

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

3 1.4 “Fashion Accessories” means: (i) wallets, handbags, purses, and clutches; (ii)
4 belts; (iii) footwear; provided, however, that the terms of this Consent Judgment apply to each
5 Settling Defendant only as to those Fashion Accessories designated for that Settling Defendant on
6 Exhibit A.

7 1.5 “Lead Limits” means the maximum concentrations of lead and lead
8 compounds (“Lead”) by weight specified in Section 3.2.

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

12 1.7 “Non-Suspect Materials” means natural materials other than leather that have
13 been determined not to exceed lead limits for children’s products by the final rule of the
14 Consumer Product Safety Commission set forth at 16 C.F.R. § 1500.91(d) and (e), as it exists on
15 the Effective Date.

16 1.8 “Private Label Covered Product” means a Fashion Accessory that bears a
17 private label where (i) the product (or its container) is labeled with the brand or trademark of a
18 person other than a manufacturer of the product, (ii) the person with whose brand or trademark
19 the product (or container) is labeled has authorized or caused the product to be so labeled, and
20 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

21 1.9 “Private Labeler” means an owner or licensee of a brand or trademark on the
22 label of a consumer product which bears a private label; provided, however, that a Settling
23 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
24 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s
25 brand or trademark.

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28 ¹ As of the Effective Date, the term “Manufactured” and “Manufactures” means to manufacture,
produce, or assemble.

1 1.10 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R. §
2 1303.2(b)², as amended from time to time.

3 1.11 “Vendor” means a person or entity that Manufactures, imports, distributes, or
4 supplies a Fashion Accessory to a Settling Defendant, and that is not itself a Settling Defendant.

5 **2. INTRODUCTION.**

6 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
7 Environmental Health (“CEH”) and the entities executing this Consent Judgment that are also
8 listed on Exhibit A (the “Settling Defendants”).

9 2.2 Commencing in April 2009, CEH served multiple 60-Day Notices of
10 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that the entities named in those
12 notices violated Proposition 65 by exposing persons to lead contained in wallets, handbags,
13 purses, clutches, belts and footwear, without first providing a clear and reasonable Proposition 65
14 warning.

15 2.3 Each Settling Defendant manufactures, distributes or offers Fashion
16 Accessories for sale in the State of California or has done so in the past.

17 2.4 Each Settling Defendant represents that as of the date it executes this Consent
18 Judgment: (a) no public enforcer is diligently prosecuting an action related to lead in its Fashion
19 Accessories; and (b) it does not have a pending 60-Day Notice of Violation of Proposition 65 as
20 to lead in its Fashion Accessories (as defined below) from any entity that predates the 60-Day
21 Notice of Violation of Proposition 65 issued by CEH for lead in such Fashion Accessories.
22 “Pending” in the prior sentence means that such 60-Day Notice has not been withdrawn, resolved
23 by judgment or resolved by settlement agreement.

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26 ² As of the Effective Date, “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 2.5 On June 24, 2009 CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*,
2 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
3 Proposition 65 violations as to wallets, handbags, purses, and clutches. On or about January 15,
4 2010, CEH filed its First Amended Complaint, and also filed the following new actions alleging
5 Proposition 65 violations as to lead in Fashion Accessories: *CEH v. Ashley Stewart Ltd., et al.*,
6 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,
7 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,
8 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court
9 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448.

10 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this
11 Court has jurisdiction over the allegations of violations contained in the operative Complaint
12 applicable to each Settling Defendant (the “Complaint”) and personal jurisdiction over each
13 Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
14 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

15 2.7 Nothing in this Consent Judgment is or shall be construed as an admission by
16 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
17 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
18 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
19 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
20 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
21 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
22 this action.

23 **3. INJUNCTIVE RELIEF**

24 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
25 more than 30 days after the Effective Date, each Settling Defendant shall provide the Lead Limits
26 to its Vendors of Fashion Accessories that will be sold or offered for sale to California consumers
27 and shall instruct each Vendor to use reasonable efforts to provide Fashion Accessories that
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1 comply with the Lead Limits on a nationwide basis. This Section 3.1 is not applicable with
2 respect to Non-Suspect Materials.

3 **3.2 Lead Limits.**

4 A Settling Defendant shall not purchase, import, Manufacture, or supply to an
5 unaffiliated third party any Covered Product that will be sold or offered for sale to California
6 consumers that exceeds the following Lead Limits:

7 3.2.1 Commencing on the Effective Date, Paint or other Surface Coatings on
8 Accessible Components: 90 parts per million (“ppm”).

9 3.2.2 Commencing on the Effective Date, leather (including composited leather)
10 Accessible Components: 600 ppm; and commencing on December 1, 2011: 300 ppm. In
11 the alternative, Covered Products containing multiple patches of different scrap leathers
12 may be sold with a clear and reasonable warning provided pursuant to the requirements of
13 Section 3.4.

14 3.2.3 Commencing on the Effective Date, polyvinyl chloride (“PVC”)
15 Accessible Components: 300 ppm, and commencing on December 1, 2011, PVC
16 Accessible Components: 200 ppm.

17 3.2.4 Commencing on the Effective Date, for all other Accessible Components
18 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or
19 rhinestones: 300 ppm.

20 **3.3 Final Retail Compliance Date.** Commencing on December 1, 2011, a
21 Settling Defendant shall not sell or offer for sale in California any Covered Product that exceeds
22 the Lead Limits specified in Section 3.2 as being effective on the Effective Date. Commencing
23 on December 1, 2012, a Settling Defendant shall not sell or offer for sale in California any
24 Covered Product that exceeds the Lead Limits specified in Section 3.2 as being effective
25 December 1, 2011. For purposes of this Section 3.3, when a Settling Defendant’s direct customer
26 sells or offers for sale to California consumers a Covered Product after the applicable Final Retail
27 Compliance Date, the Settling Defendant is deemed to “offer for sale in California” that Covered
28 Product.

1 **3.4 Warnings for Covered Products.**

2 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
3 Manufactured by a Settling Defendant before the Effective Date, may, as an alternative to
4 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,
5 2011, with a Clear and Reasonable Warning that complies with the provisions of Section
6 3.4.2.

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

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

12 Or

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

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

24 **3.5 Action Regarding Specific Products.**

25 3.5.1 On or before the Effective Date, each Settling Defendant shall (i) cease
26 selling the specific products (if any) identified as Section 3.5 Products next to its name on
27 Exhibit A (the “Section 3.5 Products”) in California, (ii) cease shipping the Section 3.5
28 Products to any of its customers that resell the Section 3.5 Products in California, and (iii)

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

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

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

11 3.6 **Deadlines for Belts and Footwear.** Each of the dates set forth in Sections
12 3.2, 3.3 and 3.4 is extended by one year with respect to Covered Products that are belts or
13 footwear.

14 **4. ENFORCEMENT**

15 4.1 Any Party may, after meeting and conferring, by motion or application for an
16 order to show cause before this Court, enforce the terms and conditions contained in this Consent
17 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent
18 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

19 4.2 Within 30 days after the Effective Date, each Settling Defendant shall notify
20 CEH of a means sufficient to allow CEH to identify Covered Products supplied or offered by that
21 Settling Defendant on or after that date, for example, a unique brand name or characteristic
22 system of product numbering or labeling. Upon written request by CEH, but no more than once
23 in any calendar year, Settling Defendants shall, within 30 days of receiving a request from CEH,
24 update the information provided to CEH pursuant to this Section 4.2 by notifying CEH of a
25 means sufficient to allow CEH to identify Covered Products currently supplied or offered by that
26 Settling Defendant. If CEH is unable to determine whether a particular product is a Covered
27 Product as to a Settling Defendant based on the information provided to CEH pursuant to this
28 Section 4.2, Settling Defendants shall cooperate in good faith with CEH in determining whether

1 the product at issue is a Covered Product and, if so, the identify of the Settling Defendant
2 responsible for selling the product. Information provided to CEH pursuant to this Section 4.2,
3 including but not limited to the identities of parties to contracts among Settling Defendants or
4 between Settling Defendants and third parties, may be designated by the Settling Defendant as
5 competitively sensitive confidential business information, and if so designated shall not be
6 disclosed to any person, including but not limited to any Settling Defendant, without the written
7 permission of the Settling Defendant who provided the information. Any motions or pleadings or
8 any other court filings that may reveal information designated as competitively sensitive
9 confidential business information pursuant to this Section shall be submitted in accordance with
10 California Rules of Court 8.160 and 2.550, *et seq.*

11 **4.3 Notice of Violation.** CEH may seek to enforce the requirements of Section 3.2
12 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

13 **4.3.1 Service of Notice.** CEH shall serve the Notice of Violation on the Settling
14 Defendant(s) that CEH alleges to have violated Sections 3.2 or 3.3 within 45 days of the
15 date the alleged violation(s) was or were observed, provided, however, that CEH may
16 have up to an additional 45 days to provide the Settling Defendant with the test data
17 required by Section 4.3.2(d) below if it has not yet obtained it from its laboratory.

18 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
19 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
20 (b) the location at which the Covered Product was offered for sale, (c) a description of the
21 Covered Product giving rise to the alleged violation, and of each Accessible Component
22 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
23 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including
24 a picture of the Covered Product and all identifying information on tags and labels, and
25 (d) all test data obtained by CEH regarding the Covered Product and related supporting
26 documentation, including all laboratory reports, quality assurance reports and quality
27 control reports associated with testing of the Covered Products. Such Notice of Violation
28 shall be based at least in part upon total acid digest testing performed by an independent

1 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
2 themselves sufficient to support a Notice of Violation, although any such testing may be
3 used as additional support for a Notice. The Parties agree that the sample Notice of
4 Violation attached hereto as Exhibit B is sufficient in form to satisfy the requirements of
5 subsections (c) and (d) of this Section 4.3.2.

6 **4.3.3 Additional Documentation.** CEH shall promptly make available for
7 inspection and/or copying upon request by and at the expense of the Settling Defendant,
8 all supporting documentation related to the testing of the Covered Products and associated
9 quality control samples, including chain of custody records, all laboratory logbook entries
10 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
11 from all analytical instruments relating to the testing of Covered Product samples and any
12 and all calibration, quality assurance, and quality control tests performed or relied upon in
13 conjunction with the testing of the Covered Products, obtained by or available to CEH that
14 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
15 any exemplars of Covered Products tested.

16 **4.3.4 Multiple Notices.** If the Settling Defendant has received more than four
17 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
18 fines, costs, penalties, or remedies are provided by law for failure to comply with the
19 Consent Judgment. For purposes of determining the number of Notices of Violation
20 pursuant to this Section 4.3.4, the following shall be excluded:

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

23 (b) A Notice of Violation that meets one or more of the conditions of
24 Section 4.4.3(c).

25 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation
26 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), the Settling
27 Defendant shall provide written notice to CEH stating whether it elects to contest the allegations
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1 contained in the Notice of Violation (“Notice of Election”). Failure to provide a Notice of
2 Election shall be deemed an election to contest the Notice of Violation.

3 **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
4 Election shall include all then-available documentary evidence regarding the alleged
5 violation, including any test data. Within 30 days the parties shall meet and confer to
6 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
7 CEH may file an enforcement motion or application pursuant to Section 4.1. If the
8 Settling Defendant withdraws its Notice of Election to contest the Notice of Violation
9 before any motion concerning the violations alleged in the Notice of Violation is filed
10 pursuant to Section 4.1, the Settling Defendant shall make a contribution to the
11 Proposition 65 Fashion Accessory Testing Fund in the amount of \$12,500 and shall
12 comply with all of the non-monetary provisions of Section 4.4.2. If, at any time prior to
13 reaching an agreement or obtaining a decision from the Court, CEH or the Settling
14 Defendant acquires additional test or other data regarding the alleged violation, it shall
15 promptly provide all such data or information to the other Party.

16 **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested, the
17 Settling Defendant shall include in its Notice of Election a detailed description of
18 corrective action that it has undertaken or proposes to undertake to address the alleged
19 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
20 Covered Product will no longer be offered by the Settling Defendant or its customers for
21 sale in California. If there is a dispute over the sufficiency of the proposed corrective
22 action or its implementation, CEH shall promptly notify the Settling Defendant and the
23 Parties shall meet and confer before seeking the intervention of the Court to resolve the
24 dispute. In addition to the corrective action, the Settling Defendant shall make a
25 contribution to the Fashion Accessory Testing Fund in the amount of \$10,000, unless one
26 of the provisions of Section 4.4.3 applies.

27 **4.4.3 Limitations in Non-Contested Matters.**

28 (a) The monetary liability of a Settling Defendant that elects not to

1 contest a Notice of Violation before any motion concerning the violation(s) at issue has
2 been filed shall be limited to the contributions required by this Section 4.4.3, if any.

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

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

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

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

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

1 been required to pay a total of ten thousand dollars (\$10,000) pursuant to
2 this subsection. This subsection shall apply only to Covered Products that
3 the Settling Defendant demonstrates were shipped prior to the applicable
4 Shipping Compliance Date specified in Section 3.2.

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

9 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If
10 CEH alleges that a Settling Defendant sold or offered for retail sale to California consumers a
11 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
12 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to
13 CEH serving a 60-Day Notice under Proposition 65 on such Settling Defendant, CEH shall
14 provide notice to the Settling Defendant pursuant to this Section 4.5.

15 4.5.1 The notice shall contain the information required for a Notice of Violation
16 in Section 4.3. If the information is insufficient to allow the Settling Defendant to identify
17 the Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide
18 any further identifying information for the Noncompliant Non-Covered Product that is
19 reasonably available to it.

20 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
21 requested further information sufficient to identify the Noncompliant Non-Covered
22 Product, whichever is later, the Settling Defendant shall serve a Notice of Election on
23 CEH. The Notice of Election shall:

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

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

1 reasonably available; and

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

11 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
12 confidential business information, or (iii) other information that may be subject to a claim
13 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
14 or confidentiality, provided that the Party disclosing such information shall clearly
15 designate it as confidential. Any Party receiving information designated as confidential
16 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
17 or entity, and shall use such information solely for purposes of resolving any disputes
18 under this Consent Judgment.

19 4.5.4 No further action is required of the Settling Defendant under this Consent
20 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
21 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
22 Covered Product by the terms of a separate settlement agreement or consent judgment
23 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

24 4.5.5 If the Settling Defendant elects not to proceed under Section 4.5, then
25 neither the Settling Defendant nor CEH has any further duty under this Section 4.5 and
26 either may pursue any available remedies under Proposition 65 or otherwise. If the
27 Settling Defendant elects to proceed under Section 4.5.2(c)(ii), then compliance with that
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1 Section shall constitute compliance with Proposition 65 as to that Noncompliant Non-
2 Covered Product.

3 4.5.6 If the Settling Defendant elects to proceed under this Section 4.5 and is not
4 relieved of liability under Section 4.5.4, the Settling Defendant shall make a contribution
5 to the Fashion Accessory Testing Fund in the amounts that follow unless one of the
6 provisions of Section 4.4.3(c) applies, in which case the applicable amount specified in
7 Section 4.4.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
8 of the person(s) identified by the Settling Defendant pursuant to Section 4.5.2 (i) is a
9 person in the course of doing business as defined in Health & Safety Code § 25249.11(b)
10 and (ii) has a principal place of business located within the United States, and \$10,000 for
11 all other notices.

12 4.5.7 If a Settling Defendant makes a contribution pursuant to this Section and at
13 a later date CEH resolves the alleged violation with the direct or indirect Vendor of the
14 Noncompliant Non-Covered Product, CEH shall notify the Settling Defendant and the
15 Settling Defendant shall be entitled to a refund of the lesser amount of its contribution or
16 the settlement amount paid by such Vendor. If the settlement or consent judgment
17 between CEH and the direct or indirect Vendor of the Noncompliant Non-Covered
18 Product does not provide for the refund to be paid directly by the Vendor to the Settling
19 Defendant, then CEH shall pay the refund to the Settling Defendant within 15 days of
20 receiving the Vendor's settlement payment.

21 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
22 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
23 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
24 than a Settling Defendant.

25 **5. PAYMENTS**

26 5.1 **Payments by Settling Defendants.** Within fifteen days after entry of this
27 Consent Judgment, each Settling Defendant or group of Settling Defendants identified together on
28 Exhibit A (a "Settling Defendant Group") shall pay the sum set forth for that Settling Defendant

1 Group in Exhibit A. These amounts are calculated as follows:

2 5.1.1 Each Settling Defendant Group shall pay a base settlement amount of
3 forty-five thousand dollars (\$45,000).

4 5.1.2 Each Settling Defendant Group that elected to apply the terms of this
5 Consent Judgment to a second type of Fashion Accessories as reflected on Exhibit A shall,
6 in addition to the amount set forth in Section 5.1.1, pay an additional ten thousand dollars
7 (\$10,000) for a total payment of fifty-five thousand dollars (\$55,000).

8 5.1.3 Each Settling Defendant Group that elected to apply the terms of this
9 Consent Judgment to a third type of Fashion Accessories as reflected on Exhibit A shall,
10 in addition to the amount set forth in Section 5.1.1 and 5.1.2, pay an additional ten
11 thousand dollars (\$10,000) for a total payment of sixty-five thousand dollars (\$65,000).

12 5.1.4 Each Settling Defendant Group that includes a Settling Defendant
13 identified as an Affiliated Settling Defendant on Exhibit A shall pay the amount set forth
14 on Exhibit A for such Affiliated Settling Defendants.

15 5.2 The settlement payment shall be by check made payable to the Lexington Law
16 Group Attorney-Client Trust Fund. The funds paid by the Settling Defendants shall be allocated
17 as set forth on Exhibit A for each Settling Defendant Group between the following categories:

18 5.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b), of which
19 25% shall be paid to CEH and 75% shall be paid to the State of California's Office of
20 Environmental Health Hazard Assessment.

21 5.2.2 A payment to CEH in lieu of civil penalty pursuant to Health & Safety
22 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). CEH will use such
23 funds to continue its work educating and protecting people from exposures to toxic chemicals,
24 including heavy metals. In addition, as part of its Community Environmental Action and Justice
25 Fund, CEH will use four percent of such funds to award grants to grassroots environmental
26 justice groups working to educate and protect people from exposures to toxic chemicals. The
27 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.

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1 5.2.3 A contribution to the Proposition 65 Fashion Accessory Testing Fund.
2 CEH shall use such funds to locate, purchase and test wallets, purses, handbags, clutches, belts
3 and footwear to verify compliance with the reformulation requirements of Section 3, to prepare,
4 send and prosecute Notices of Violation as necessary to Settling Defendants pursuant to Section
5 4, and to reimburse attorneys' fees and costs incurred in connection with these activities.

6 5.2.4 As reimbursement of a portion of CEH's attorneys' fees and costs.

7 **6. MODIFICATION**

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

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

14 6.3 **Opt-In Defendants.** This Consent Judgment may be amended pursuant to the
15 procedure set forth in the Order For Entry of Judgment, Opt-in Procedure and Future Amendment
16 of Consent Judgment.

17 **7. CLAIMS COVERED AND RELEASED**

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

28

1 7.2 Compliance with the terms of this Consent Judgment by a Settling Defendant
2 constitutes compliance with Proposition 65 with respect to Lead in that Settling Defendant's
3 Covered Products.

4 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
5 action under Proposition 65 against any person other than a Settling Defendant, Defendant
6 Releasee, or Downstream Defendant Releasee.

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

13 **8. NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail to:

16 Eric S. Somers
17 Lexington Law Group
18 1627 Irving Street
19 San Francisco, CA 94122
20 esomers@lexlawgroup.com

21 8.2 When any Settling Defendant is entitled to receive any notice under this
22 Consent Judgment, the notice shall be sent by first class and electronic mail to the person
23 identified in Exhibit A.

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

26 **9. COURT APPROVAL**

27 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
28 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
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 a
8 Settling Defendant prevail on any motion application for an order to show cause or other
9 proceeding, the Settling Defendant may be awarded its reasonable attorneys' fees and costs as a
10 result of such motion or application upon a finding by the court that CEH's prosecution of the
11 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
12 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
13 1986, 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 by any Settling
20 Defendant as to that Settling Defendant at any time after September 1, 2017, upon the provision
21 of 30 days advanced written notice; such termination shall be effective upon the subsequent filing
22 of a notice of termination with Superior 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 a Settling Defendant is the terminating Party, the provisions of Sections 5,
27 7.1 and 12.1 shall survive any termination.

28

1 **12. OTHER TERMS**

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

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

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

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

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

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


27 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into

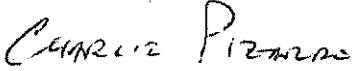
1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
2 Party.

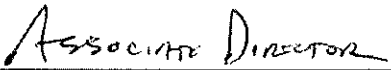
3 12.8 The Parties, including their counsel, have participated in the preparation of
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
5 This Consent Judgment was subject to revision and modification by the Parties and has been
6 accepted and approved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

12 **IT IS SO STIPULATED:**

13
14 **CENTER FOR ENVIRONMENTAL HEALTH**

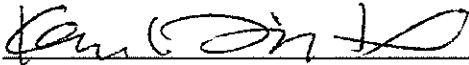
15
16 
17 _____
Signature

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19 
20 _____
Printed Name

21
22 
23 _____
Title

1 PHARMACY, INC
CVS CAREMARK CORPORATION

EF

2
3 

4 Signature

5
6 KAREN L. FESTHAMEZ

7 Printed Name

8
9 Assistant Secretary

10 Title

11 CALSON INVESTMENT LTD.

12
13
14 Signature

15
16 Printed Name

17
18 Title

19 DYNASTY FOOTWEAR, LTD.

20
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23 Signature

24
25 Printed Name

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28 Title

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CVS CAREMARK CORPORATION

Signature

Printed Name

Title

CALSON INVESTMENT LTD.

Sally
Signature

SALLY WU

Printed Name

MANAGER

Title

DYNASTY FOOTWEAR, LTD.

Signature

Printed Name

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CVS CAREMARK CORPORATION

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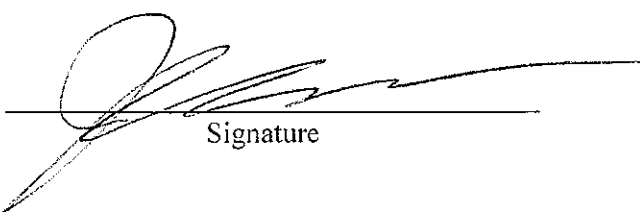
CALSON INVESTMENT LTD.

Signature

Printed Name

Title

DYNASTY FOOTWEAR, LTD.



Signature

John Koo

Printed Name

CEO

Title

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FRENCH CONNECTION GROUP, INC.



Signature

NEIL WILLIAMS

Printed Name

DIRECTOR

Title

IT IS SO ORDERED:

Dated: _____, 2011

The Honorable Steven A. Brick
Judge of the Superior Court

1 **EXHIBIT A**
2 **Settling Defendants**

3 **Settling Defendant(s):** CVS Pharmacy, Inc.
4

5 **1. Fashion Accessories Applicable to Defendant:**

6 Wallets, Handbags, Purses and Clutches

7 Belts

8 Footwear
9

10 **2. Section 3.5 Products:**

11 Candice Handbag in Yellow, CVS SKU No. 8-55947-01999-4, Style No. LA71998

12 Comely Zebra Print Handbag , CVS SKU No. 8-55947-03999-2, Item No. H1121-9Z

13 Innovation Handbag in Green, CVS SKU No. 8-55947-03299-3, Item No. H1141

14 Handbag in Red, CVS SKU No. 8-55947-02999-3, Item No. 8017 RED
15

16 **3. Defendant's Settlement Payment and Allocation:**

17 Total Settlement Payment \$45,000

18 Civil Penalty \$6,300

19 Payment in Lieu of Civil Penalty \$9,500

20 Contribution to Prop. 65 Fashion
Accessory Testing Fund \$2,000

21 Attorneys' Fees and Costs \$27,200
22

23 **4. Person(s) to Receive Notices Pursuant to Section 8.1:**

24 Melissa Jones
25 Greenberg Traurig, LLP
1201 K Street, Ste. 1100
Sacramento, CA 95814
26 jonesme@gtlaw.com
27
28

1 **Settling Defendant(s):** Calson Investment Ltd.

2

3 **1. Fashion Accessories Applicable to Defendant:**

4 Wallets, Handbags, Purses and Clutches

5 Belts

6 Footwear

7

8 **2. Defendant's Settlement Payment and Allocation:**

9 Total Settlement Payment \$45,000

10 Civil Penalty \$6,300

11 Payment in Lieu of Civil Penalty \$9,500

12 Contribution to Prop. 65 Fashion
Accessory Testing Fund \$2,000

13 Attorneys' Fees and Costs \$27,200

14

15 **3. Person(s) to Receive Notices Pursuant to Section 8.1:**

16 Melissa Jones
17 Greenberg Traurig, LLP
18 1201 K Street, Ste. 1100
19 Sacramento, CA 95814
20 jonesme@gtlaw.com

19

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1 **Settling Defendant(s):** Dynasty Footwear, Ltd.

2

3 **1. Fashion Accessories Applicable to Defendant:**

4 Wallets, Handbags, Purses and Clutches

5 Belts

6 Footwear

7

8 **2. Section 3.5 Products:**

9 Seychelles Women's Sophia Wedge Pumps in Yellow, SKU No. 8-84633-09026-9

10

11 **3. Defendant's Settlement Payment and Allocation:**

12 Total Settlement Payment \$45,000

13 Civil Penalty \$6,300

14 Payment in Lieu of Civil Penalty \$9,500

15 Contribution to Prop. 65 Fashion
Accessory Testing Fund \$2,000

16 Attorneys' Fees and Costs \$27,200

17

18 **4. Person(s) to Receive Notices Pursuant to Section 8.1:**

19 Melissa Jones
20 Greenberg Traurig, LLP
21 1201 K Street, Ste. 1100
22 Sacramento, CA 95814
23 jonesme@gtlaw.com

22

23

24

25

26

27

28

1 **Settling Defendant(s):** French Connection Group, Inc.

2

3 **1. Fashion Accessories Applicable to Defendant:**

4 Wallets, Handbags, Purses and Clutches

5 Belts

6 Footwear

7

8 **2. Section 3.5 Products:**

9 Yellow Open Tote, SKU No. 8-83494-55018-9

10 Dotty Pointed Ballerina Shoes in Red, Style No. AFAZ1, Item No. 16003

11 Posey Flat Studded Shoes in Yellow, SKU No. AFBT17603

12

13 **3. Defendant's Settlement Payment and Allocation:**

14 Total Settlement Payment \$55,000

15 Civil Penalty \$7,700

16 Payment in Lieu of Civil Penalty \$12,150

17 Contribution to Prop. 65 Fashion
Accessory Testing Fund \$2,000

18 Attorneys' Fees and Costs \$33,150

19

20 **4. Person(s) to Receive Notices Pursuant to Section 8.1:**

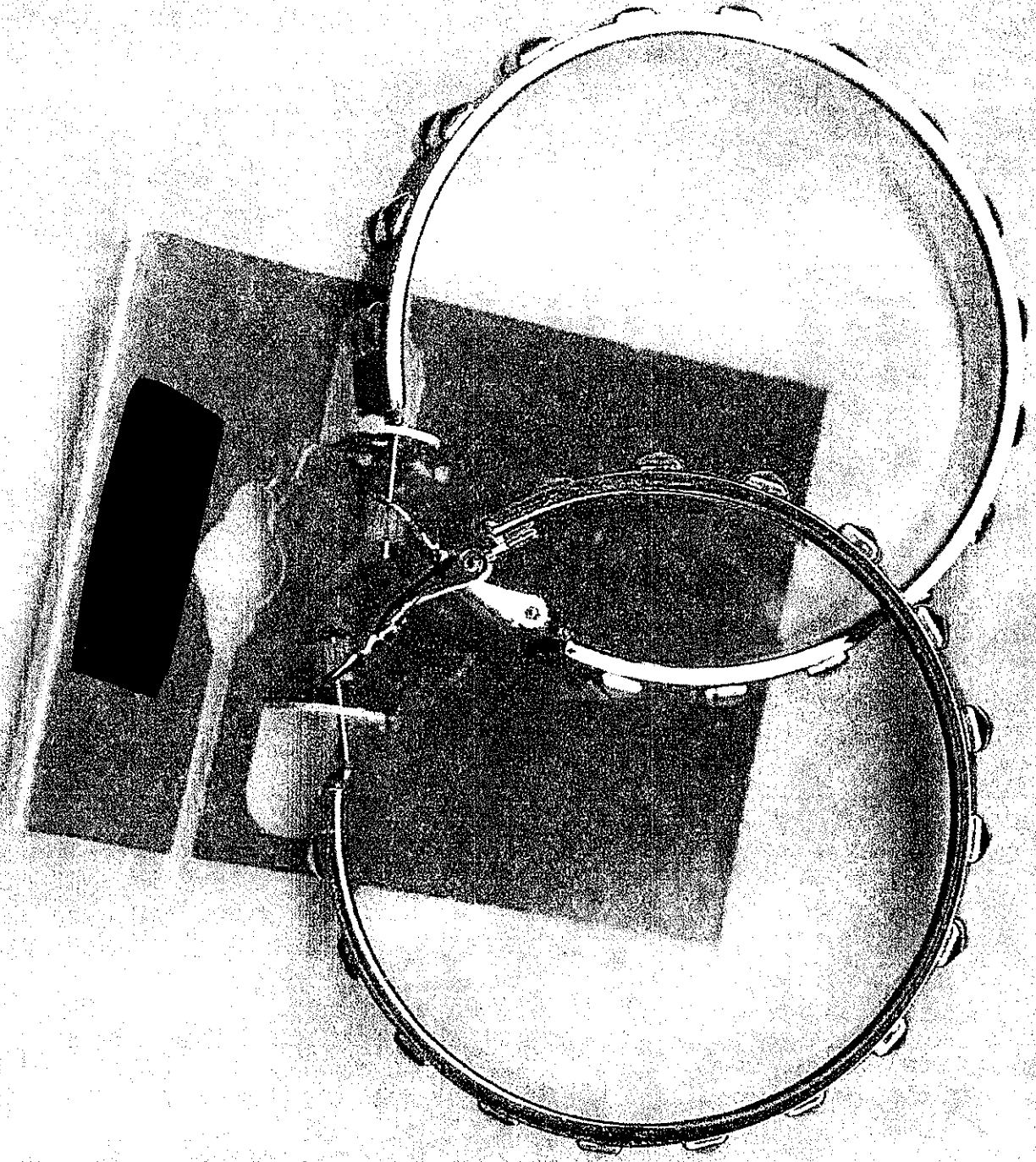
21 Melissa Jones
22 Greenberg Traurig, LLP
23 1201 K Street, Ste. 1100
24 Sacramento, CA 95814
25 jonesme@gtlaw.com

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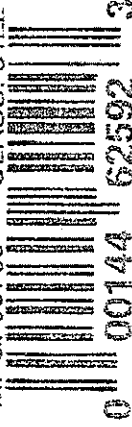
28

EXHIBIT B



251463

SEAR WK: 22 STYLE: 9688
MFG: 05769 CLASS: 3122



\$5.99

MADE
IN CHINA





THE
NATIONAL
FOOD
LAB

September 28, 2009

Analytical Report No.: CL1405-61

Center For Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612-3017

Listed below are the results of our analyses for sample(s) received on September 02, 2009.

CEH ID: JCT1463b, [REDACTED] Earrings (black faux leather on hoops)

NFL ID AE10383

Analyte	Result	Units
Lead	4140	ppm

Method Reference

Testing was conducted according to testing protocol outlined in exhibit D of the amended consent judgment, People of the State of California v. Burlington Coat Factory, June 15, 2006 and California Health Safety Code §25214.4. In summary, a portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

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.

Thank you for using the services of The National Food Laboratory.

Sincerely,

Grace Bandong, Laboratory Manager, Analytical Services - Chemistry Division

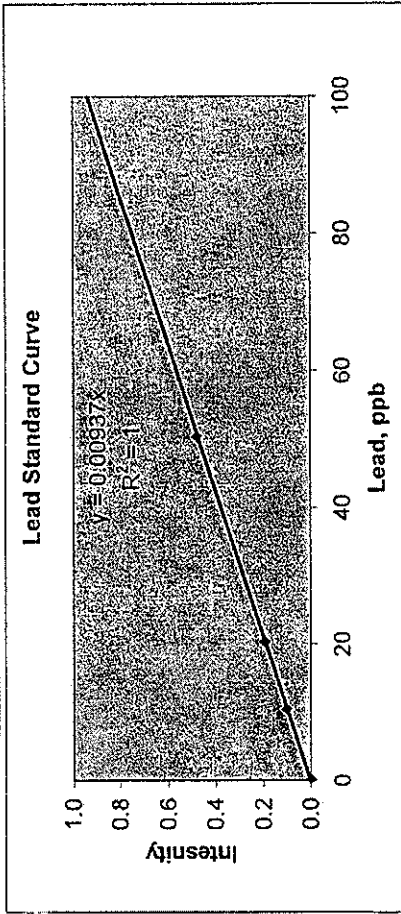
cc: Patrick Manning, Accounting

where art meets science

365 North Canyons Parkway, Suite 201, Livermore CA 94551 Tech Center: 2441 Constitution Drive, Livermore CA 94551
925.828.1440 www.TheNFL.com

Lead

Client: Centerreh
 Project No.: CL1405-61
 Analysis Date: 9/23/2009
 Analyst: C. Ng
 Method: CM5013.1
 QC data with: CL1405-60 CEH



Standards			
internal std	analyte Intensity	Conc (ppb)	al / is
1540801	289	0.2	0.000187565
1515494	157023	10.39	0.10361176
1531282	298037	20.3	0.19463107
1539419	735139	50.37	0.477543151
1567844	1471950	100.57	0.938837027

NIST Values	19.89
NFL NIST Range:	19.50 ± 1.90
NIST Range:	19.63 ± 0.21

Instrument: Perkin Elmer Elan 9000 ICP-MS
 Plasma: Argon
 Run Time: 1min 20 sec per sample
 Isotopes: Pb 206, Pb207, Pb 208
 Standards: 1029G-14-01, 1029G-14-02, 1029G-14-03, 1029G-14-04,
 Internal Standard: 1033B-01-04

Regression	
slope	0.00937
y-intercept	0

Conc. Spike (ppm)	Spike Amt. (ul)	Spike Level (ppb)	Smp Weight (g)	Final Volume (ml)	Conc. ppb	% Recovery
NA	NA	NA	NA	NA	NA	NA
NA	NA	NA	NA	NA	NA	NA

Sample Number	CEH ID	Description	Weight, g	Volume, ml	Dilution Factor	ng/g	ppm of Lead	MDL
blank		MV blank	0.10	50		31.92		
AE10383	JCT1463b	earrings (black faux leather on hoop)	0.0520	50	200	20706.51	4141	0.010 ppm

Sample Calc: ppm = (ng/g calculated by instrument * dilution factor) / 1000