

1 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
2 with or without a suspension of finely divided coloring matter, which changes to a solid film
3 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
4 This term does not include printing inks or those materials which actually become a part of the
5 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
6 the substrate, such as by electroplating or ceramic glazing.

7 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or
8 supplies a Covered Product to Settling Defendant.

9 2. INTRODUCTION

10 2.1 The parties (“Parties”) to this Consent Judgment are the Center for
11 Environmental Health (“CEH”) and Defendant Spring Footwear Corp. (“Settling Defendant”).

12 2.2 On January 16, 2015, CEH served a 60-Day Notice of Violation under
13 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
14 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney
15 General, the District Attorneys of every County in the State of California, and the City Attorneys
16 for every City in the State of California with a population greater than 750,000. The Notice
17 alleges that Settling Defendant violated Proposition 65 by exposing persons to Lead contained in
18 footwear without first providing a clear and reasonable Proposition 65 warning.

19 2.3 On April 8, 2015, CEH filed the action *Center for Environmental Health v.*
20 *Charming Charlie LLC, et al.*, Case No. RG 15-765590, in the Superior Court of California for
21 Alameda County, naming Settling Defendant as a defendant.

22 2.4 Settling Defendant manufactures, distributes and/or offers for sale Covered
23 Products in the State of California or has done so in the past.

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

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 thirty (30) days after the Effective Date, Settling Defendant shall provide the Lead
12 Limits to its Vendors of Covered Products and shall instruct each Vendor to use reasonable
13 efforts to provide Covered Products that comply with the Lead Limits on a nationwide basis.

14 3.2 **Lead Limits.** Commencing on April 1, 2016, Settling Defendant shall not
15 purchase, import, Manufacture, supply to an unaffiliated third party, or sell or offer for sale any
16 Covered Product that will be sold or offered for sale to California consumers that contains a
17 material or is made of a component that exceeds the following Lead Limits:

18 3.2.1 Paint or other Surface Coatings: 90 parts per million ("ppm").

19 3.2.2 Polyvinyl chloride ("PVC"): 200 ppm.

20 3.2.3 All other materials or components other than cubic zirconia (sometimes
21 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

22 **4. ENFORCEMENT**

23 4.1 Any Party may, after meeting and conferring, by motion or application for an
24 order to show cause before this Court, enforce the terms and conditions contained in this Consent
25 Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment
26 shall be brought exclusively pursuant to Sections 4.2 through 4.3.

27 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section
28 3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

1 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
2 Defendant within 45 days of the date the alleged violation(s) was or were observed,
3 provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling
4 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it
5 from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a
6 Covered Product so long as: (a) the identity of the supplier cannot be discerned from the
7 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
8 within 45 days of the date the supplier is identified by CEH.

9 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
10 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
11 (b) the location at which the Covered Product was offered for sale, (c) a description of the
12 Covered Product giving rise to the alleged violation, and of each material or component
13 that is alleged not to comply with the Lead Limits, including a picture of the Covered
14 Product and all identifying information on tags and labels, and (d) all test data obtained by
15 CEH regarding the Covered Product and related supporting documentation, including all
16 laboratory reports, quality assurance reports and quality control reports associated with
17 testing of the Covered Products. Such Notice of Violation shall be based at least in part
18 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
19 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
20 Notice of Violation, although any such testing may be used as additional support for a
21 Notice.

22 4.2.3 **Additional Documentation.** CEH shall promptly make available for
23 inspection and/or copying upon request by and at the expense of Settling Defendant, all
24 supporting documentation related to the testing of the Covered Products and associated
25 quality control samples, including chain of custody records, all laboratory logbook entries
26 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
27 from all analytical instruments relating to the testing of Covered Product samples and any
28 and all calibration, quality assurance, and quality control tests performed or relied upon in

1 conjunction with the testing of the Covered Products, obtained by or available to CEH that
2 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
3 any exemplars of Covered Products tested.

4 4.2.4 **Multiple Notices.** If Settling Defendant has received more than four
5 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
6 fines, costs, penalties, or remedies are provided by law for failure to comply with the
7 Consent Judgment. For purposes of determining the number of Notices of Violation
8 pursuant to this Section 4.2.4, the following shall be excluded:

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

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

13 4.3 **Notice of Election.** Within thirty (30) days of receiving a Notice of Violation
14 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant
15 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
16 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
17 deemed an election to contest the Notice of Violation. Any contributions to the Fashion
18 Accessory Testing Fund required under this Section 4.3 shall be made payable to The Center for
19 Environmental Health and included with Settling Defendant's Notice of Election.

20 4.3.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
21 Election shall include all then-available documentary evidence regarding the alleged
22 violation, including any test data. Within thirty (30) days the parties shall meet and confer
23 to attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
24 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
25 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
26 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
27 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
28 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-

1 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or
2 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
3 other data regarding the alleged violation, it shall promptly provide all such data or
4 information to the other Party.

5 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
6 Settling Defendant shall include in its Notice of Election a detailed description of
7 corrective action that it has undertaken or proposes to undertake to address the alleged
8 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
9 Covered Product will no longer be offered by Settling Defendant or its customers for sale
10 in California. If there is a dispute over the sufficiency of the proposed corrective action or
11 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
12 meet and confer before seeking the intervention of the Court to resolve the dispute. In
13 addition to the corrective action, Settling Defendant shall make a contribution to the
14 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
15 Section 4.3.3 applies.

16 **4.3.3 Limitations in Non-Contested Matters.**

17 (a) If it elects not to contest a Notice of Violation before any motion
18 concerning the violation(s) at issue has been filed, the monetary liability of Settling
19 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section
20 4.3.3, if any.

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

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

26 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
27 Defendant, prior to receiving and accepting for distribution or sale the
28 Covered Product identified in the Notice of Violation, obtained test results

1 demonstrating that all of the materials or components in the Covered
2 Product identified in the Notice of Violation complied with the applicable
3 Lead Limits, and further provided that such test results meet the same
4 quality criteria to support a Notice of Violation as set forth in Section 4.2.2
5 and that the testing was performed within two years prior to the date of the
6 sales transaction on which the Notice of Violation is based. Settling
7 Defendant shall provide copies of such test results and supporting
8 documentation to CEH with its Notice of Election; or

9 (ii) One thousand five hundred dollars (\$1,500) if Settling
10 Defendant is in violation of Section 3.2 only insofar as that Section deems
11 Settling Defendant to have "offered for sale to California consumers" a
12 product sold at retail by Settling Defendant's customer, provided however,
13 that no contribution is required or payable if Settling Defendant has already
14 been required to pay a total of ten thousand dollars (\$10,000) pursuant to
15 this subsection. This subsection shall apply only to Covered Products that
16 Settling Defendant demonstrates were shipped prior to the Effective Date;
17 or

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

22 **5. PAYMENTS**

23 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum
24 of \$22,500 as a settlement payment. This total shall be paid on the dates and in the amounts as
25 further set forth in this Section and Exhibit A and allocated and delivered as follows:

26 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil
27 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%
28 to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment

1 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty for the amounts designated
2 for Settling Defendant on Exhibit A as “Civil Penalty OEHHA Portion” shall be made payable to
3 OEHHA and associated with taxpayer identification number 68-0284486. These payments shall
4 be delivered as follows:

5 For United States Postal Service Delivery:

6 Attn: Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010, MS #19B
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street, MS #19B
16 Sacramento, CA 95814

17 The CEH portion of the civil penalty payment for the amounts designated for Settling
18 Defendant on Exhibit A as “Civil Penalty CEH Portion” shall be made payable to the Center for
19 Environmental Health and associated with taxpayer identification number 94-3251981. These
20 payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
21 94117.

22 5.1.2 A payment in lieu of civil penalty for the amounts set forth on Exhibit A as
23 “Payment in Lieu of Civil Penalty” to CEH pursuant to Health & Safety Code § 25249.7(b), and
24 California Code of Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its
25 work educating and protecting people from exposures to toxic chemicals, including heavy metals.
26 In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
27 percent of such funds to award grants to grassroots environmental justice groups working to
28 educate and protect people from exposures to toxic chemicals. The method of selection of such
groups can be found at the CEH web site at www.ceh.org/justicefund. The payments pursuant to
this Section shall be made payable to the Center for Environmental Health and associated with
taxpayer identification number 94-3251981. These payment shall be delivered to Lexington Law
Group, 503 Divisadero Street, San Francisco, CA 94117.

1 5.1.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and costs
2 in the amounts set forth on Exhibit A as "Attorneys' Fees and Costs." The attorneys' fees and
3 cost reimbursement checks shall be made payable to the Lexington Law Group and associated
4 with taxpayer identification number 94-3317175. These payment shall be delivered to Lexington
5 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

6 **6. MODIFICATION**

7 6.1 **Written Consent.** This Consent Judgment may be modified from time to
8 time by express written agreement of the Parties with the approval of the Court, or by an order of
9 this Court upon motion and in accordance with law.

10 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
11 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
12 modify the Consent Judgment.

13 **7. CLAIMS COVERED AND RELEASED**

14 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
15 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
16 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
17 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
18 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
19 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")
20 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
21 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
22 to warn about alleged exposure to Lead contained in Covered Products that were sold by Settling
23 Defendant prior to the Effective Date.

24 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
25 constitutes compliance with Proposition 65 with respect to Lead in Covered Products sold by
26 Settling Defendant.

27 7.3 This Consent Judgment resolves all monetary claims CEH has asserted against
28 Settling Defendant and any of its retail customers under Fashion Accessory Testing Fund Notices

1 of Violation issued or to be issued by CEH that are related to the Section 3.3 Products.

2 **8. NOTICE**

3 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
4 notice shall be sent by first class and electronic mail to:

5 Eric S. Somers
6 Lexington Law Group
7 503 Divisadero Street
8 San Francisco, CA 94117
9 esomers@lexlawgroup.com

10 8.2 When Settling Defendant is entitled to receive any notice under this Consent
11 Judgment, the notice shall be sent by first class and electronic mail to:

12 David Benzikry
13 Spring Footwear Corp.
14 1001 West McNab Road
15 Pompano Beach, FL 33069
16 david@springfootwear.com

17 and

18 Daniel S. Silverman
19 Venable LLP
20 2049 Century Park East, Suite 2100
21 Los Angeles, CA 90067
22 dsilverman@venable.com

23 8.3 Any Party may modify the person and address to whom the notice is to be sent
24 by sending each other Party notice by first class and electronic mail.

25 **9. COURT APPROVAL**

26 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
27 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
28 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.

1 **10. ATTORNEYS' FEES**

2 10.1 Should CEH prevail on any motion, application for an order to show cause or
3 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
5 Settling Defendant prevail on any motion application for an order to show cause or other
6 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
7 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
8 or application lacked substantial justification. For purposes of this Consent Judgment, the term
9 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
10 Code of Civil Procedure §§ 2016, *et seq.*

11 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
12 its own attorneys' fees and costs.

13 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
14 sanctions pursuant to law.

15 **11. TERMINATION**

16 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
17 at any time after January 1, 2020, upon the provision of 30 days advanced written notice; such
18 termination shall be effective upon the subsequent filing of a notice of termination with Superior
19 Court of Alameda County.

20 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
21 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
22 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided
23 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and 7.1
24 shall survive any termination.

25 **12. OTHER TERMS**

26 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
27 of California.

28 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling

1 Defendant, and the successors or assigns of any of them.

2 12.3 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein and therein. There are no warranties, representations, or other agreements between
6 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
7 implied, other than those specifically referred to in this Consent Judgment have been made by any
8 Party hereto. No other agreements not specifically contained or referenced herein, oral or
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
10 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
11 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
12 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
13 whether or not similar, nor shall such waiver constitute a continuing waiver.

14 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
15 that Settling Defendant might have against any other party, whether or not that party is a Settling
16 Defendant.

17 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

19 12.6 The stipulations to this Consent Judgment may be executed in counterparts
20 and by means of facsimile or portable document format (pdf), which taken together shall be
21 deemed to constitute one document.

22 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
24 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
25 Party.

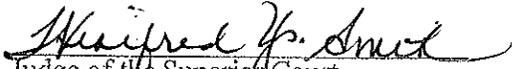
26 12.8 The Parties, including their counsel, have participated in the preparation of
27 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
28 This Consent Judgment was subject to revision and modification by the Parties and has been

1 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
2 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
3 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
4 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
5 be resolved against the drafting Party should not be employed in the interpretation of this Consent
6 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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IT IS SO ORDERED:

Dated: MAR 04 2016


Judge of the Superior Court
WINIFRED Y. SMITH

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

1 SPRING FOOTWEAR CORP.

2

3

4

Av. Ben. F. ...
Signature



5

6

Av. Ben. F. ...
Printed Name

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v. president
Title

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Exhibit A

Superior Court of California, County of Alameda
Department 21, Administration Building

Case # RG15 765590

Case Name: Center For Environmental Health v. Charming Charlie LLC, et al.

Document(s): Order Granting Plaintiff's Motion For Court Approval And Entry Of Consent Judgments; Consent Judgment As To Esquire Footwear LLC.; Consent Judgment As To Hennis International Inc.; Consent Judgment As To Spring Footwear Corp.

DECLARATION OF SERVICE BY MAIL (CCP 1013a)

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Superior Court of California, County of Alameda. I am over the age of 18 years. My business address is 1221 Oak St. Oakland, California, 94612. I served the above-referenced document by placing copies in envelope(s) addressed as shown on the foregoing document or on the attached and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail in Oakland, California, following standard court practices.

Executed on March 4, 2016 at Oakland, California.

Chad Finke,
Executive Officer/Clerk of the Superior Court

by *Sianté Dewberry*

Sianté Dewberry
Deputy Clerk

SHORT TITLE:

Center For Environmental Health VS Charming Charlie LLC

CASE NUMBER:

RG15765590

ADDITIONAL ADDRESSEES

Lexington Law Group
Attn: Somers, Eric S.
503 Divisadero Street
San Francisco, CA 94117

Tharpe & Howell
Attn: Forman, Stephanie
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Sherman Oaks, CA 91403

*HENNIS International Inc.
c/o Constants Law Offices LLC
115 Forest Ave, Unit 331
Locust Valley, CA 94560*

NORTON ROSE FULBRIGHT US
LLP
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555 South Flower Street
Forty-First Floor
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Attn: Delehunt, Michael E.
555 California St, Ste. 1700
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Stoel Rives LLP
Attn: Jones, Melissa Ann
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

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San Francisco, CA 94111

BARG COFFIN LEWIS & TRAPP,
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Attn: Bloom, Joshua A.
350 California Street, 22nd Floor
San Francisco, CA 94104-1435

Hunton & Williams LLP
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Los Angeles, CA 90071