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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
LULU NYC LLC, et. al,
Defendants.

Lead Case No. RG-09-459448
(Consolidated with Case Nos.
RG 10-494289, RG 10-494513,
RG 10-494517, RG 11-598595,
RG 11-598596, and RG 11-603764)
**[PROPOSED] CONSENT
JUDGMENT AS TO BIOWORLD
MERCHANDISING, INC.**

AND CONSOLIDATED CASES.

1. DEFINITIONS

1.1 "Accessible Component" means a component of a Covered Product that could be touched by a person during normal or reasonably foreseeable use.

1.2 "Covered Products" means Fashion Accessories that are (a) Manufactured by Settling Defendant, or (b) distributed for resale or sold for resale by Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by Settling Defendant where Settling Defendant is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity that is under common ownership of the Private Labeler of such product.

1.3 "Effective Date" means the date on which this Consent Judgment is entered by the Court.

1 1.4 "Fashion Accessories" means: (i) wallets, handbags, purses, and clutches;
2 (ii) belts; and (iii) footwear.

3 1.5 "Lead Limits" means the maximum concentrations of lead and lead
4 compounds ("Lead") by weight specified in Section 3.2.

5 1.6 "Manufactured" and "Manufactures" have the meaning defined in
6 Section 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C.
7 § 2052(a)(10)],¹ as amended from time to time.

8 1.7 "Private Label Covered Product" means a Fashion Accessory that bears a
9 private label where (i) the product (or its container) is labeled with the brand or trademark
10 of a person other than a manufacturer of the product, (ii) the person with whose brand or
11 trademark the product (or container) is labeled has authorized or caused the product to be
12 so labeled, and (iii) the brand or trademark of a manufacturer of such product does not
13 appear on such label.

14 1.8 "Private Labeler" means an owner or licensee of a brand or trademark on the
15 label of a consumer product which bears a private label; provided, however, that Settling
16 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark
17 is visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a
18 third party's brand or trademark.

19 1.9 "Paint and other similar surface-coating materials" has the meaning defined
20 in 16 C.F.R. § 1303.2(b)², as amended from time to time.

21 1.10 "Vendor" means a person or entity that Manufactures, imports, distributes, or
22 supplies a Fashion Accessory to Settling Defendant.

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25 ¹ As of February 1, 2012, the term "Manufactured" and "Manufactures" means to
26 manufacture, produce, or assemble.

27 ² As of February 1, 2012, "Paint or other Surface Coatings" means a fluid, semi-fluid, or
28 other 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 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.

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1 **2. INTRODUCTION**

2 2.1 The parties to this Consent Judgment ("Parties") are the Center for
3 Environmental Health ("CEH") and defendant Bioworld Merchandising, Inc. ("Settling
4 Defendant").

5 2.2 On or about July 1, 2011, CEH served a 60-Day Notice of Violation under
6 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California
7 Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated
8 Proposition 65 by exposing persons to Lead contained in wallets, handbags, purses and
9 clutches, without first providing a clear and reasonable Proposition 65 warning.

10 2.3 Settling Defendant manufactures, distributes or sells Fashion Accessories
11 that are offered for retail sale in the State of California or has done so in the past.

12 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. LuLu NYC LLC, et*
13 *al.*, Case No. RG 09-459448, in the Superior Court of California for Alameda County,
14 alleging Proposition 65 violations as to wallets, handbags, purses and clutches. Since then,
15 CEH has filed several actions alleging Proposition 65 violations as to Lead in Fashion
16 Accessories, including *CEH v. Bioworld Merchandising, Inc. et al.*, Case
17 No. RG-11-598596, that have been consolidated for pre-trial purposes under Lead Case
18 No. RG 09-459448.

19 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
20 Court has jurisdiction over the allegations of violations contained in the operative
21 Complaint applicable to Settling Defendant (the "Complaint") and personal jurisdiction
22 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the
23 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

24 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
25 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
26 compliance with the Consent Judgment constitute or be construed as an admission by the
27 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
28 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense

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1 the Parties may have in any other legal proceeding. This Consent Judgment is the product
2 of negotiation and compromise and is accepted by the Parties for purposes of settling,
3 compromising and resolving issues disputed in this action.

4 **3. INJUNCTIVE RELIEF**

5 **3.1 Specification Compliance Date.** To the extent it has not already done so,
6 no more than 30 days after the Effective Date, Settling Defendant shall provide the Lead
7 Limits to its Vendors of Fashion Accessories and shall instruct each Vendor to use
8 reasonable efforts to provide Fashion Accessories that comply with the Lead Limits on a
9 nationwide basis.

10 **3.2 Lead Limits.**

11 As of the Effective Date, Settling Defendant shall not purchase, import,
12 Manufacture, supply to an unaffiliated third party, sell or offer for sale any Covered
13 Product that will be sold or offered for sale to California consumers that exceeds the
14 following Lead Limits:

15 **3.2.1** Paint and other similar surface-coating materials on Accessible
16 Components: 90 parts per million ("ppm").

17 **3.2.2** Polyvinyl chloride ("PVC") Accessible Components: 200 ppm.

18 **3.2.3** All other Accessible Components (including but not limited to leather
19 and non-PVC imitation leather) other than cubic zirconia (sometimes called cubic
20 zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

21 **3.3 Final Retail Compliance Date.** When one of Settling Defendant's direct
22 customers sells or offers for sale to a California consumer a Covered Product after
23 December 1, 2012 that does not meet the Lead Limits, Settling Defendant is deemed to
24 "sell or offer for sale in California" that Covered Product in violation of this Consent
25 Judgment.

26 **3.4 Action Regarding Specific Products.**

27 **3.4.1** On or before the Effective Date, Settling Defendant shall cease selling
28 the Sesame Street Cookie Monster Wallet in Green, SKU No. 451001194227 (the Recall

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1 Product") in California. On or before the Effective Date, Settling Defendant shall also:
2 (i) cease shipping the Recall Product to any of its customers that resell the Recall Product
3 in California, and (ii) send instructions to its customers that resell the Recall Product in
4 California instructing them to cease offering the Recall Product for sale in California.

5 3.4.2 If Settling Defendant has not complied with Section 3.4.1 prior to
6 executing this Consent Judgment, it shall instruct its California stores and/or customers
7 that resell the Recall Product either to (i) return the Recall Product to the Settling
8 Defendant for destruction; or (ii) directly destroy the Recall Product.

9 3.4.3 Any destruction of Recall Product shall be in compliance with all
10 applicable laws.

11 3.4.4 Within sixty days of the Effective Date, Settling Defendant shall
12 provide CEH with written certification from Settling Defendant confirming compliance
13 with the requirements of this Section 3.4.

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
17 Consent Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of
18 this Consent Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

19 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
20 of a means sufficient to allow CEH to identify Covered Products supplied or offered by
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
23 once in any calendar year, Settling Defendants shall, within 30 days of receiving a request
24 from CEH, update the information provided to CEH pursuant to this Section 4.2 by
25 notifying CEH of a means sufficient to allow CEH to identify Covered Products currently
26 supplied or offered by that Settling Defendant. If CEH is unable to determine whether a
27 particular product is a Covered Product as to a Settling Defendant based on the information
28 provided to CEH pursuant to this Section 4.2, Settling Defendants shall cooperate in good

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1 faith with CEH in determining whether the product at issue is a Covered Product and, if so,
2 the identity of the Settling Defendant responsible for selling the product. Information
3 provided to CEH pursuant to this Section 4.2, including but not limited to the identities of
4 parties to contracts between Settling Defendant and third parties, may be designated by
5 Settling Defendant as competitively sensitive confidential business information, and if so
6 designated shall not be disclosed to any person without the written permission of Settling
7 Defendant. Any motions or pleadings or any other court filings that may reveal
8 information designated as competitively sensitive confidential business information
9 pursuant to this Section shall be submitted in accordance with California Rules of
10 Court 8.46 and 2.550, *et seq.*

11 **4.3 Notice of Violation.** CEH may seek to enforce the requirements of Sections
12 3.2 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
14 Settling Defendant within 45 days of the date the alleged violation(s) was or were
15 observed, provided, however, that CEH may have up to an additional 45 days to provide
16 Settling Defendant with the test data required by Section 4.3.2(d) below if it has not yet
17 obtained it from its laboratory.

18 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a
19 minimum, set forth for each Covered Product: (a) the date(s) the alleged violation(s) was
20 observed, (b) the location at which the Covered Product was offered for sale, (c) a
21 description of the Covered Product giving rise to the alleged violation, and of each
22 Accessible Component that is alleged not to comply with the Lead Limits and/or each
23 Accessible Component that is alleged to contain Lead in excess of 300 ppm, including a
24 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

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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 A 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 Settling Defendant, all
8 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 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
22 for or sold to Settling Defendant from the same Vendor; and

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

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), Settling
27 Defendant shall provide written notice to CEH stating whether it elects to contest the
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1 allegations contained in the Notice of Violation ("Notice of Election"). Failure to provide
2 a Notice of 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
4 of 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.

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1 **4.4.3 Limitations in Non-Contested Matters.**

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

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

8 (i) One thousand seven hundred fifty dollars (\$1750) if
9 Settling Defendant, prior to receiving and accepting for distribution
10 or sale the Covered Product identified in the Notice of Violation,
11 obtained test results demonstrating that all of the Accessible
12 Components in the Covered Product identified in the Notice of
13 Violation complied with the applicable Lead Limits, and further
14 provided that such test results meet the same quality criteria to
15 support a Notice of Violation as set forth in Section 4.3.2 and that the
16 testing was performed within two years prior to the date of the sales
17 transaction on which the Notice of Violation is based. Settling
18 Defendant shall provide copies of such test results and supporting
19 documentation to CEH with its Notice of Election; or

20 (ii) One thousand five hundred dollars (\$1500) if Settling
21 Defendant is in violation of Section 3.3 only insofar as that Section
22 deems Settling Defendant to have "offered for sale" a product sold at
23 retail by Settling Defendant's customer, provided however, that no
24 contribution is required or payable if Settling Defendant has already
25 been required to pay a total of ten thousand dollars (\$10,000)
26 pursuant to this subsection. This subsection shall apply only to
27 Covered Products that Settling Defendant demonstrates were shipped
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1 prior to the applicable Shipping Compliance Date specified in
2 Section 3.2.

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

7 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If
8 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers
9 a Fashion Accessory that is not a Covered Product, and that contains Lead in an amount
10 that exceeds any of the applicable Lead Limits ("Noncompliant Non-Covered Product"),
11 then prior to CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant,
12 CEH shall provide notice to Settling Defendant pursuant to this Section 4.5.

13 4.5.1 The notice shall contain the information required for a Notice of
14 Violation in Section 4.3. If the information is insufficient to allow Settling Defendant to
15 identify the Noncompliant Non-Covered Product and/or Vendor, it may request that CEH
16 provide any further identifying information for the Noncompliant Non-Covered Product
17 that is reasonably available to it.

18 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
19 requested further information sufficient to identify the Noncompliant Non-Covered
20 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
21 The Notice of Election shall:

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

25 (b) Identify the manufacturer and other distributors in the chain of
26 distribution of the Noncompliant Non-Covered Product, provided that such
27 information is reasonably available; and
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1 (c) Include either: (i) a statement that Settling Defendant elects
2 not to proceed under this Section 4.5, in which case CEH may take further action
3 including issuance of a 60-Day Notice under Proposition 65; (ii) a statement that
4 Settling Defendant elects to proceed under this Section 4.5, with a description of
5 corrective action that meets the conditions of Section 4.4.2., and a contribution to
6 the Fashion Accessory Testing Fund in the amount required under Section 4.5.6, or
7 (iii) a statement that Settling Defendant contends that the Noncompliant Non-
8 Covered Product is released from liability by a Qualified Settlement under
9 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,
11 (ii) confidential business information, or (iii) other information that may be subject to a
12 claim of privilege or confidentiality, shall not constitute a waiver of any such claim of
13 privilege or confidentiality, provided that the Party disclosing such information shall
14 clearly designate it as confidential. Any Party receiving information designated as
15 confidential pursuant to this Section 4.5.3 shall not disclose such information to any
16 unrelated person or entity, and shall use such information solely for purposes of resolving
17 any disputes 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
24 neither Settling Defendant nor CEH has any further duty under this Section 4.5 and either
25 may pursue any available remedies under Proposition 65 or otherwise. If Settling
26 Defendant elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section
27 shall constitute compliance with Proposition 65 as to that Noncompliant Non-Covered
28 Product.

1 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is
2 not relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution
3 to the Fashion Accessory Testing Fund in the amounts that follow unless one of the
4 provisions of Section 4.4.3(c) applies, in which case the applicable amount specified in
5 Section 4.4.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
6 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person in
7 the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii) has
8 a principal place of business located within the United States, and \$10,000 for all other
9 notices.

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

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

23 **5. PAYMENTS**

24 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this
25 Consent Judgment, Settling Defendant shall pay the total sum of \$75,000 as a settlement
26 payment. The total settlement amount for Settling Defendant shall be paid in three
27 separate checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers),
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1 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated as
2 follows:

3 5.1.1 Settling Defendant shall pay the sum of \$9,930 as a civil penalty
4 pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in
5 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of
6 California's Office of Environmental Health Hazard Assessment). The civil penalty check
7 shall be made payable to the Center For Environmental Health.

8 5.1.2 Settling Defendant shall also pay the sum of \$14,900 as a payment in
9 lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and
10 California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue
11 its work educating and protecting people from exposures to toxic chemicals, including
12 heavy metals. In addition, as part of its Community Environmental Action and Justice
13 Fund, CEH will use four percent of such funds to award grants to grassroots environmental
14 justice groups working to educate and protect people from exposures to toxic chemicals.
15 The method of selection of such groups can be found at the CEH web site at
16 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to
17 the Center For Environmental Health.

18 5.1.3 Settling Defendant shall also separately pay to the Lexington Law
19 Group the sum of \$50,170 as reimbursement of a portion of CEH's reasonable attorneys'
20 fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to
21 the Lexington Law Group.

22 **6. MODIFICATION**

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

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

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1 **7. CLAIMS COVERED AND RELEASED**

2 7.1 This Consent Judgment is a full, final and binding resolution between CEH
3 on behalf of itself and the public interest and Settling Defendant, and its parents,
4 subsidiaries, affiliated entities that are under common ownership or common control,
5 directors, officers, employees, and attorneys ("Defendant Releasees"), and each entity to
6 whom they directly or indirectly distribute or sell Covered Products, including but not
7 limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
8 licensors, and licensees ("Downstream Defendant Releasees") of any violation of
9 Proposition 65 that was or could have been asserted in the Complaint against Settling
10 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
11 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
12 Settling Defendant prior to the Effective Date.

13 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
14 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's
15 Covered Products.

16 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
17 action under Proposition 65 against any person other than a Settling Defendant, Defendant
18 Releasee, or Downstream Defendant Releasee.

19 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action
20 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct
21 customer of Settling Defendant under Section 3.3; and (b) sells or offers for sale a Covered
22 Product to California consumers that does not comply with the Lead Limits after the
23 applicable Final Retail Compliance Date set forth in Section 3.3.

24 **8. NOTICE**

25 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail to:

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Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

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

John Allen
Allen Matkins Leck Gamble Mallory & Natsis LLP
515 South Figueroa Street
Los Angeles, CA 90071
jallen@allenmatkins.com

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

9. COURT APPROVAL

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

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

10. ATTORNEYS' FEES

10.1 Should CEH prevail on any motion, application for an order to show cause or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should Settling Defendant prevail on any motion application for an order to show cause or other 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 or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

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1 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
2 its own attorneys' fees and costs.

3 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
4 sanctions pursuant to law.

5 **11. TERMINATION**

6 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
7 at any time after September 1, 2017, upon the provision of 30 days advanced written
8 notice; such termination shall be effective upon the subsequent filing of a notice of
9 termination with Superior Court of Alameda County.

10 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
11 be of no further force or effect as to the terminated parties; provided, however that if CEH
12 is the terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any
13 termination and provided further that if Settling Defendant is the terminating Party, the
14 provisions of Sections 5, 7.1 and 12.1 shall survive any termination.

15 **12. OTHER TERMS**

16 12.1 The terms of this Consent Judgment shall be governed by the laws of the
17 State of California.

18 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
19 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors
20 or assigns of any of them.

21 12.3 This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof, and any and
23 all prior discussions, negotiations, commitments, or understandings related thereto, if any,
24 are hereby merged herein and therein. There are no warranties, representations, or other
25 agreements between the Parties except as expressly set forth herein. No representations,
26 oral or otherwise, express or implied, other than those specifically referred to in this
27 Consent Judgment have been made by any Party hereto. No other agreements not
28 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to

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1 bind any of the Parties hereto. No supplementation, modification, waiver, or termination
2 of this Consent Judgment shall be binding unless executed in writing by the Party to be
3 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
4 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 12.4 Nothing in this Consent Judgment shall release, or in any way affect any
7 rights that Settling Defendant might have against any other party, whether or not that party
8 is a Settling Defendant.

9 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 12.6 The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile or portable document format (pdf), which taken together shall
13 be deemed to constitute one document.

14 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to stipulate to this Consent Judgment and to
16 enter into and execute the Consent Judgment on behalf of the Party represented and legally
17 to bind that Party.

18 12.8 The Parties, including their counsel, have participated in the preparation of
19 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
20 Parties. This Consent Judgment was subject to revision and modification by the Parties
21 and has been accepted and approved as to its final form by all Parties and their counsel.
22 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
23 interpreted against any Party as a result of the manner of the preparation of this Consent
24 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of
25 construction providing that ambiguities are to be resolved against the drafting Party should
26 not be employed in the interpretation of this Consent Judgment and, in this regard, the
27
28

JWK
3/10/12

1 Parties hereby waive California Civil Code § 1654.

2

3 **IT IS SO ORDERED:**

4

5

6 Dated: _____, 2012

7

The Honorable Steven A. Brick
Judge of the Superior Court

8

9 **IT IS SO STIPULATED:**

10

11 **CENTER FOR ENVIRONMENTAL HEALTH**

12

13

CP

Signature

14

15

CHARLIE PIZANO

Printed Name

16

17

ASSOCIATE DIRECTOR

Title

18

19

20

21

BIOWORLD MERCHANDISING, INC.

22

23

24

Signature

25

26

Printed Name

27

28

Title

1 Parties hereby waive California Civil Code § 1654.

2

3 **IT IS SO ORDERED:**

4

5

6 Dated: _____, 2012

7

The Honorable Steven A. Brick
Judge of the Superior Court

8

9 **IT IS SO STIPULATED:**

10

11 **CENTER FOR ENVIRONMENTAL HEALTH**

12

13

Signature

14

15

Printed Name

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Title

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21 **BIOWORLD MERCHANDISING, INC.**

22

23

David D. Reynolds

24

Signature

25

David D. Reynolds

26

Printed Name

27

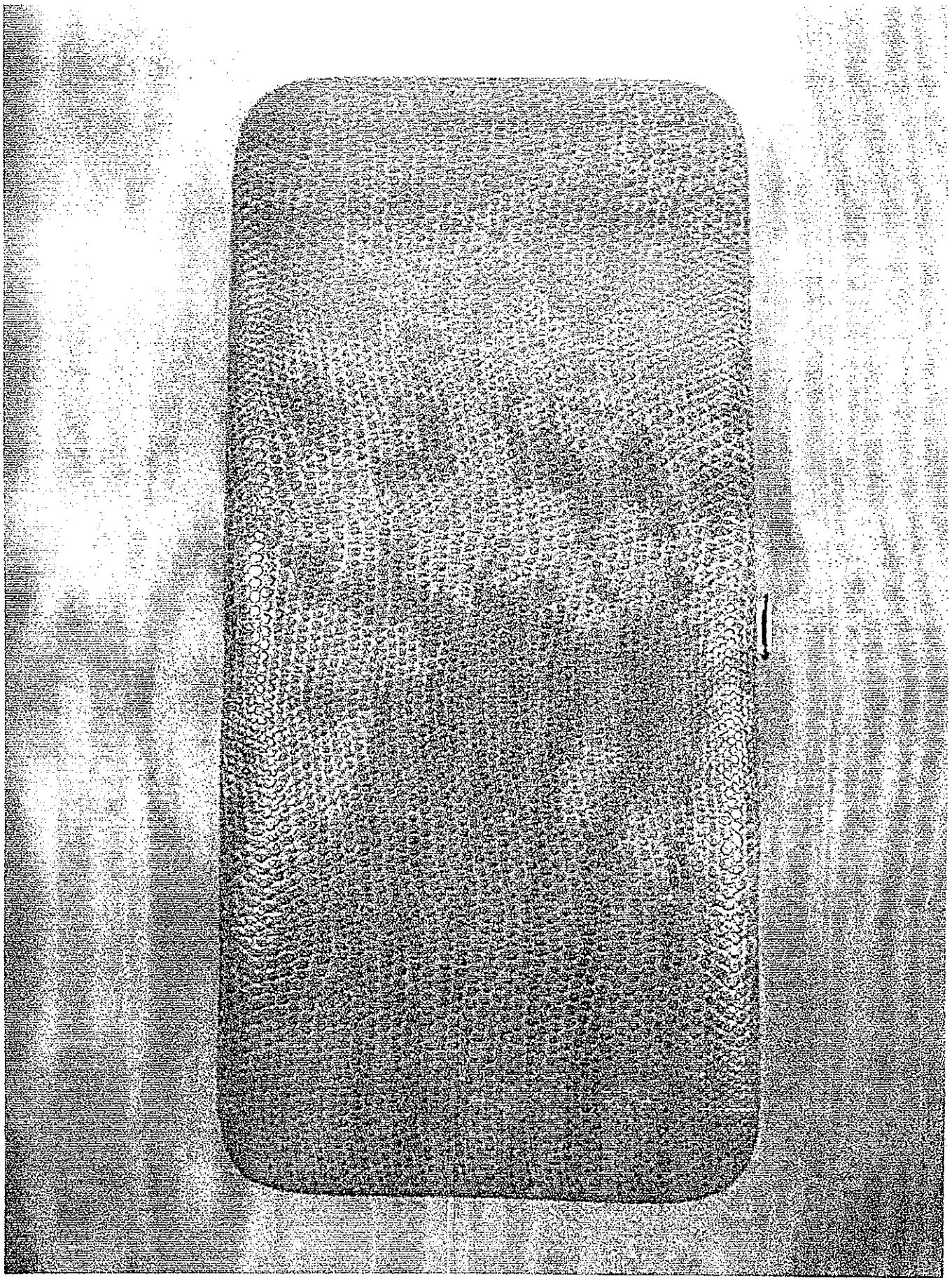
Chief Financial Officer

28

Title

*JJK
3/19/12*

Exhibit A



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THE

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



925-828-1440
www.TheNFL.com

Analytical Report

August 03, 2011

Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117

Analytical Report No.: CL3573-33
Analysis Dates: 07/26/11 - 08/03/11

Listed below are the results of our analyses for sample(s) received on July 26, 2011.

CEH ID#AB789L, [REDACTED] Wallet (Orange Surface Material On Main Part Of W
NFL ID AF02363

Analyte	Result	Units	Method Ref.
Lead	67500	ppm	NIOSH 7082

A portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

Sample(s) were received in good condition unless and results are reported based on the sample(s) as received, unless otherwise noted. Please note that these results apply only to the sample(s) submitted for this report. Samples from a different portion of the same lot may produce different results.

The National Food Lab services are provided subject to our standard terms and conditions, which can be found on our website, www.TheNFL.com. Should you have any questions concerning these results, please do not hesitate to contact us. Thank you for using the services of the National Food Lab.

Sincerely,

Grace Bandong, Division Manager, Food Contaminants -Chemistry

cc: The NFL's Accounts Receivable