



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 footwear.

4           1.5           “Lead Limits” means the maximum concentrations of lead and lead  
5 compounds (“Lead”) by weight specified in Section 3.2.

6           1.6           “Manufactured” and “Manufactures” have the meaning defined in Section  
7 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],<sup>1</sup> as amended  
8 from time to time.

9           1.7           “Non-Suspect Materials” means natural materials other than leather that have  
10 been determined not to exceed Lead limits for children’s products by the final rule of the  
11 Consumer Product Safety Commission set forth at 16 C.F.R. § 1500.91(d) and (e), as it existed on  
12 June 1, 2010.

13           1.8           “Private Label Covered Product” means a Fashion Accessory that bears a  
14 private label where (i) the product (or its container) is labeled with the brand or trademark of a  
15 person other than a manufacturer of the product, (ii) the person with whose brand or trademark  
16 the product (or container) is labeled has authorized or caused the product to be so labeled, and  
17 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

18           1.9           “Private Labeler” means an owner or licensee of a brand or trademark on the  
19 label of a consumer product which bears a private label; provided, however, that Settling  
20 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
21 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s  
22 brand or trademark.

23           1.10          “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.  
24 § 1303.2(b)<sup>2</sup>, as amended from time to time.

25  
26 <sup>1</sup> As of May 1, 2011, the term “Manufactured” and “Manufactures” means to manufacture,  
produce, or assemble.

27 <sup>2</sup> As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other  
28 material, with or without a suspension of finely divided coloring matter, which changes to a solid  
film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other

1            1.11            “Vendor” means a person or entity that Manufactures, imports, distributes, or  
2 supplies a Fashion Accessory to Settling Defendant.

3            **2.            INTRODUCTION**

4            2.1            The parties to this Consent Judgment (“Parties”) are the Center for  
5 Environmental Health (“CEH”) and defendant Earth, Inc. (“Settling Defendant”).

6            2.2            Commencing in April 2009, CEH served multiple 60-Day Notices of  
7 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,  
8 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that the entities named in those  
9 notices violated Proposition 65 by exposing persons to Lead contained in wallets, handbags,  
10 purses, clutches, belts and footwear, without first providing a clear and reasonable Proposition 65  
11 warning.

12            2.3            Settling Defendant manufactures, distributes or offers Fashion Accessories for  
13 sale in the State of California or has done so in the past.

14            2.4            Settling Defendant represents that as of the date it executes this Consent  
15 Judgment: (a) no public enforcer is diligently prosecuting an action related to Lead in its Fashion  
16 Accessories; and (b) it does not have a pending 60-Day Notice of Violation of Proposition 65 as  
17 to Lead in its Fashion Accessories (as defined herein) from any entity that predates the 60-Day  
18 Notice of Violation of Proposition 65 issued by CEH for Lead in such Fashion Accessories.  
19 “Pending” in the prior sentence means that such 60-Day Notice has not been withdrawn, resolved  
20 by judgment or resolved by settlement agreement.

21            2.5            On June 24, 2009, CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*,  
22 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging  
23 Proposition 65 violations as to wallets, handbags, purses and clutches. On or about January 15,  
24 2010, CEH filed its First Amended Complaint, and also filed the following new actions alleging  
25 Proposition 65 violations as to Lead in Fashion Accessories: *CEH v. Ashley Stewart Ltd., et al.*,

26  
27 surface. This term does not include printing inks or those materials which actually become a part  
28 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 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,  
2 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,  
3 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court  
4 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448.

5           2.6           For purposes of this Consent Judgment only, the Parties stipulate that this  
6 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
7 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
8 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
9 and that this Court has jurisdiction to enter this Consent Judgment.

10           2.7           Nothing in this Consent Judgment is or shall be construed as an admission by  
11 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
12 with 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 any  
15 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
16 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
17 this action.

18 **3.       INJUNCTIVE RELIEF**

19           3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
20 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
21 Vendors of Fashion Accessories that will be sold or offered for sale to California consumers and  
22 shall instruct each Vendor to use reasonable efforts to provide Fashion Accessories that comply  
23 with the Lead Limits on a nationwide basis. This Section 3.1 is not applicable with respect to  
24 Non-Suspect Materials.

25           3.2           **Lead Limits.** Settling Defendant shall not purchase, import, Manufacture, or  
26 supply to an unaffiliated third party any Covered Product that will be sold or offered for sale to  
27 California consumers that exceeds the following Lead Limits:  
28

1           3.2.1 On the Effective Date, Paint or other Surface Coatings on Accessible  
2 Components: 90 parts per million (“ppm”).

3           3.2.2 On the Effective Date, for all other Accessible Components: 200 ppm.

4           3.3           **Final Retail Compliance Date.** Commencing on December 1, 2011, Settling  
5 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
6 Limits specified in Section 3.2 as being effective on the Effective Date. For purposes of this  
7 Section 3.3, when a Settling Defendant's direct customer sells or offers for sale to California  
8 consumers a Covered Product more than one year after the applicable Final Retail Compliance  
9 Date, the Settling Defendant is deemed to "offer for sale in California" that Covered Product.

10          3.4           **Warnings for Covered Products.**

11           3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or  
12 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to  
13 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,  
14 2011, with a Clear and Reasonable Warning that complies with the provisions of Section  
15 3.4.2.

16           3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
17 Consent Judgment shall state either:

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

21           Or

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

25           This statement shall be prominently displayed on the Covered Product or the packaging of  
26 the Covered Product with such conspicuousness, as compared with other words,  
27 statements or designs as to render it likely to be read and understood by an ordinary  
28 individual prior to sale. For internet, catalog or any other sale where the consumer is not

1 physically present and cannot see a warning displayed on the Covered Product or the  
2 packaging of the Covered Product prior to purchase or payment, the warning statement  
3 shall be displayed in such a manner that it is likely to be read and understood prior to the  
4 authorization of or actual payment.

5 **3.5 Action Regarding Specific Products.**

6 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the  
7 specific products identified as Section 3.5 Products next to its name on Exhibit A (the  
8 “Section 3.5 Products”) in California. On or before the Effective Date, Settling Defendant  
9 shall also: (i) cease shipping the Section 3.5 Products to any of its customers that resell the  
10 Section 3.5 Products in California, and (ii) send instructions to its customers that resell the  
11 Section 3.5 Products in California instructing them to cease offering such Section 3.5  
12 Products for sale in California.

13 3.5.2 If Settling Defendant has not complied with Section 3.5.1 prior to  
14 executing this Consent Judgment, it shall instruct its California stores and/or customers  
15 that resell the Section 3.5 Products either to (i) return all the Section 3.5 Products to the  
16 Settling Defendant for destruction; or (ii) directly destroy the Section 3.5 Products; or (iii)  
17 sell the Section 3.5 Products with a Clear and Reasonable Warning that complies with the  
18 provisions of Section 3.4.2.

19 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all  
20 applicable laws.

21 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide  
22 CEH with written certification from Settling Defendant confirming compliance with the  
23 requirements of this Section 3.5.

24 **4. ENFORCEMENT**

25 4.1 Any Party may, after meeting and conferring, by motion or application for an  
26 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
27 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent  
28 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

1           4.2           Within 30 days after the Effective Date, Settling Defendant shall notify CEH  
2 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling  
3 Defendant on or after that date, for example, a unique brand name or characteristic system of  
4 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,  
5 including but not limited to the identities of parties to contracts between Settling Defendant and  
6 third parties, may be designated by Settling Defendant as competitively sensitive confidential  
7 business information, and if so designated shall not be disclosed to any person without the written  
8 permission of Settling Defendant. Any motions or pleadings or any other court filings that may  
9 reveal information designated as competitively sensitive confidential business information  
10 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.160  
11 and 2.550, *et seq.*

12           4.3           **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
13 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

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

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

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

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

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

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

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

26 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation  
27 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant  
28 shall provide written notice to CEH stating whether it elects to contest the allegations contained in



1 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be  
2 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 Settling  
8 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
9 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
10 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
11 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
12 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or  
13 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
14 other data regarding the alleged violation, it shall promptly provide all such data or  
15 information to the other Party.

16           **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested,  
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 Settling Defendant or its customers for sale  
21 in California. If there is a dispute over the sufficiency of the proposed corrective action or  
22 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall  
23 meet and confer before seeking the intervention of the Court to resolve the dispute. In  
24 addition to the corrective action, Settling Defendant shall make a contribution to the  
25 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of  
26 Section 4.4.3 applies.

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

28           (a) If it elects not to contest a Notice of Violation before any motion

1 concerning the violation(s) at issue has been filed, the monetary liability of Settling  
2 Defendant 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 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. Settling Defendant shall provide copies of such test  
17 results and supporting documentation to CEH with its Notice of Election;  
18 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 Settling Defendant has received more than three Notices  
22 of Violation in an 18-month period for the same Non-Suspect Material that  
23 was supplied by more than one Vendor; or

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

1 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This  
2 subsection shall apply only to Covered Products that Settling Defendant  
3 demonstrates were shipped prior to the applicable Shipping Compliance  
4 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 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 Settling Defendant, CEH shall provide  
14 notice to 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 Settling Defendant to identify the  
17 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
18 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, Settling Defendant shall serve a Notice of Election on CEH.  
23 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 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 Settling Defendant elects not to  
3 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 Settling Defendant  
5 elects to proceed under this Section 4.5, with a description of corrective action that meets  
6 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund  
7 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant  
8 contends that the Noncompliant Non-Covered Product is released from liability by a  
9 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

10 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)  
11 confidential business information, or (iii) other information that may be subject to a claim  
12 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
13 or confidentiality, provided that the Party disclosing such information shall clearly  
14 designate it as confidential. Any Party receiving information designated as confidential  
15 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person  
16 or entity, and shall use such information solely for purposes of resolving any disputes  
17 under this Consent Judgment.

18 4.5.4 No further action is required of Settling Defendant under this Consent  
19 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability  
20 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
21 Covered Product by the terms of a separate settlement agreement or consent judgment  
22 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

23 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither  
24 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may  
25 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
26 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall  
27 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

28 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not

1 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to  
2 the Fashion Accessory Testing Fund in the amounts that follow unless one of the  
3 provisions of Section 4.4.3(c) applies, in which case the applicable amount specified in  
4 Section 4.4.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one  
5 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person  
6 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)  
7 has a principal place of business located within the United States, and \$10,000 for all  
8 other notices.

9 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a  
10 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
11 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
12 Defendant shall be entitled to a refund of the lesser amount of its contribution or the  
13 settlement amount paid by such Vendor. If the settlement or consent judgment between  
14 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
15 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
16 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's  
17 settlement payment.

18 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be  
19 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5  
20 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
21 than a Settling Defendant.

## 22 **5. PAYMENTS**

23 5.1 **Payments by Settling Defendant.** Upon execution of this Consent Judgment,  
24 Settling Defendant shall pay the total sum of \$45,000 as a settlement payment. The total  
25 settlement amount for Settling Defendant shall be paid in four separate checks delivered to the  
26 offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco,  
27 California 94117-2212, and made payable and allocated as set forth in Exhibit A between the  
28 following categories:

1                   5.1.1 Settling Defendant shall pay the amount designated in Exhibit A as a civil  
2 penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in  
3 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of  
4 California’s Office of Environmental Health Hazard Assessment). The civil penalty check shall  
5 be made payable to the Center For Environmental Health.

6                   5.1.2 Settling Defendant shall also pay the amount designated in Exhibit A as a  
7 payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and  
8 California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its  
9 work educating and protecting people from exposures to toxic chemicals, including heavy metals.  
10 In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
11 percent of such funds to award grants to grassroots environmental justice groups working to  
12 educate and protect people from exposures to toxic chemicals. The method of selection of such  
13 groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to  
14 this Section shall be made payable to the Center For Environmental Health.

15                   5.1.3 Settling Defendant shall pay the amount designated in Exhibit A as a  
16 contribution to the Proposition 65 Fashion Accessory Testing Fund. CEH shall use such funds to  
17 locate, purchase and test Covered Products to verify compliance with the reformulation  
18 requirements of Section 3, to prepare, send and prosecute Notices of Violation as necessary to  
19 Settling Defendant pursuant to Section 4, and to reimburse attorneys’ fees and costs incurred in  
20 connection with these activities. The Proposition 65 Fashion Accessory Testing Fund check shall  
21 be made payable to the Center For Environmental Health.

22                   5.1.4 Settling Defendant shall also separately pay to the Lexington Law Group  
23 the amount designated in Exhibit A as reimbursement of a portion of CEH’s reasonable attorneys’  
24 fees and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the  
25 Lexington Law Group.

1     **6.     MODIFICATION**

2             6.1             **Written Consent.** This Consent Judgment may be modified from time to  
3 time by express written agreement of the Parties with the approval of the Court, or by an order of  
4 this Court upon motion and in accordance with law.

5             6.2             **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
6 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
7 modify the Consent Judgment.

8     **7.     CLAIMS COVERED AND RELEASED**

9             7.1             This Consent Judgment is a full, final and binding resolution between CEH on  
10 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
11 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
12 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell  
13 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
14 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)  
15 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
16 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
17 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by  
18 Settling Defendant prior to the Effective Date.

19             7.2             Compliance with the terms of this Consent Judgment by Settling Defendant  
20 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered  
21 Products.

22             7.3             Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
23 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
24 Releasee, or Downstream Defendant Releasee.

25             7.4             Nothing in Section 7 affects CEH’s right to commence or prosecute an action  
26 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
27 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to  
28 California consumers that does not comply with the Lead Limits after the applicable Final Retail

1 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant  
2 Proposition 65 warnings under this Consent Judgment.

3 **8. NOTICE**

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

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

11 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
12 Judgment, the notice shall be sent by first class and electronic mail to the person identified in  
13 Exhibit A.

14 8.3 Any Party may modify the person and address to whom the notice is to be sent  
15 by sending each other Party notice by first class and electronic mail.

16 **9. COURT APPROVAL**

17 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
18 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
19 shall support entry of this Consent Judgment.

20 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
21 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
22 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

23 **10. ATTORNEYS' FEES**

24 10.1 Should CEH prevail on any motion, application for an order to show cause or  
25 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
26 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
27 Settling Defendant prevail on any motion application for an order to show cause or other  
28 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
of such motion or application upon a finding by the Court that CEH's prosecution of the motion



1 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
2 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
3 Code of Civil Procedure §§ 2016, *et seq.*

4 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
5 its own attorneys' fees and costs.

6 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
7 sanctions pursuant to law.

8 **11. TERMINATION**

9 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant  
10 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such  
11 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
12 Court of Alameda County.

13 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall  
14 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
15 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
16 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
17 7.1 and 12.1 shall survive any termination.

18 **12. OTHER TERMS**

19 12.1 The terms of this Consent Judgment shall be governed by the laws of the State  
20 of California.

21 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
22 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
23 assigns of any of them.

24 12.3 This Consent Judgment contains the sole and entire agreement and  
25 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
26 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
27 merged herein and therein. There are no warranties, representations, or other agreements between  
28 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or

1 implied, other than those specifically referred to in this Consent Judgment have been made by any  
2 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
3 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
4 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
5 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
6 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
7 whether or not similar, nor shall such waiver constitute a continuing waiver.

8           12.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
9 that any Settling Defendant might have against any other party, whether or not that party is a  
10 Settling Defendant.

11           12.5       This Court shall retain jurisdiction of this matter to implement or modify the  
12 Consent Judgment.

13           12.6       The stipulations to this Consent Judgment may be executed in counterparts  
14 and by means of facsimile or portable document format (pdf), which taken together shall be  
15 deemed to constitute one document.

16           12.7       Each signatory to this Consent Judgment certifies that he or she is fully  
17 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
18 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
19 Party.

20  
21  
22  
23  
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

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

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
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

**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

*Charlie Pizarro*

Signature

CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

**EARTH, INC.**

Signature

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

**IT IS SO STIPULATED:**

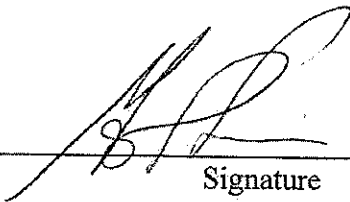
**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**EARTH, INC.**

  
\_\_\_\_\_  
Signature

*GARY L. CHAMPION*  
\_\_\_\_\_  
Printed Name

*PRESIDENT*  
\_\_\_\_\_  
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

**EXHIBIT A**

**Settling Defendant:** Earth, Inc.

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

- Wallets, Handbags, Purses and Clutches
- Belts
- Footwear

**2. Section 3.5 Products:**

- Earth Women’s Exer-Luxe Sandals, Spice Rhino Leather, SKU No. 6-92257-35981-1
- Earth Women’s Exer-Flip Straw Grained K-Calf, SKU 6-92257-36106-7
- Earth Women’s Exer-Luxe Green Rhino Leather, SKU No. 6-92257-36827-1
- Earth Women’s Exer-Jewel Sandals, Jazzy Red, SKU No. 6-92257-38295-6

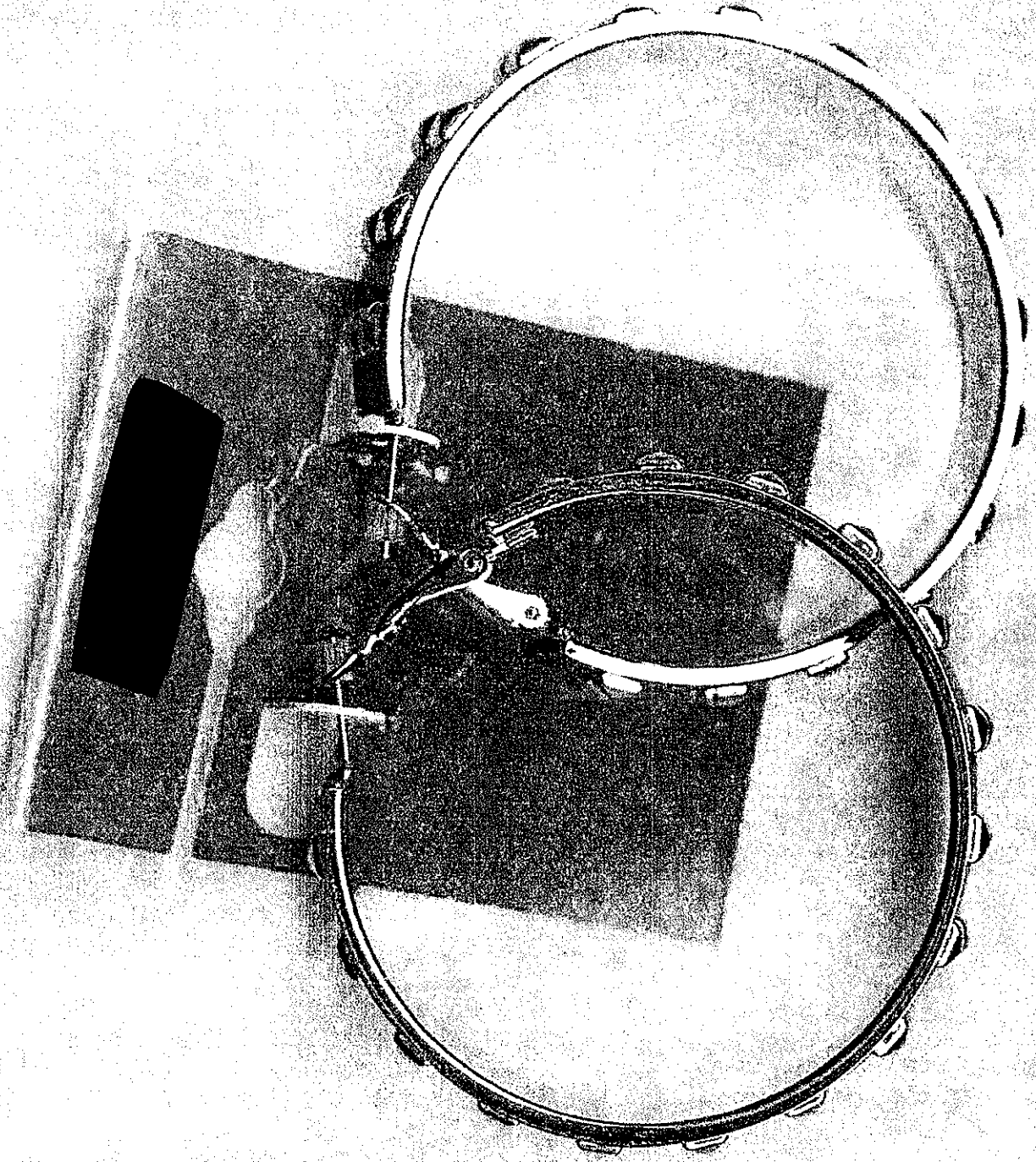
**3. Defendant’s Settlement Payment and Allocation:**

Total Settlement Payment	\$45,000
Civil Penalty	\$ 6,700
Payment in Lieu of Civil Penalty	\$10,100
Contribution to Prop. 65 Fashion Accessory Testing Fund	\$ 2,000
Attorneys’ Fees and Costs	\$26,200

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

S. Wayne Rosenbaum  
Foley & Lardner LLP  
402 W. Broadway, Suite 2100  
San Diego CA 92101  
srosenbaum@foley.com

# **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

