settling Defendant”).

6 2.2 Settling Defendant manufactures, distributes or offers Fashion Accessories for
7 sale in the State of California or has done so in the past.

8 2.3 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
9 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
10 Proposition 65 violations as to wallets, handbags, purses and clutches. The Court has
11 consolidated the *Lulu* matter with a number of other related Proposition 65 cases.

12 2.4 On May 9, 2011 and January 15, 2013, CEH served 60-Day Notices of
13 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated
15 Proposition 65 by exposing persons to Lead contained in belts and footwear, without first
16 providing a clear and reasonable Proposition 65 warning. On December 5, 2012, CEH filed the
17 action entitled *CEH v. Fashion Eden*, Case No. RG 12-658652. On March 26, 2013, CEH named
18 Settling Defendant as a “Belts Defendant” and “Footwear Defendant” in the *Fashion Eden* action
19 via Doe Amendment.

20 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
21 Court has jurisdiction over the allegations of violations contained in the operative Complaint
22 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
23 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
24 and that this Court has jurisdiction to enter this Consent Judgment.

25 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
26
27 surface. This term does not include printing inks or those materials which actually become a part
28 of the substrate, such as the pigment in a plastic article, or those materials which are actually
bonded to the substrate, such as by electroplating or ceramic glazing.

1 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
2 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
3 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
4 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
5 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
6 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
7 this action.

8 **3. INJUNCTIVE RELIEF**

9 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
10 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
11 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to
12 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis. This
13 Section 3.1 is not applicable with respect to Non-Suspect Materials.

14 3.2 **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall
15 not purchase, import, Manufacture, or supply to an unaffiliated third party any Covered Product
16 that will be sold or offered for sale to California consumers that exceeds the following Lead
17 Limits:

18 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
19 million (“ppm”).

20 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

21 3.2.3 All other Accessible Components other than cubic zirconia (sometimes
22 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

23 3.3 **Final Retail Compliance Date.** Commencing on the Effective Date, Settling
24 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead
25 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s
26 direct customer sells or offers for sale to California consumers a Covered Product after the
27 Effective Date, Settling Defendant is deemed to have “offered for sale to California consumers”
28 that Covered Product.

1 3.4 **Warnings for Covered Products.**

2 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
3 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to
4 meeting the Lead Limits, be sold or offered for retail sale in California after the Effective
5 Date, with a Clear and Reasonable Warning that complies with the provisions of Section
6 3.4.2.

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

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

12 Or

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

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

24 3.5 **Action Regarding Specific Products.**

25 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the
26 following specific products in California:

- 27 • Belt in Brown, Item No. 41819

- 1 • Foreign Exchange Metal Loop Belt in Green; Item No. 67779; Style No.
2 KGB0084
- 3 • Foreign Exchange Pink Twisted Multi Color Belt; Item No. 63367; Style No.
4 PB5387
- 5 • Foreign Exchange Yellow Belt with Pretzel Weave Closure; Item No. 67806; Style
6 No. PB5391
- 7 • Foreign Exchange Burgundy Simple Elastic Buckle Belt; Item No. 86208; Style
8 No. H7609
- 9 • Foreign Exchange Animal Print Skinny Belt in Green; Item No. 67547; Style No.
10 LBS-1101
- 11 • Wild Rose Cinderella Chic Heels in Red; Item No. WEB80001; Style No.
12 POSY01

13 (the “Section 3.5 Products”). On or before the Effective Date, Settling Defendant shall
14 also: (i) cease shipping the Section 3.5 Products to any of its customers that resell the
15 Section 3.5 Products in California, and (ii) send instructions to its customers that resell the
16 Section 3.5 Products in California instructing them to cease offering the Section 3.5
17 Products for sale in California.

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

24 3.5.3 Any destruction of the Section 3.5 Products shall be in compliance with all
25 applicable laws.

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

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 4.2 through 4.3.

6 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
7 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.2.

8 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
9 Defendant within 45 days of the date the alleged violation(s) was or were observed,
10 provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling
11 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it
12 from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a
13 Covered Product so long as: (a) the identity of the supplier cannot be discerned from the
14 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
15 within 45 days of the date the supplier is identified by CEH.

16 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
17 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
18 (b) the location at which the Covered Product was offered for sale, (c) a description of the
19 Covered Product giving rise to the alleged violation, and of each Accessible Component
20 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
21 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including
22 a picture of the Covered Product and all identifying information on tags and labels, and
23 (d) all test data obtained by CEH regarding the Covered Product and related supporting
24 documentation, including all laboratory reports, quality assurance reports and quality
25 control reports associated with testing of the Covered Products. Such Notice of Violation
26 shall be based at least in part upon total acid digest testing performed by an independent
27 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
28 themselves sufficient to support a Notice of Violation, although any such testing may be

1 used as additional support for a Notice. The Parties agree that the sample Notice of
2 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
3 subsections (c) and (d) of this Section 4.2.2.

4 **4.2.3 Additional Documentation.** CEH shall promptly make available for
5 inspection and/or copying upon request by and at the expense of Settling Defendant, all
6 supporting documentation related to the testing of the Covered Products and associated
7 quality control samples, including chain of custody records, all laboratory logbook entries
8 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
9 from all analytical instruments relating to the testing of Covered Product samples and any
10 and all calibration, quality assurance, and quality control tests performed or relied upon in
11 conjunction with the testing of the Covered Products, obtained by or available to CEH that
12 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
13 any exemplars of Covered Products tested.

14 **4.2.4 Multiple Notices.** If Settling Defendant has received more than four
15 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
16 fines, costs, penalties, or remedies are provided by law for failure to comply with the
17 Consent Judgment. For purposes of determining the number of Notices of Violation
18 pursuant to this Section 4.2.4, the following shall be excluded:

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

21 (b) A Notice of Violation that meets one or more of the conditions of
22 Section 4.3.3(c).

23 **4.3 Notice of Election.** Within 30 days of receiving a Notice of Violation
24 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant
25 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
26 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
27 deemed an election to contest the Notice of Violation. Any contributions to the Fashion
28 Accessory Testing Fund required under this Section 4 shall be made payable to The Center for

1 Environmental Health and included with Settling Defendant's Notice of Election.

2 **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
3 Election shall include all then-available documentary evidence regarding the alleged
4 violation, including any test data. Within 30 days the parties shall meet and confer to
5 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
6 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
7 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
8 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
9 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
10 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
11 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or
12 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
13 other data regarding the alleged violation, it shall promptly provide all such data or
14 information to the other Party.

15 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
16 Settling Defendant shall include in its Notice of Election a detailed description of
17 corrective action that it has undertaken or proposes to undertake to address the alleged
18 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
19 Covered Product will no longer be offered by Settling Defendant or its customers for sale
20 in California. If there is a dispute over the sufficiency of the proposed corrective action or
21 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
22 meet and confer before seeking the intervention of the Court to resolve the dispute. In
23 addition to the corrective action, Settling Defendant shall make a contribution to the
24 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
25 Section 4.3.3 applies.

26 **4.3.3 Limitations in Non-Contested Matters.**

27 (a) If it elects not to contest a Notice of Violation before any motion
28 concerning the violation(s) at issue has been filed, the monetary liability of Settling

1 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section
2 4.3.3, if any.

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

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

8 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
9 Defendant, prior to receiving and accepting for distribution or sale the
10 Covered Product identified in the Notice of Violation, obtained test results
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, and further provided that such test results meet the same
14 quality criteria to support a Notice of Violation as set forth in Section 4.2.2
15 and that the testing was performed within two years prior to the date of the
16 sales transaction on which the Notice of Violation is based. Settling
17 Defendant shall provide copies of such test results and supporting
18 documentation to CEH with its Notice of Election; or

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

24 (iii) One thousand five hundred dollars (\$1500) if Settling
25 Defendant is in violation of Section 3.3 only insofar as that Section deems
26 Settling Defendant to have “offered for sale” a product sold at retail by
27 Settling Defendant’s customer, provided however, that no contribution is
28 required or payable if Settling Defendant has already been required to pay

1 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This
2 subsection shall apply only to Covered Products that Settling Defendant
3 demonstrates were shipped prior to the Effective Date.

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

8 **4.4 Additional Enforcement for Noncompliant Non-Covered Products.** If
9 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
10 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
11 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to
12 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
13 notice to Settling Defendant pursuant to this Section 4.4.

14 4.4.1 The notice shall contain the information required for a Notice of Violation
15 in Section 4.2. If the information is insufficient to allow Settling Defendant to identify the
16 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
17 further identifying information for the Noncompliant Non-Covered Product that is
18 reasonably available to it.

19 4.4.2 Within 30 days of receiving a notice pursuant to Section 4.4, or of any
20 requested further information sufficient to identify the Noncompliant Non-Covered
21 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
22 The Notice of Election shall:

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

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

1 (c) Include either: (i) a statement that Settling Defendant elects not to
2 proceed under this Section 4.4, in which case CEH may take further action including
3 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant
4 elects to proceed under this Section 4.4, with a description of corrective action that meets
5 the conditions of Section 4.3.2, and a contribution to the Fashion Accessory Testing Fund
6 in the amount required under Section 4.4.6, or (iii) a statement that Settling Defendant
7 contends that the Noncompliant Non-Covered Product is released from liability by a
8 Qualified Settlement under Section 4.4.4 along with a copy of such Qualified Settlement.

9 4.4.3 A party's disclosure pursuant to this Section 4.4 of any (i) test reports, (ii)
10 confidential business information, or (iii) other information that may be subject to a claim
11 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
12 or confidentiality, provided that the Party disclosing such information shall clearly
13 designate it as confidential. Any Party receiving information designated as confidential
14 pursuant to this Section 4.4.3 shall not disclose such information to any unrelated person
15 or entity, and shall use such information solely for purposes of resolving any disputes
16 under this Consent Judgment.

17 4.4.4 No further action is required of Settling Defendant under this Consent
18 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
19 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
20 Covered Product by the terms of a separate settlement agreement or consent judgment
21 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

22 4.4.5 If Settling Defendant elects not to proceed under Section 4.4, then neither
23 Settling Defendant nor CEH has any further duty under this Section 4.4 and either may
24 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
25 elects to proceed under Section 4.4.2(c)(ii), then compliance with that Section shall
26 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

27 4.4.6 If Settling Defendant elects to proceed under this Section 4.4 and is not
28 relieved of liability under Section 4.4.4, Settling Defendant shall make a contribution to

1 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
2 provisions of Section 4.3.3(c) applies, in which case the applicable amount specified in
3 Section 4.3.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
4 of the person(s) identified by Settling Defendant pursuant to Section 4.4.2 (i) is a person
5 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
6 has a principal place of business located within the United States, and \$10,000 for all
7 other notices.

8 4.4.7 If Settling Defendant makes a contribution pursuant to this Section and at a
9 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
10 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
11 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
12 settlement amount paid by such Vendor. If the settlement or consent judgment between
13 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
14 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
15 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
16 settlement payment.

17 4.4.8 Any notice served by CEH pursuant to this Section 4.4 shall not be
18 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.4
19 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
20 than Settling Defendant.

21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent
23 Judgment, Settling Defendant shall pay the total sum of \$55,000 as a settlement payment. The
24 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to
25 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
26 Francisco, California 94117. The funds paid by Settling Defendant shall be allocated between the
27 following categories:

28 5.1.1 \$7,250 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),

1 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
2 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
3 Assessment). The civil penalty check shall be made payable to the Center For Environmental
4 Health.

5 5.1.2 \$10,900 as a payment in lieu of civil penalty to CEH pursuant to Health &
6 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
7 such funds to continue its work educating and protecting people from exposures to toxic
8 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
9 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
10 environmental justice groups working to educate and protect people from exposures to toxic
11 chemicals. The method of selection of such groups can be found at the CEH web site at
12 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
13 Center For Environmental Health.

14 5.1.3 \$36,850 as reimbursement of a portion of CEH’s reasonable attorneys’ fees
15 and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the
16 Lexington Law Group.

17 **6. MODIFICATION**

18 6.1 **Written Consent.** This Consent Judgment may be modified from time to
19 time by express written agreement of the Parties with the approval of the Court, or by an order of
20 this Court upon motion and in accordance with law.

21 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
22 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
23 modify the Consent Judgment.

24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
26 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
27 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
28 (“Defendant Releasees”), and each entity to whom it directly or indirectly distributes or sells

1 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
2 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)
3 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
4 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
5 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
6 Settling Defendant prior to the Effective Date.

7 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
8 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered
9 Products.

10 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
11 action under Proposition 65 against any person other than Settling Defendant, Defendant
12 Releasee, or Downstream Defendant Releasee.

13 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
14 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
15 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
16 California consumers that does not comply with the Lead Limits after the Effective Date; and (c)
17 is not sold or offered for sale with compliant Proposition 65 warnings under this Consent
18 Judgment.

19 **8. NOTICE**

20 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
21 notice shall be sent by first class and electronic mail to:

22 Eric S. Somers
23 Lexington Law Group
24 503 Divisadero Street
25 San Francisco, CA 94117
26 esomers@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Consent
28 Judgment, the notice shall be sent by first class and electronic mail to:

1 John Park
2 Kim Park Choi & Yi
3 3435 Wilshire Blvd., Suite 2150
4 Los Angeles, CA 90010
5 johnpark@kpcylaw.com

6 8.3 Any Party may modify the person and address to whom the notice is to be sent
7 by sending the other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
10 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
11 shall support entry of this Consent Judgment.

12 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
13 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
14 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

15 **10. ATTORNEYS' FEES**

16 10.1 Should CEH prevail on any motion, application for an order to show cause or
17 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
18 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
19 Settling Defendant prevail on any motion application for an order to show cause or other
20 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
21 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
22 or application lacked substantial justification. For purposes of this Consent Judgment, the term
23 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
24 Code of Civil Procedure §§ 2016, *et seq.*

25 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
26 its own attorneys' fees and costs.

27 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
28 sanctions pursuant to law.

11. TERMINATION

11.1 This Consent Judgment shall be terminable by CEH or Settling Defendant at

1 any time after January 1, 2019, upon the provision of 30 days advanced written notice; such
2 termination shall be effective upon the subsequent filing of a notice of termination with Superior
3 Court of Alameda County.

4 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
5 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
6 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
7 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
8 7.1 and 12.1 shall survive any termination.

9 **12. OTHER TERMS**

10 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
11 of California.

12 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
13 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
14 assigns of any of them.

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

27 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
28 that Settling Defendant might have against any other party, whether or not that party is a Settling

1 Defendant.

2 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 12.6 The stipulations to this Consent Judgment may be executed in counterparts
5 and by means of facsimile or portable document format (pdf), which taken together shall be
6 deemed to constitute one document.

7 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
8 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
9 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
10 Party.

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

20

21 **IT IS SO ORDERED:**

22

23 Dated: OCT 09 2013, 2013

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Judge Wynne Carvill
The Honorable Steven A. Brick
Judge of the Superior Court

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

FOREIGN EXCHANGE, INC.

Signature

Printed Name

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FOREIGN EXCHANGE, INC.



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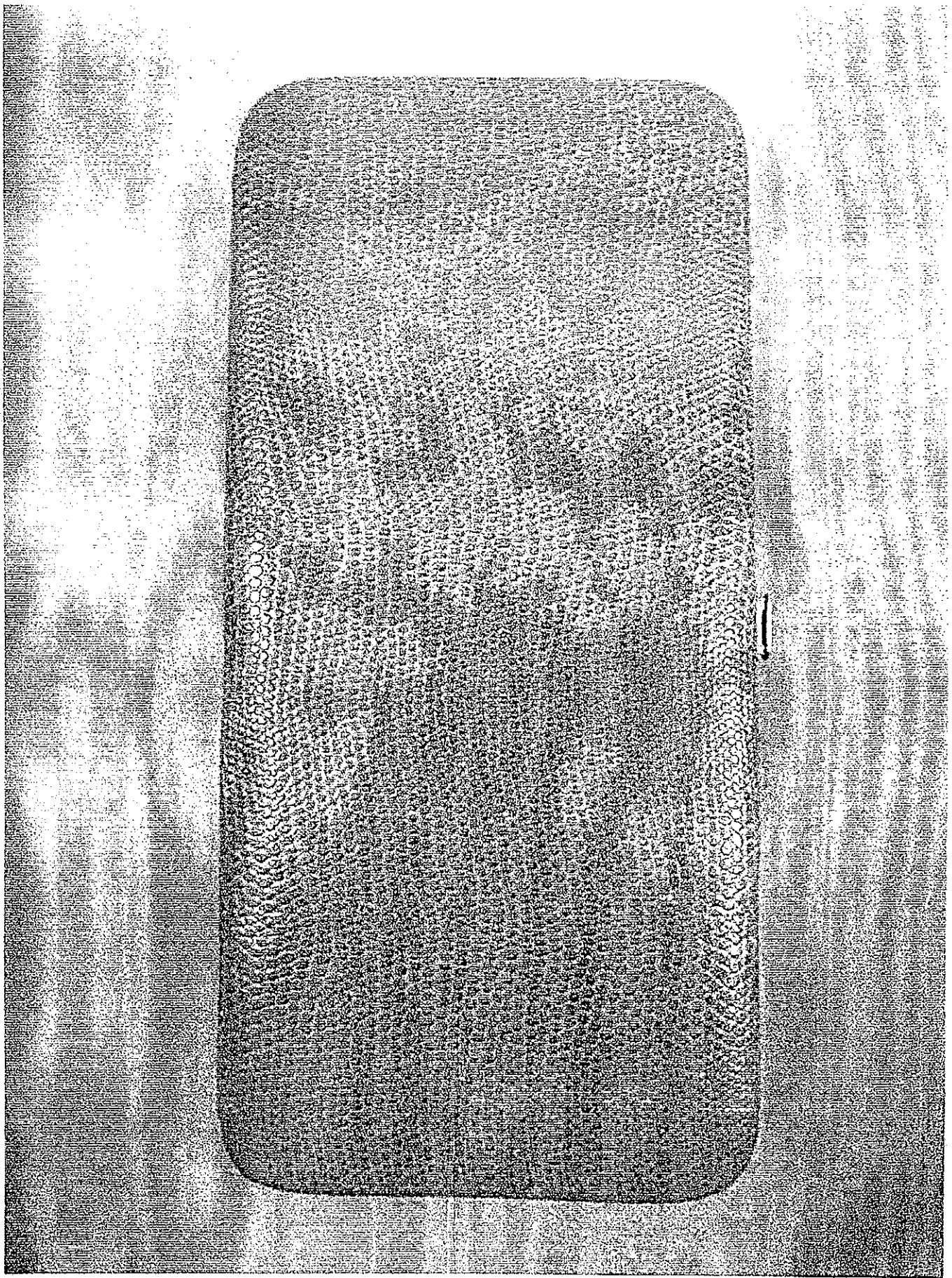
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Exhibit A



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OFFICE

OF

INTELLIGENCE

UNITED STATES

DEPARTMENT OF JUSTICE

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