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**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 06 2014

K. McCoy, Exec. Off./Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

LULU NYC LLC, et al.,)

Defendants.)

Lead Case No. RG 09-459448

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

^{km}
**[PROPOSED] CONSENT
JUDGMENT AS TO ANA
ACCESSORIES CORPORATION**

AND CONSOLIDATED CASES.)
_____)

1. DEFINITIONS

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

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

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

3 1.4 “Fashion Accessories” means wallets, handbags, purses and clutches.

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

6 1.6 “Manufactured” and “Manufactures” have the meaning defined in Section
7 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],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 October 29, 2013, the term “Manufactured” and “Manufactures” means to
manufacture, produce, or assemble.

27 ² As of October 29, 2013, “Paint or other Surface Coatings” means a fluid, semi-fluid, or
28 other 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

1 1.11 “Vendor” means a person or entity that Manufactures, imports, distributes, or
2 supplies a Fashion Accessory to Settling Defendant, and that is not itself a Settling Defendant.

3 **2. INTRODUCTION**

4 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
5 Environmental Health (“CEH”) and defendant Ana Accessories Corporation. (“Settling
6 Defendant”).

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

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

13 2.4 On September 18, 2013, CEH served a 60-Day Notice of Violation under
14 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
15 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by
16 exposing persons to Lead contained in wallets, handbags, purses and clutches, without first
17 providing a clear and reasonable Proposition 65 warning. On December 5, 2012, CEH filed the
18 action entitled *CEH v. Fashion Eden*, Case No. RG 12-658652. On or about November 22, 2013,
19 CEH named Settling Defendant as a “Handbags Defendant” in the *Fashion Eden* action via Doe
20 Amendment.

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

26
27 other surface. This term does not include printing inks or those materials which actually become
28 a part of the substrate, such as the pigment in a plastic article, or those materials which are
actually bonded to the substrate, such as by electroplating or ceramic glazing.

1 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
2 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
3 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
5 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
6 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
7 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
8 this action.

9 **3. INJUNCTIVE RELIEF**

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

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

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

21 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

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

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

1 that Covered Product.

2 3.4 **Warnings for Covered Products.**

3 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
4 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to
5 meeting the Lead Limits, be sold or offered for retail sale in California after the Effective
6 Date, with a Clear and Reasonable Warning that complies with the provisions of Section
7 3.4.2.

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

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

13 Or

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

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

25 3.5 **Action Regarding Specific Products.**

26 3.5.1 On or before the Effective Date, Settling Defendant shall (i) cease selling
27 the Yellow Clutch (the “Section 3.5 Product”) in California; (ii) cease shipping the
28 Section 3.5 Product to any of its customers that resell the Section 3.5 Product in

1 California, and (iii) send instructions to its customers that resell the Section 3.5 Product in
2 California instructing them either to (a) return all the Section 3.5 Product to the Settling
3 Defendant for destruction; or (b) directly destroy the Section 3.5 Product; or (c) sell the
4 Section 3.5 Product with a Clear and Reasonable Warning that complies with the
5 provisions of Section 3.4.2.

6 3.5.2 Any destruction of the Section 3.5 Product shall be in compliance with all
7 applicable laws.

8 3.5.3 Within sixty days of the Effective Date, Settling Defendant shall provide
9 CEH with written certification from Settling Defendant confirming compliance with the
10 requirements of this Section 3.5.

11 **4. ENFORCEMENT**

12 4.1 Any Party may, after meeting and conferring, by motion or application for an
13 order to show cause before this Court, enforce the terms and conditions contained in this Consent
14 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent
15 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3.

16 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
17 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.2.

18 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
19 Defendant within 45 days of the date the alleged violation(s) was or were observed,
20 provided, however, that CEH may have up to an additional 45 days to provide Settling
21 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it
22 from its laboratory.

23 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
24 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
25 (b) the location at which the Covered Product was offered for sale, (c) a description of the
26 Covered Product giving rise to the alleged violation, and of each Accessible Component
27 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
28 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including

1 a picture of the Covered Product and all identifying information on tags and labels, and
2 (d) all test data obtained by CEH regarding the Covered Product and related supporting
3 documentation, including all laboratory reports, quality assurance reports and quality
4 control reports associated with testing of the Covered Products. Such Notice of Violation
5 shall be based at least in part upon total acid digest testing performed by an independent
6 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
7 themselves sufficient to support a Notice of Violation, although any such testing may be
8 used as additional support for a Notice. The Parties agree that the sample Notice of
9 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
10 subsections (c) and (d) of this Section 4.2.2.

11 **4.2.3 Additional Documentation.** CEH shall promptly make available for
12 inspection and/or copying upon request by and at the expense of Settling Defendant, all
13 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 **4.2.4 Multiple Notices.** If 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 4.2.4, the following shall be excluded:

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

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

1 Section 4.3.3(c).

2 4.3 **Notice of Election.** Within 30 days of receiving a Notice of Violation
3 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant
4 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
5 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be
6 deemed an election to contest the Notice of Violation. Any contributions to the Fashion
7 Accessory Testing Fund required under this Section 4 shall be made payable to The Center for
8 Environmental Health and included with Settling Defendant’s Notice of Election.

9 4.3.1 **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 4.3.2. 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 4.3.2 **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 4.3.3 applies.

5 **4.3.3 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 Section 4.3.2 and this Section
9 4.3.3, if any.

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

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

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

26 (ii) Not required or payable, if the Notice of Violation concerns a
27 Non-Suspect Material; provided, however, that the foregoing exemption
28 shall not apply if Settling Defendant has received more than three Notices

1 of Violation in an 18-month period for the same Non-Suspect Material that
2 was supplied by more than one Vendor; or

3 (iii) One thousand five hundred dollars (\$1500) if Settling
4 Defendant is in violation of Section 3.3 only insofar as that Section deems
5 Settling Defendant to have “offered for sale” a product sold at retail by
6 Settling Defendant’s customer, provided however, that no contribution is
7 required or payable if Settling Defendant has already been required to pay
8 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This
9 subsection shall apply only to Covered Products that Settling Defendant
10 demonstrates were shipped prior to the Effective Date.

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

15 **4.4 Additional Enforcement for Noncompliant Non-Covered Products.** If
16 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
17 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
18 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to
19 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
20 notice to Settling Defendant pursuant to this Section 4.4.

21 4.4.1 The notice shall contain the information required for a Notice of Violation
22 in Section 4.2. If the information is insufficient to allow Settling Defendant to identify the
23 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
24 further identifying information for the Noncompliant Non-Covered Product that is
25 reasonably available to it.

26 4.4.2 Within 30 days of receiving a notice pursuant to Section 4.4, or of any
27 requested further information sufficient to identify the Noncompliant Non-Covered
28

1 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
2 The Notice of Election shall:

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

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

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

17 4.4.3 A party's disclosure pursuant to this Section 4.4 of any (i) test reports, (ii)
18 confidential business information, or (iii) other information that may be subject to a claim
19 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
20 or confidentiality, provided that the Party disclosing such information shall clearly
21 designate it as confidential. Any Party receiving information designated as confidential
22 pursuant to this Section 4.4.3 shall not disclose such information to any unrelated person
23 or entity, and shall use such information solely for purposes of resolving any disputes
24 under this Consent Judgment.

25 4.4.4 No further action is required of Settling Defendant under this Consent
26 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
27 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
28 Covered Product by the terms of a separate settlement agreement or consent judgment

1 entered into by CEH under Health & Safety Code § 25249.7 (“Qualified Settlement”).

2 4.4.5 If Settling Defendant elects not to proceed under Section 4.4, then neither
3 Settling Defendant nor CEH has any further duty under this Section 4.4 and either may
4 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
5 elects to proceed under Section 4.4.2(c)(ii), then compliance with that Section shall
6 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

7 4.4.6 If Settling Defendant elects to proceed under this Section 4.4 and is not
8 relieved of liability under Section 4.4.4, Settling Defendant shall make a contribution to
9 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
10 provisions of Section 4.3.3(c) applies, in which case the applicable amount specified in
11 Section 4.3.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
12 of the person(s) identified by Settling Defendant pursuant to Section 4.4.2 (i) is a person
13 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
14 has a principal place of business located within the United States, and \$10,000 for all
15 other notices.

16 4.4.7 If Settling Defendant makes a contribution pursuant to this Section and at a
17 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
18 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
19 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
20 settlement amount paid by such Vendor. If the settlement or consent judgment between
21 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
22 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
23 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor’s
24 settlement payment.

25 4.4.8 Any notice served by CEH pursuant to this Section 4.4 shall not be
26 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.4
27 affects CEH’s right to issue a 60-Day Notice under Proposition 65 against any entity other
28 than Settling Defendant.

1 **5. PAYMENTS**

2 **5.1 Payments by Settling Defendant.** On or before December 13, 2013, Settling
3 Defendant shall pay the sum of \$15,000 as a settlement payment by check payable to the
4 Lexington Law Group. On or before January 31, 2014, Settling Defendant shall pay the sum of
5 \$30,000 as a settlement payment by check payable to the Lexington Law Group, for a total sum
6 of \$45,000. The settlement payments for Settling Defendant shall be delivered to the offices of
7 the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California
8 94117, and allocated as set forth below between the following categories:

9 5.1.1 \$5,930 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
10 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
11 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
12 Assessment).

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

21 5.1.3 \$30,170 as reimbursement of a portion of CEH’s reasonable attorneys’ fees
22 and costs.

23 **6. MODIFICATION**

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

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

1 modify the Consent Judgment.

2 **7. CLAIMS COVERED AND RELEASED**

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

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

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

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

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26 **8. NOTICE**

27 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
28 notice shall be sent by first class and electronic mail to:

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Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

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

Ki Whan Pak, President
Ana Accessories Corporation
1004 Towne Avenue
Los Angeles, CA 90021
charles@theanacollection.com

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

9. COURT APPROVAL

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

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

10. ATTORNEYS' FEES

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

1 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
2 its own attorneys' fees and costs.

3 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
4 sanctions pursuant to law.

5 **11. TERMINATION**

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

10 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
11 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
12 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
13 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
14 7.1 and 12.1 shall survive any termination.

15 **12. OTHER TERMS**

16 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
17 of California.

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

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

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

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

8 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

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

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

17 12.8 The Parties, including their counsel, have participated in the preparation of
18 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
19 This Consent Judgment was subject to revision and modification by the Parties and has been
20 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
21 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
22 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
23 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
24 be resolved against the drafting Party should not be employed in the interpretation of this Consent
25
26
27
28

1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

2

3 **IT IS SO ORDERED:**

4

5 Dated: MAY 06 2014

Wynne Carvill

Judge of the Superior Court

6


7

8 **IT IS SO STIPULATED:**

9

10 **CENTER FOR ENVIRONMENTAL HEALTH**

11

12 

Signature

14 *CHARLIE PIZARRO*

Printed Name

16

17 *ASSOCIATE DIRECTOR*

Title

19

20 **ANA ACCESSORIES CORPORATION**

21

22 _____
Signature

23

24 _____
Printed Name

26

27 _____
Title

28

1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

2

3 **IT IS SO ORDERED:**

4

5 Dated: _____

Judge of the Superior Court

6

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8 **IT IS SO STIPULATED:**

9

10 **CENTER FOR ENVIRONMENTAL HEALTH**

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Signature

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Printed Name

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Title

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ANA ACCESSORIES CORPORATION

21

Ki Whan Pak

Signature

23

24

Ki Whan Pak

Printed Name

25

26

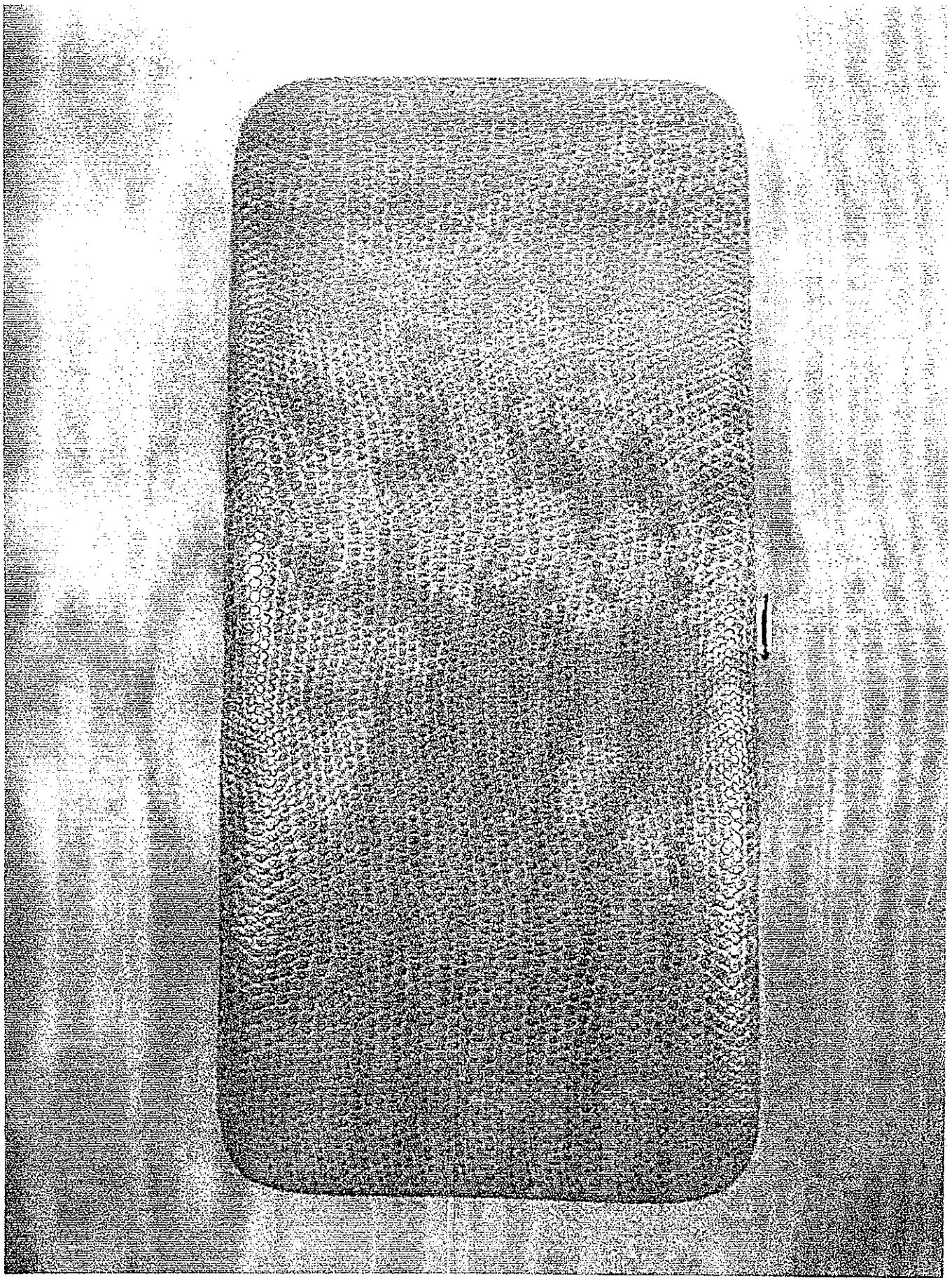
CEO

Title

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Exhibit A



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ORANGE

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



925-828-1440
www.TheNFL.com

Analytical Report

August 03, 2011

Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117

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

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

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

| Analyte | Result | Units | Method Ref. |
|---------|--------|-------|-------------|
| Lead | 67500 | ppm | NIOSH 7082 |

A portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

Sample(s) were received in good condition unless and results are reported based on the sample(s) as received, unless otherwise noted. Please note that these results apply only to the sample(s) submitted for this report. Samples from a different portion of the same lot may produce different results.

The National Food Lab services are provided subject to our standard terms and conditions, which can be found on our website, www.TheNFL.com. 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