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6 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

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12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

13 Plaintiff,)

14 v.)

15 LULU NYC LLC, et al.,)

16 Defendants.)

Lead Case No. RG-09-459448

(Consolidated with Case Nos. RG-10-494289, RG-10-494513, and RG-10-494517)

**STIPULATION FOR ENTRY OF
JUDGMENT AS TO BENETTON
USA CORPORATION DBA UNITED
COLORS OF BENETTON**

Action Filed: June 24, 2009

17 _____)
18 AND CONSOLIDATED CASES.)
19)
20)
21 _____)

22 WHEREAS, on or about May 15, 2009, Plaintiff Center for Environmental Health
23 (“CEH”) sent a 60-day Notice of Violation of Proposition 65 to Defendant Benetton USA
24 Corporation doing business as United Colors of Benetton (“Benetton”) alleging the presence of
25 lead and lead compounds (“Lead”) in wallets, handbags, purses, and clutches (“Handbags”) sold
26 by Benetton;
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WHEREAS, shortly after receiving the Notice of Violation from CEH, Benetton ceased selling any Handbags in California;

WHEREAS, Benetton does not intend to resume sales of Handbags in California;

WHEREAS, Benetton has agreed that, if it decides to sell Handbags in California in the future, Benetton will comply with the Lead limits and other injunctive provisions of the Amended Consent Judgment entered by the Court in this action on November 3, 2010;

IT IS HEREBY STIPULATED by and between CEH and Benetton that judgment may be entered in the above-captioned action according to the terms of the Judgment attached hereto as Exhibit 1 under the following terms and conditions:

1. The attached Judgment shall not be filed with the Court nor entered by the Court provided Benetton complies with the terms of the Settlement Agreement attached hereto as Exhibit 2.

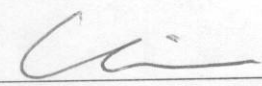
2. If Benetton breaches the attached Settlement Agreement, CEH shall be entitled to file the Judgment with the Court for entry.

3. Except as specifically stated herein, nothing in this Stipulation shall modify or in any way affect the rights or obligations of CEH and Benetton as set forth in the Settlement Agreement.

IT IS SO STIPULATED

Dated: JAN 24, ^{2011 CSP} ~~2010~~

CENTER FOR ENVIRONMENTAL HEALTH


Signature

CHARLIE PIZARRO
Name


ASSOCIATE DIRECTOR
Title

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Dated: January 18, 2010

BENETTON USA CORPORATION DBA
UNITED COLORS OF BENETTON

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Signature

Siane Marziale

Name

Vice President + Secretary

Title

Exhibit 1

1 **SETTLEMENT AGREEMENT**

2 **1. INTRODUCTION**

3 1.1 The parties to this Settlement Agreement (“Parties”) are the Center for
4 Environmental Health (“CEH”) and Benetton USA Corporation doing business as United Colors
5 of Benetton (“Benetton”).

6 1.2 On or about May 15, 2009, CEH sent a 60-day Notice of Violation under
7 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
8 & Safety Code §§ 25249.5, *et seq.*), alleging that Benetton violated Proposition 65 by exposing
9 persons to lead and lead compounds (“Lead”) contained in wallets, handbags, purses, and
10 clutches (“Handbags”), without first providing a clear and reasonable Proposition 65 warning.

11 1.3 Shortly after receiving the Notice of Violation from CEH, Benetton ceased
12 selling any Handbags in California.

13 1.4 Benetton has no present intention of resuming sales of Handbags in California.

14 1.5 On January 19, 2010, CEH filed the action entitled *Bag Bazaar, Ltd., et al.*,
15 Alameda County Superior Court Case No. RG 10-494517, in the Superior Court of California for
16 Alameda County (“the Action”), naming Benetton as a party and alleging Proposition 65
17 violations as to Handbags. On March 3, 2010, the Court consolidated the Action with the
18 following actions for pre-trial purposes under Lead Case No. RG 09-459448: *CEH v. LuLu NYC*
19 *LLC, et al.*, Alameda County Superior Court Case No. RG 09-459448, *CEH v. Ashley Stewart*
20 *Ltd., et al.*, Alameda County Superior Court Case No. RG 10-494289; and *CEH v. Zappos.com,*
21 *Inc., et al.*, Alameda County Superior Court Case No. RG 10-494513 (the “Consolidated Cases”).

22 1.6 On November 3, 2010, the Court entered an Amended Consent Judgment in
23 the Consolidated Cases (the “Amended Consent Judgment”), a copy of which is attached hereto
24 as Exhibit A.

25 1.7 Nothing in this Settlement Agreement is or shall be construed as an admission
26 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
27 compliance with the Settlement Agreement constitute or be construed as an admission by the
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1 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
2 Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense
3 the Parties may have in any other legal proceeding. This Settlement Agreement is the product of
4 negotiation and compromise and is accepted by the Parties for purposes of settling, compromising
5 and resolving issues disputed in the Action.

6 **2. COMPLIANCE**

7 2.1 In the event that in the future Benetton sells or distributes for sale, in
8 California, or causes to be manufactured, distributed, or sold, in California, any Handbags,
9 Defendant shall provide written notice to CEH, and any such Handbags shall comply with 2.2
10 below.

11 2.2 Should Benetton begin selling Handbags following execution of this
12 Settlement Agreement, Benetton shall not purchase, import, manufacture, or supply to an
13 unaffiliated third party any Handbags that will be sold or offered for sale to California consumers
14 that exceed the Lead Limits set forth in Section 3 of the Amended Consent Judgment.

15 **3. SETTLEMENT PAYMENTS**

16 3.1 **Payments by Benetton.** Within five days after execution of this Settlement
17 Agreement, Benetton shall pay the total sum of \$40,000 as a settlement payment. The total
18 settlement amount for shall be paid in three separate checks delivered to the offices of the
19 Lexington Law Group (Attn: Howard Hirsch), 1627 Irving Street, San Francisco, California
20 94122 and made payable and allocated as follows:

21 3.1.1 Benetton shall pay the sum of \$2,000 pursuant to Health & Safety Code §
22 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code §
23 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
24 Hazard Assessment). The check shall be made payable to the Center For Environmental Health.

25 3.1.2 Benetton shall pay the sum of \$12,500 as payment to CEH in lieu of
26 payment pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,
27 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting people
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1 from exposures to toxic chemicals, including heavy metals. In addition, as part of its Community
2 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants
3 to grassroots environmental justice groups working to educate and protect people from exposures
4 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at
5 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
6 Center For Environmental Health.

7 3.1.3 Benetton shall pay the sum of \$25,500 as reimbursement of a portion of
8 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check
9 shall be made payable to the Lexington Law Group.

10 **4. MODIFICATION**

11 4.1 This Settlement Agreement may be modified from time to time by express
12 written agreement of the Parties.

13 **5. ENFORCEMENT OF SETTLEMENT AGREEMENT**

14 5.1 Any alleged breach of this Settlement Agreement shall be addressed
15 exclusively through the Stipulation for Entry of Judgment between CEH and Benetton executed
16 in conjunction with this Settlement Agreement. If Judgment is entered against Benetton pursuant
17 to the terms of the Stipulation for Entry of Judgment, the terms of the Judgment shall supersede
18 any inconsistent terms in this Settlement Agreement.

19 **6. CLAIMS COVERED AND RELEASED**

20 6.1 This Settlement Agreement is a full, final and binding resolution between
21 CEH on behalf of itself and the public interest and Benetton, and its parents, subsidiaries,
22 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
23 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
24 Handbags, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
25 cooperative members, licensors, and licensees ("Downstream Defendant Releasees") of any
26 violation of Proposition 65 that was or could have been asserted in the Action against Benetton,
27 Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about
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1 alleged exposure to Lead contained in Handbags that were sold by Benetton prior to the date on
2 which this Settlement Agreement has been fully executed.

3 6.2 Compliance with the terms of this Settlement Agreement by Benetton
4 constitutes compliance with Proposition 65 with respect to Lead in Benetton's Handbags.

5 6.3 Nothing in this Section 6 affects CEH's right to commence or prosecute an
6 action under Proposition 65 against any person other than Benetton, a Defendant Releasee, or a
7 Downstream Defendant Releasee.

8 **7. NOTICE**

9 7.1 When any Party is entitled to receive any notice under this Settlement
10 Agreement, the notice shall be sent by certified mail and electronic mail.

11 7.1.1 The person for CEH to receive Notices pursuant to this Settlement
12 Agreement shall be:

13 Howard Hirsch
14 Lexington Law Group
15 1627 Irving Street
16 San Francisco, California 94122
17 hhirsch@lexlawgroup.com

18 7.1.2 The person for Benetton to receive Notices pursuant to this Settlement
19 Agreement shall be:

20 Patrick J. Hagan
21 Dillingham & Murphy, LLP
22 225 Bush Street, Sixth Floor
23 San Francisco, CA 94104-4207
24 pjh@dillinghammurphy.com

25 7.2 Any Party may modify the person and address to whom the notice is to be sent
26 by sending each other Party notice by certified mail and/or other verifiable form of written
27 communication.
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1 **8. COURT APPROVAL**

2 8.1 This Settlement Agreement shall become effective upon approval by the
3 Court. CEH shall prepare and file a Motion for Approval of this Settlement Agreement and
4 Benetton shall support Court approval of this Settlement Agreement.

5 8.2 If this Settlement Agreement is not approved by the Court, it shall be of no
6 force or effect and shall never be introduced into evidence or otherwise used in any proceeding
7 for any purpose other than to allow the Court to determine if there was a material breach of
8 Section 8.1. If this Settlement Agreement is not approved by the Court, within five days of such
9 disapproval, CEH shall return to Benetton the payments made by Benetton pursuant to Section 3.

10 **9. ATTORNEYS' FEES**

11 9.1 Should CEH prevail on any motion, application for an order to show cause or
12 other proceeding to enforce a violation of this Settlement Agreement, CEH shall be entitled to its
13 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
14 Benetton prevail on any motion application for an order to show cause or other proceeding,
15 Benetton may be awarded its reasonable attorneys' fees and costs as a result of such motion or
16 application upon a finding by the Court that CEH's prosecution of the motion or application
17 lacked substantial justification. For purposes of this Settlement Agreement, the term substantial
18 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
19 Civil Procedure §§ 2016, *et seq.*

20 9.2 Except as otherwise provided in this Settlement Agreement, each Party shall
21 bear its own attorneys' fees and costs.

22 9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of
23 sanctions pursuant to law.

24 **10. OTHER TERMS**

25 10.1 The terms of this Settlement Agreement shall be governed by the laws of the
26 State of California.

27 10.2 This Settlement Agreement shall apply to and be binding upon CEH and
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1 Benetton, and their respective divisions, subdivisions, and subsidiaries, and the successors or
2 assigns of any of them.

3 10.3 Nothing in this Settlement Agreement shall release, or in any way affect any
4 rights that any Benetton might have against any other party.

5 10.4 The parties agree that in the event Benetton shall breach this Settlement
6 Agreement, that the Stipulation for Entry of Judgment as well as the Judgment, which are the
7 subjects of this Agreement, shall be filed in the Superior Court of Alameda, State of California,
8 and that Benetton shall not contest jurisdiction, venue, or the application of California law.

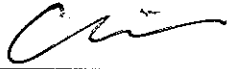
9 10.5 This Settlement Agreement may be executed in counterparts and by means of
10 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
11 one document.

12 10.6 Each signatory to this Settlement Agreement certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter
14 into and execute the Settlement Agreement on behalf of the Party represented and legally to bind
15 that Party.

16 10.7 The Parties, including their counsel, have participated in the preparation of
17 this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the
18 Parties. This Settlement Agreement was subject to revision and modification by the Parties and
19 has been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
20 any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted
21 against any Party as a result of the manner of the preparation of this Settlement Agreement. Each
22 Party to this Settlement Agreement agrees that any statute or rule of construction providing that
23 ambiguities are to be resolved against the drafting Party should not be employed in the
24 interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive
25 California Civil Code § 1654.

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IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLES PIZARRO

Printed Name

Associate Director

Title

BENETTON USA CORPORATION
DBA UNITED COLORS OF BENETTON

Signature

Printed Name

Title

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IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

BENETTON USA CORPORATION
DBA UNITED COLORS OF BENETTON

TSB

[Handwritten Signature]

Signature

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Printed Name

Vice President - Secretary

Title