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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)	Lead Case No. RG 09-459448
)	
Plaintiff,)	(Consolidated with Case Nos. RG 10-
)	494289, RG 10-494513, RG 10-494517,
v.)	RG 11-598595, RG 11-598596, and RG
)	11-603764)
LULU NYC LLC, et al.,)	
)	
Defendants.)	[PROPOSED] CONSENT
)	JUDGMENT AS TO ROSS STORES,
)	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: (i) wallets, handbags, purses, and clutches; (ii)
4 belts; and (iii) footwear.

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

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

10 1.7 “Private Label Covered Product” means a Fashion Accessory that bears a
11 private label where (i) the product (or its container) is labeled with the brand or trademark of a
12 person other than a manufacturer of the product, (ii) the person with whose brand or trademark
13 the product (or container) is labeled has authorized or caused the product to be so labeled, and
14 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

15 1.8 “Private Labeler” means an owner or licensee of a brand or trademark on the
16 label of a consumer product which bears a private label; provided, however, that Settling
17 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
18 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s
19 brand or trademark.

20 1.9 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.
21 § 1303.2(b)², as amended from time to time.

22 1.10 “Vendor” means a person or entity that Manufactures, imports, distributes, or
23 supplies a Fashion Accessory to Settling Defendant.

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

26 ² As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
27 material, with or without a suspension of finely divided coloring matter, which changes to a solid
28 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other
surface. This term does not include printing inks or those materials which actually become 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. INTRODUCTION**

2 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and defendant Ross Stores, Inc. (“Settling Defendant”).

4 2.2 Settling Defendant offers Fashion Accessories for sale in the State of
5 California.

6 2.3 More than 60 days prior to naming Settling Defendant as a defendant in each
7 applicable action, CEH served 60-Day Notices of Violation under Proposition 65 (The Safe
8 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
9 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by exposing persons to
10 Lead contained in Fashion Accessories, without first providing a clear and reasonable Proposition
11 65 warning.

12 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
13 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
14 Proposition 65 violations as to wallets, handbags, purses and clutches. On July 26, 2011, CEH
15 filed the operative Third Amended Complaint in *CEH v. Bag Bazaar, et al.*, Case No. RG 10-
16 494517, alleging Proposition 65 violations as to wallets, handbags, purses and clutches and
17 naming Settling Defendant as a defendant in that action. On April 12, 2012, CEH filed the
18 operative First Amended Complaint in *CEH v. Yoki Shoes LLC*, Case No. RG 11-598595,
19 alleging Proposition 65 violations as to footwear. On November 9, 2011, CEH filed the operative
20 Complaint in *CEH v. Armani Exchange*, Case No. RG 11-603764, alleging Proposition 65
21 violations as to belts. The *Bag Bazaar*, *Yoki Shoes*, and *Armani Exchange* actions have been
22 consolidated for pre-trial purposes with the *Lulu* consolidated cases, along with other related
23 actions pending in Alameda County Superior Court.

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 that the First Amended Complaint be deemed amended to include allegations relating to all

1 Covered Products as to Settling Defendants, and that this Court has jurisdiction to enter this
2 Consent Judgment.

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

11 **3. INJUNCTIVE RELIEF**

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

16 3.2 **Lead Limits.**

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

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

22 3.2.2 Leather Accessible Components (including composited leather): 300 ppm.

23 3.2.3 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

24 3.2.4 All other Accessible Components made of materials and components other
25 than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones: 300
26 ppm.

27 3.3 **Final Retail Compliance Date.** Commencing on December 1, 2012, Settling
28 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead

1 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s
2 direct customer sells or offers for sale to California consumers a Covered Product after the
3 applicable Final Retail Compliance Date, Settling Defendant is deemed to “offer for sale in
4 California” that Covered Product.

5 **3.4 Action Regarding Specific Products.**

6 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
7 following specific products (the “Section 3.4 Products”) in California:

- 8 • Fuchsia Collection Handbag in Green, SKU No. 400065285600, Style No.
9 866634-1
- 10 • Patent Wallet in Yellow, SKU No. 400074245428
- 11 • Perfect Image Wristlet with Studs in Coral, SKU No. 4000075996145
- 12 • Giannini Wristlet with Woven Material and Yellow, SKU No. 400072017140
- 13 • Under One Sky Wallet in Red Snakeskin, SKU No. 400074831249
- 14 • Sachi Shoulder Bag in Salmon Pink, SKU No. 400065290932
- 15 • Depeche Mode New York Polka Dot Wallet in Orange, SKU No. 400062542461
- 16 • Roxy Green Hawaiian Print Tote Handbag, SKU No. 8-83861-87035-3
- 17 • Nine West Large Moss Clutch, SKU No. 7-86130-27667-5
- 18 • Rosetti Large Pale Yellow Purse, SKU No. 400040213598
- 19 • Rampage Black Belt with Multi-color Peace Signs, SKU No. 400043292125
- 20 • Dollhouse Black Snake Peep Toe Shoe, SKU No. 400044350398
- 21 • Dollhouse Polka Dot Pumps in Yellow & Black, SKU No. 400055972299

22 3.4.2 If Settling Defendant has not complied with Section 3.4.1 prior to
23 executing this Consent Judgment, it shall instruct its California stores either to (i) return
24 all of the Section 3.4 Products to Settling Defendant for destruction; or (ii) directly destroy
25 the Section 3.4 Products.

26 3.4.3 Any destruction of Section 3.4 Products shall be in compliance with all
27 applicable laws.

28

1 3.4.4 Within sixty days of the Effective Date, Settling Defendant shall provide
2 CEH with written certification from Settling Defendant confirming compliance with the
3 requirements of this Section 3.4.

4 **4. ENFORCEMENT**

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

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

20 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
21 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

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

27 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
28 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,

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

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

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

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

1 sold to Settling Defendant from the same Vendor; and

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

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

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

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

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

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

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

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

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

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

25 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If
26 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
27 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
28 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to

1 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
2 notice to Settling Defendant pursuant to this Section 4.5.

3 4.5.1 The notice shall contain the information required for a Notice of Violation
4 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the
5 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
6 further identifying information for the Noncompliant Non-Covered Product that is
7 reasonably available to it.

8 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
9 requested further information sufficient to identify the Noncompliant Non-Covered
10 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
11 The Notice of Election shall:

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

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

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

26 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
27 confidential business information, or (iii) other information that may be subject to a claim
28 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege

1 or confidentiality, provided that the Party disclosing such information shall clearly
2 designate it as confidential. Any Party receiving information designated as confidential
3 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
4 or entity, and shall use such information solely for purposes of resolving any disputes
5 under this Consent Judgment.

6 4.5.4 No further action is required of Settling Defendant under this Consent
7 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
8 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
9 Covered Product by the terms of a separate settlement agreement or consent judgment
10 entered into by CEH under Health & Safety Code § 25249.7 (“Qualified Settlement”).

11 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
12 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may
13 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
14 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall
15 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

16 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
17 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
18 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
19 provisions of Section 4.4.3(b) applies, in which case the applicable amount specified in
20 Section 4.4.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one
21 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person
22 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
23 has a principal place of business located within the United States, and \$10,000 for all
24 other notices.

25 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a
26 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
27 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
28 Defendant shall be entitled to a refund of the lesser amount of its contribution or the

1 settlement amount paid by such Vendor. If the settlement or consent judgment between
2 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
3 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
4 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
5 settlement payment.

6 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
7 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
8 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
9 than Settling Defendant.

10 **5. PAYMENTS**

11 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent
12 Judgment, Settling Defendant shall pay the total sum of \$50,000 as a settlement payment. The
13 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to
14 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
15 Francisco, California 94117. The funds paid by Settling Defendant shall be allocated as follows:

16 5.1.1 \$6,600 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
17 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
18 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
19 Assessment). The civil penalty check shall be made payable to the Center For Environmental
20 Health (Tax ID Number 94-3251981).

21 5.1.2 \$9,900 as a payment in lieu of civil penalty to CEH pursuant to Health &
22 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
23 such funds to continue its work educating and protecting people from exposures to toxic
24 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
25 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
26 environmental justice groups working to educate and protect people from exposures to toxic
27 chemicals. The method of selection of such groups can be found at the CEH web site at
28 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the

1 Center For Environmental Health (Tax ID Number 94-3251981).

2 5.1.3 \$33,500 as reimbursement of a portion of CEH's reasonable attorneys' fees
3 and costs. The attorneys' fees and cost reimbursement check shall be made payable to the
4 Lexington Law Group (Tax ID Number 94-3317175).

5 **6. MODIFICATION**

6 6.1 **Written Consent.** This Consent Judgment may be modified from time to
7 time by express written agreement of the Parties with the approval of the Court, or by an order of
8 this Court upon motion and in accordance with law.

9 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
10 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
11 modify the Consent Judgment.

12 **7. CLAIMS COVERED AND RELEASED**

13 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
14 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
15 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
16 ("Defendant Releasees"), and each entity to whom it directly or indirectly distributes or sells
17 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
18 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")
19 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
20 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
21 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
22 Settling Defendant prior to the Effective Date.

23 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
24 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered
25 Products.

26 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
27 action under Proposition 65 against any person other than Settling Defendant, Defendant
28 Releasee, or Downstream Defendant Releasee.

1 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action
2 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
3 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
4 California consumers that does not comply with the Lead Limits after the applicable Final Retail
5 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant
6 Proposition 65 warnings under this Consent Judgment.

7 **8. NOTICE**

8 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail to:

10 Eric S. Somers
11 Lexington Law Group
12 503 Divisadero Street
13 San Francisco, CA 94117
14 esomers@lexlawgroup.com

15 8.2 When Settling Defendant is entitled to receive any notice under this Consent
16 Judgment, the notice shall be sent by first class and electronic mail to:

17 General Counsel
18 Ross Stores, Inc.
19 4440 Rosewood Drive
20 Pleasanton, CA 94588

21 With a copy to:

22 Jeffrey B. Margulies
23 Fulbright & Jaworski L.L.P.
24 555 South Flower Street, 41st Floor
25 Los Angeles, CA 90071
26 jmargulies@fulbright.com

27 8.3 Any Party may modify the person and address to whom the notice is to be sent
28 by sending the other Party notice by first class and electronic mail.

29 **9. COURT APPROVAL**

30 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
31 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
32 shall support entry of this Consent Judgment.

1 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4 **10. ATTORNEYS' FEES**

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

14 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
15 its own attorneys' fees and costs.

16 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **11. TERMINATION**

19 11.1 This Consent Judgment shall be terminable by CEH or Settling Defendant at
20 any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
21 termination shall be effective upon the subsequent filing of a notice of termination with Superior
22 Court of Alameda County.

23 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
24 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
25 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
26 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
27 7.1 and 12.1 shall survive any termination.

28 **12. OTHER TERMS**

1 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
2 of California.

3 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
4 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
5 assigns of any of them.

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

18 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
19 that Settling Defendant might have against any other party, whether or not that party is a Settling
20 Defendant.

21 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 12.6 The stipulations to this Consent Judgment may be executed in counterparts
24 and by means of facsimile or portable document format (pdf), which taken together shall be
25 deemed to constitute one document.

26 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
28 and execute the Consent Judgment on behalf of the Party represented and legally to bind that

1 Party.

2 12.8 The Parties, including their counsel, have participated in the preparation of
3 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
4 This Consent Judgment was subject to revision and modification by the Parties and has been
5 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
6 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
7 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
8 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
9 be resolved against the drafting Party should not be employed in the interpretation of this Consent
10 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

11

12 **IT IS SO ORDERED:**

13

14 Dated: _____, 2012

The Honorable Steven A. Brick
Judge of the Superior Court

15

16 **IT IS SO STIPULATED:**

17

18 **CENTER FOR ENVIRONMENTAL HEALTH**

19

20



Signature

21

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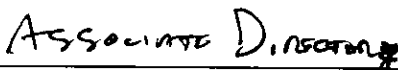


Printed Name

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Title

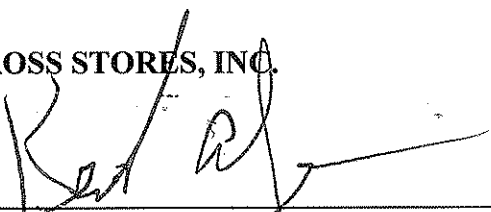
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ROSS STORES, INC.



Signature

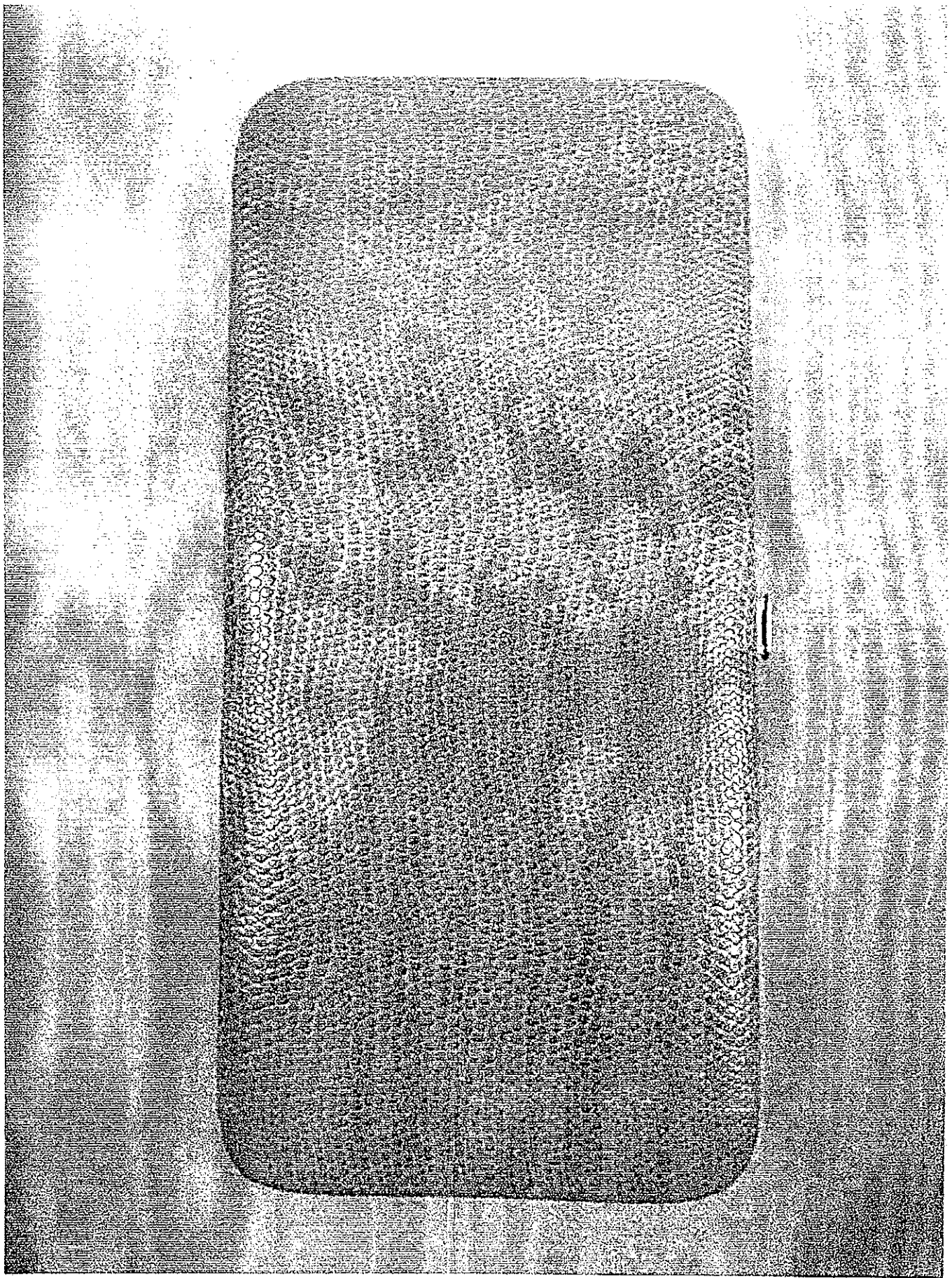
Ken Sew

Printed Name

Vice President Corporate Counsel

Title

Exhibit A



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THE

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



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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