

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, and RG-10-
v.)	494517)
)	
LULU NYC LLC, et al.,)	CONSENT JUDGMENT
)	[PROPOSED] AS TO H&M HENNES
Defendants.)	& MAURITZ, L.P.
)	
_____)	
)	
AND CONSOLIDATED CASES.)	
)	
_____)	

1. INTRODUCTION.

1.1 The parties to this Consent Judgment (“Parties”) are plaintiff Center for Environmental Health (“CEH”) and defendant H&M Hennes & Mauritz, L.P. (“H&M”).

1.2 H&M manufactures, distributes or offers belts for sale in the State of California or has done so in the past.

1.3 On June 24, 2009 CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*, Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging Proposition 65 violations as to wallets, handbags, purses, clutches, totes. On or about January 15, 2010, CEH filed its First Amended Complaint, and also filed the following new actions alleging

1 Proposition 65 violations as to lead in fashion accessories: *CEH v. Ashley Stewart Ltd., et al.*,
2 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,
3 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,
4 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court
5 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448.

6 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
7 has jurisdiction over the allegations of violations resolved in this Consent Judgment and personal
8 jurisdiction over H&M as to the alleged violations at issue, that venue is proper in the County of
9 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

10 1.5 Nothing in this Consent Judgment is or shall be construed as an admission by the
11 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
12 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
14 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
15 any other or future legal proceedings. This Consent Judgment is the product of negotiation and
16 compromise and is accepted by the Parties for purposes of settling, compromising and resolving
17 issues disputed in this action.

18 **2. DEFINITIONS**

19 2.1 “Covered Products” means belts.

20 2.2 “Effective Date” is the date on which this Consent Judgment is entered by the
21 Court.

22 2.3 “Lead Limits” means the maximum concentrations of Lead by weight specified in
23 Section 3.2.

24 2.4 “Manufactured” and “Manufactures” means to manufacture, produce, or assemble.

25 2.5 “Paints and Surface Coatings” means a fluid, semi-fluid, or other material, with or
26 without a suspension of finely divided coloring matter, which changes to a solid film when a thin
27 layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term
28 does not include printing inks or those materials which actually become a part of the substrate,

1 such as the pigment in a plastic article, or those materials which are actually bonded to the
2 substrate, such as by electroplating or ceramic glazing.

3 **3. INJUNCTIVE RELIEF**

4 3.1 **Specification Compliance Date.** No later than five days after the Effective Date,
5 H&M shall provide the Lead Limits to its suppliers of Covered Products and shall request each
6 Supplier to use best efforts to provide Covered Products that comply with the Lead Limits as soon
7 as commercially practicable.

8 3.2 **Lead Limits.** As of July 1, 2010, H&M shall not Manufacture, import, distribute,
9 ship, or sell or cause to be Manufactured, imported, distributed, shipped, or sold, any Covered
10 Product that exceeds the following Lead Limits:

11 3.2.1 **Paints and Surface coatings:** Paints and Surface Coatings of the Covered
12 Products may not contain more than 90 parts per million (“ppm”) Lead by weight.

13 3.2.2 **Polyvinyl Chloride:** No Covered Product may include any polyvinyl
14 chloride (PVC) that contains more than 90 ppm Lead by weight.

15 3.2.3 **Leather:** No Covered Product may include any leather component or be
16 made of any leather material that contains more than 90 ppm Lead by weight.

17 3.2.4 **Other Materials or Components:** Except as otherwise provided in
18 Sections 3.2.1, 3.2.2, 3.2.3, and 3.2.5, as of March 1, 2010, no Covered Product may contain any
19 component or be made of any material that contains more than 600 ppm Lead by weight and, as
20 of December 1, 2010, no Covered Product may contain any component or be made of any
21 material that contains more than 300 ppm Lead by weight.

22 3.2.5 **Glass, ceramic, and crystal:** The Lead Limits shall not apply to any cubic
23 zirconia (sometimes called cubic zirconium, CZ), glass or rhinestones.

24 3.3 **Certification of Compliance From Manufacturers.** As of September 1, 2010, at
25 least once per year H&M shall obtain written certification with corresponding test results from
26 the Manufacturer of each of the Covered Products certifying that: (a) no lead chromate or other
27 lead based coloring agent was used in the Manufacture of the Covered Products; and (b) that Lead
28 was not intentionally added to any polyvinyl chloride used in the Manufacture of the Covered

1 Products. These certifications shall be made available to CEH for inspection and copying upon
2 request by CEH.

3 **3.4 Market Withdrawal of Identified Products.** On or before the Effective Date,
4 H&M shall cease selling and shipping the Covered Products identified in Exhibit A to this
5 Consent Judgment (the “Identified Products”) to its stores and/or its customers that sell or offer
6 for sale Covered Products to California consumers, and, at a minimum, send instructions to any of
7 its stores and/or its customers that offer the Identified Products for sale in California to cease
8 offering such Identified Products for sale in California and to either return all the Identified
9 Products to H&M for destruction, or to directly destroy the Identified Products. Any destruction
10 of such Identified Products shall be in compliance with all applicable laws. Within sixty days of
11 the Effective Date, H&M shall provide CEH with sufficient records to document its market
12 withdrawal and destruction of such Identified Products.

13 **3.5 Testing by CEH.** CEH intends to conduct periodic testing of Covered Products to
14 ensure compliance with the Lead Limits.

15 **4. ENFORCEMENT**

16 **4.1** Any Party may, by motion or application for an order to show cause before this
17 Court, enforce the terms and conditions contained in this Consent Judgment. Enforcement of the
18 terms and conditions of Section 3 of this Consent Judgment shall be brought exclusively pursuant
19 to Sections 4.2 through 4.3.

20 **4.2 Notice of Violation.** In the event that CEH identifies one or more Covered
21 Products that it believes in good faith do not comply with an applicable Lead Limit, CEH may
22 seek to enforce the requirements of Section 3 by issuing a Notice of Violation pursuant to this
23 Section 4.2.

24 **4.2.1 Service of Notice.** The Notice of Violation shall be sent to the person(s)
25 identified in Exhibit A to receive notices for H&M, and must be served within 90 days of the date
26 the alleged violation(s) was or were observed.

27 **4.2.2 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, (b) the

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

12 **4.2.3 Multiple Notices.** If H&M has received more than three Notices of
13 Violation from CEH under this Consent Judgment in any 12-month period that result in a
14 contribution to the Fashion Accessory Testing Fund (either because they were not contested or
15 because the contest by H&M was unsuccessful), then, at CEH’s option, CEH may seek whatever
16 fines, costs, penalties, or remedies are provided by law for failure to comply with the Consent
17 Judgment. For purposes of determining the number of Notices of Violation pursuant to this
18 Section 4.2.3, multiple notices identifying different colors of the same styles of Covered
19 Product(s) shall be excluded.

20 **4.3 Notice of Election.** Within 30 days of receiving a Notice of Violation pursuant to
21 Section 4.2, H&M shall provide written notice to CEH stating whether it elects to contest the
22 allegations contained in the Notice of Violation (“Notice of Election”).

23 **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
24 Election shall include all then-available documentary evidence regarding the alleged violation,
25 including any test data. Within 30 days the parties shall meet and confer to attempt to resolve
26 their dispute. Should such attempts at meeting and conferring fail, CEH may file an enforcement
27 motion or application pursuant to Section 4.1. If H&M withdraws its Notice of Election to
28 contest the Notice of Violation before any motion concerning the violations alleged in the Notice

1 of Violation is filed pursuant to Section 4.1, H&M shall make a contribution to the Fashion
2 Accessory Testing Fund in the amount of \$12,500 and comply with the non-monetary terms of
3 Section 4.3.2. If, at any time prior to reaching an agreement or obtaining a decision from the
4 Court, CEH or H&M acquires additional test or other data regarding the alleged violation, it shall
5 promptly provide all such data or information to the other Party.

6 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested, H&M
7 shall include in its Notice of Election a detailed description of corrective action that it has
8 undertaken or proposes to undertake to address the alleged violation. Any such corrective action
9 shall at a minimum include, but not be limited to, action sufficient to ensure market withdrawal of
10 the Covered Products at issue that would be compliant with the Market Withdrawal requirement
11 of Section 3.4 hereof. If there is a dispute over the sufficiency of the proposed corrective action,
12 CEH shall promptly notify H&M and the Parties shall meet and confer before seeking the
13 intervention of the Court to resolve the dispute. In addition to the corrective action referenced in
14 this Section 4.3.2, H&M shall make a contribution to the Fashion Accessory Testing Fund in the
15 amount of \$10,000, unless one of the limitations of Section 4.3.3 applies.

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

17 (a) Except as provided in Section 4.3.3, if H&M elects not to contest a
18 Notice of Violation before any motion concerning the violation(s) at issue is filed by CEH,
19 H&M's liability shall be limited to the contributions required by Section 4.3.

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

24 **5. PAYMENTS**

25 **5.1 Payments by H&M.** Other than any money that may be payable after the
26 Effective Date pursuant to the terms of Sections 4 or 10 hereof, the payment set forth in this
27 Section 5 shall constitute the total monetary liability of H&M under this Consent Judgment.
28 Within ten days after Entry of Judgment as stipulated, H&M shall pay the total sum of \$9,500 as

1 a settlement payment. The total settlement amount for H&M shall be paid in four separate checks
2 delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 1627 Irving Street, San
3 Francisco, California 94122 and made payable and allocated as follows:

4 5.1.1 H&M shall pay the sum of \$500 pursuant to Health & Safety Code
5 §25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code
6 §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
7 Hazard Assessment). The check shall be made payable to the Center for Environmental Health.

8 5.1.2 H&M shall pay the sum of \$2,800 as payment to CEH in lieu of payment
9 pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, title 11,
10 §3202(b). CEH will use such funds to continue its work educating and protecting people from
11 exposures to toxic chemicals, including heavy metals. In addition, as part of its Community
12 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants
13 to grassroots environmental justice groups working to educate and protect people from exposures
14 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at
15 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
16 Center For Environmental Health.

17 5.1.3 H&M shall pay the sum of \$6,200 as reimbursement of CEH's reasonable
18 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
19 payable to the Lexington Law Group.

20 **6. MODIFICATION**

21 6.1 This Consent Judgment may be modified from time to time by express written
22 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion
23 and in accordance with law.

24 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
25 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
26 modify the Consent Judgment.

27
28

1 **7. CLAIMS COVERED AND RELEASED**

2 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
3 behalf of itself and the public interest and H&M, and its parents, subsidiaries, directors, officers,
4 employees, and attorneys (“Defendant Releasees”), and each entity to whom H&M directly or
5 indirectly distributes or sells Covered Products, including but not limited to distributors,
6 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream
7 Defendant Releasees”) of any violation of Proposition 65 that was or could have been asserted in
8 the Complaint against H&M, Defendant Releasees, and Downstream Defendant Releasees, based
9 on failure to warn about alleged exposure to Lead contained in Covered Products, with respect to
10 any Covered Products manufactured, shipped, or sold by H&M prior to the Effective Date.

11 7.2 Compliance with the terms of this Consent Judgment by H&M shall constitute
12 compliance with Proposition 65 with respect to Lead in any Covered Products that are
13 manufactured, shipped, or sold by H&M after the Effective Date.

14 7.3 Nothing in this Section 7 affects CEH’s rights to commence or prosecute an action
15 under Proposition 65 against any person other than H&M, a Defendant Releasee, or a
16 Downstream Defendant Releasee.

17 **8. NOTICE**

18 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
19 notice shall be sent by certified mail and electronic mail to:

20 Eric S. Somers
21 Lexington Law Group
22 1627 Irving St.
23 San Francisco, CA 94122
24 esomers@lexlawgroup.com

25 8.2 When H&M is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by certified mail and electronic mail to the person identified in Exhibit A.

27 8.3 Any Party may modify the person and address to whom the notice is to be sent by
28 sending each other Party notice by certified mail and/or other verifiable form of written
communication.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
3 shall prepare and file a Motion for Approval of this Consent Judgment and H&M shall support
4 approval of such Motion.

5 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
7 purpose other than to allow the Court to determine if there was a breach of Section 9.1.

8 **10. ATTORNEYS' FEES**

9 10.1 Should CEH prevail on any motion or application to enforce a violation of the
10 Consent Judgment under this Section, CEH shall be entitled to reimbursement of its attorneys'
11 fees and costs incurred as a result of such motion or application from H&M.

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

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

16 **11. OTHER TERMS**

17 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 11.2 This Consent Judgment shall apply to and be binding upon CEH and H&M, and
20 their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of
21 them.

22 11.3 This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
25 and therein. There are no warranties, representations, or other agreements between the Parties
26 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
27 other than those specifically referred to in this Consent Judgment have been made by any Party
28 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,

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

6 11.4 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 11.5 The stipulations to this Consent Judgment may be executed in counterparts and by
9 means of facsimile or portable document format (pdf), which taken together shall be deemed to
10 constitute one document.

11 11.6 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
13 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

14 11.7 The Parties, including their counsel, have participated in the preparation of this
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
16 Consent Judgment was subject to revision and modification by the Parties and has been accepted
17 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
18 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
19 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
20 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
21 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
22 this regard, the Parties hereby waive California Civil Code section 1654.


23 **IT IS SO STIPULATED:**

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: ^{JUNE 24} May __, 2010

CENTER FOR ENVIRONMENTAL HEALTH



CHARLIE PIZZANO
Printed Name

ASSOCIATE DIRECTOR
Title

Dated: May __, 2010

H&M HENNES & MAURITZ, L.P.

Printed Name

Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May __, 2010

CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

Dated: May 26, 2010

H&M HENNES & MAURITZ, L.P.

Laura McCabe Brandt

Laura McCabe Brandt

Printed Name

General Counsel

Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED:

Dated: _____, 2010	_____ The Honorable Steven A. Brick Judge of the Superior Court
--------------------	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Identified Products for Market Withdrawal
and Notice Recipients

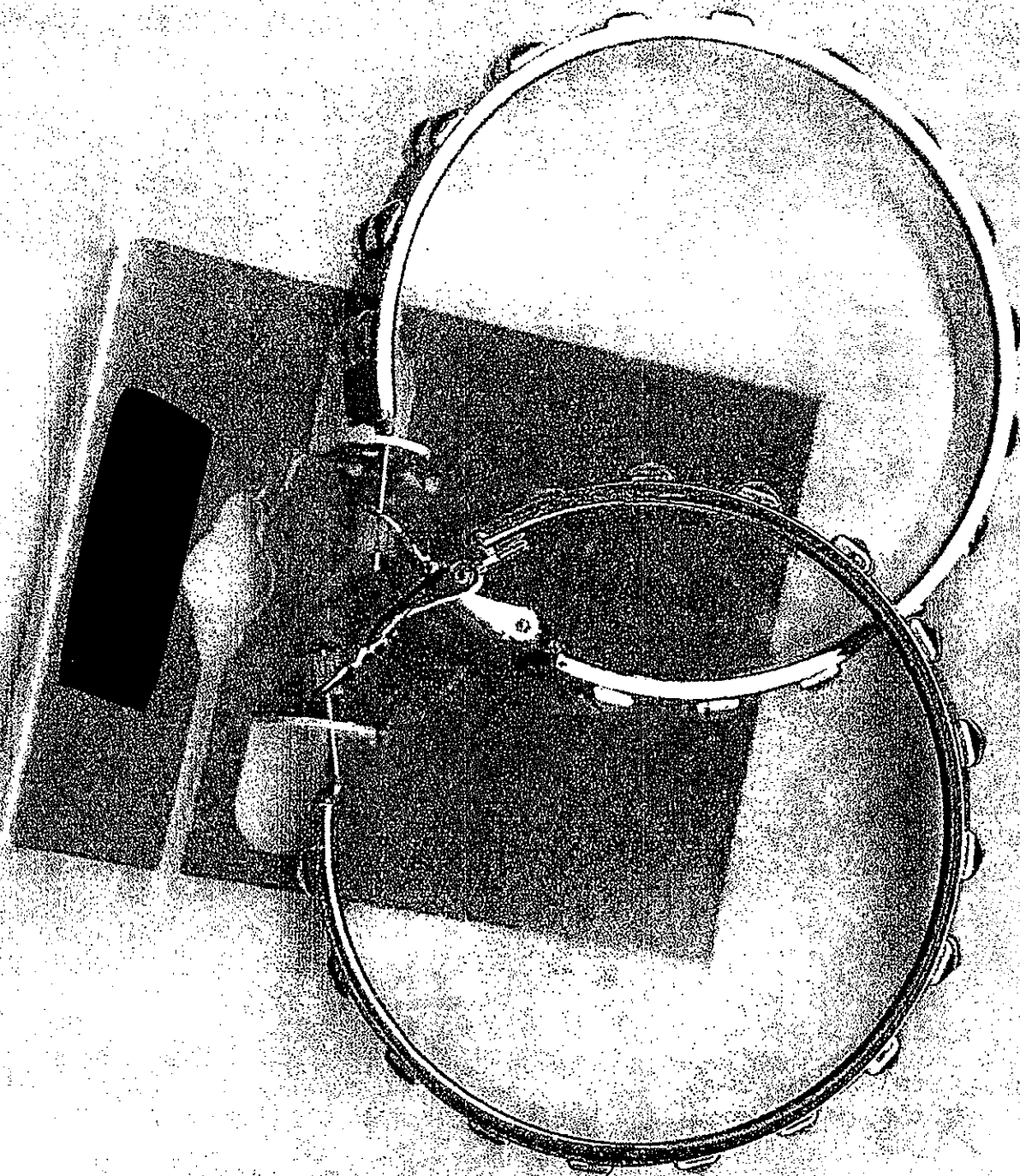
Identified Product(s) for Market Withdrawal Pursuant to Section 3.4:

Divided Belt - Red; SKU No. 083208-9-3024-45-0

Persons to Receive Notices Pursuant to Section 8.2:

Jeffrey M. Lenkov
Martin Kosla
Manning & Marder Kass, Ellrod, Ramirez LLP
801 South Figueroa Street
15th Floor
Los Angeles, CA 90017
jml@mmker.com

EXHIBIT B



151463

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



\$5.99

MADE IN CHINA



THE
NATIONAL
FOOD
L A B

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

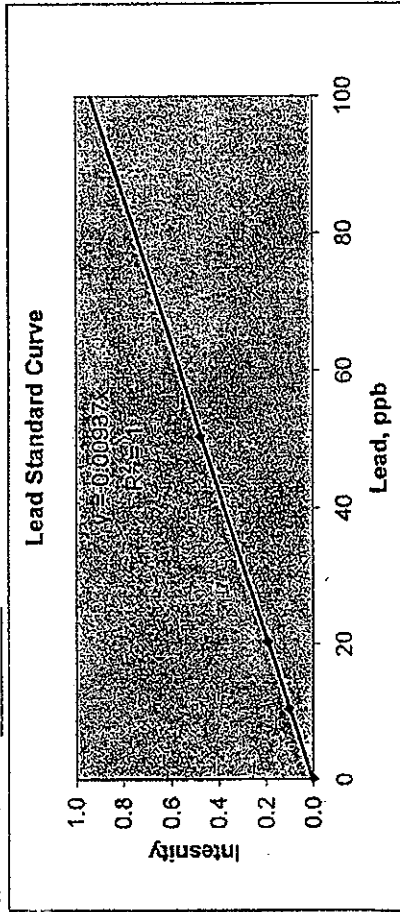
cc: Patrick Manning, Accounting

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



Internal std	analyte	Intensity	Conc (ppb)	al / fs
1540801		289	0.2	0.000187585
1575494		157023	10.38	0.10361176
1531282		280037	20.3	0.19463107
1539419		735139	50.37	0.477543151
1567844		1471950	100.57	0.938637027

NIST Values	18.89
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, P5207, 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)	Amt. Spike (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 hoops)	0.0520	50	200	20706.51	4141	0.010 ppm

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