

1 1.4 “Lead Limits” means the maximum concentrations of lead and lead
2 compounds (“Lead”) by weight specified in Section 3.2.

3 1.5 “Manufactured” and “Manufactures” means to manufacture, produce, or
4 assemble.

5 1.6 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
6 with or without a suspension of finely divided coloring matter, which changes to a solid film
7 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
8 This term does not include printing inks or those materials which actually become a part of the
9 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
10 the substrate, such as by electroplating or ceramic glazing.

11 **2. INTRODUCTION**

12 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
13 Environmental Health (“CEH”) and defendants American Apparel Inc. and American Apparel
14 (USA), LLC (collectively, the “Settling Defendants”).

15 2.2 More than sixty (60) days prior to naming Settling Defendants in the
16 applicable actions, CEH served 60-Day Notices of Violation under Proposition 65 (The Safe
17 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
18 25249.5, *et seq.*), alleging that Settling Defendants violated Proposition 65 by exposing persons
19 to Lead contained in Covered Products, without first providing a clear and reasonable Proposition
20 65 warning.

21 2.3 Settling Defendants manufacture, distribute and/or offer for sale Covered
22 Products in the State of California. As of the Effective Date, Settling Defendants manufacture all
23 of the Covered products in the United States and thus have no vendors to provide with the lead
24 specifications.

25 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
26 Case No. RG 09-459448, alleging Proposition 65 violations as to wallets, handbags, purses and
27 clutches. The Court has consolidated the *Lulu* matter with a number of other related Proposition
28 65 cases, including *CEH v. Bioworld Merchandising, Inc.*, Case No. RG 11-598596. On or about

1 April 12, 2012, CEH named Settling Defendants as defendants in the operative First Amended
2 Complaint in the *Bioworld* action. The First Amended Complaint in the *Bioworld* action is
3 hereby amended to include allegations as to Settling Defendants only as to lead in all Covered
4 Products.

5 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
6 Court has jurisdiction over the allegations of violations contained in the *Bioworld* Complaint and
7 personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue
8 is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent
9 Judgment.

10 2.6 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 **Lead Limits.** Commencing on the Effective Date as to Handbags and on
20 January 1, 2014 as to Footwear and Belts, Settling Defendants shall not Manufacture or supply to
21 an unaffiliated third party, any Covered Product that will be sold or offered for sale in California
22 that contains a material or is made of a component that exceeds the following Lead Limits:

23 3.1.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
24 million (“ppm”).

25 3.1.2 Polyvinyl chloride (“PVC”) on Accessible Components: 200 ppm.

26 3.1.3 All other Accessible Components made of materials or components other
27 than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones: 300
28 ppm.

1 3.2 **Final Retail Compliance Date.** Commencing on the Effective Date as to
2 Handbags and on May 1, 2014 as to Footwear and Belts, Settling Defendants shall not sell or
3 offer for sale in California any Covered Product that exceeds the Lead Limits specified in Section
4 3.2. For purposes of this Section 3.3, when Settling Defendants' direct customer sells or offers
5 for sale to California consumers a Covered Product that is a Handbag after the Effective Date,
6 Settling Defendants are deemed to "offer for sale in California" that Covered Product. In
7 addition, for purposes of this Section 3.3, when Settling Defendants' direct customer sells or
8 offers for sale to California consumers a Covered Product that is a Belt or Footwear after May 1,
9 2014, Settling Defendants are deemed to "offer for sale in California" that Covered Product.

10 3.3 **Action Regarding Specific Products.**

11 3.3.1 On or before the Effective Date, Settling Defendants shall cease selling the
12 following specific products in California: (i) American Apparel Patent Leather Coin Purse
13 in Yellow, Style No. RSALH502SP; and (ii) American Apparel Pleated Loafers in Red,
14 SKU No. 052359 (the "Section 3.3 Products"). On or before the Effective Date, Settling
15 Defendants shall also: (i) cease shipping the Section 3.3 Products to any of their stores
16 and/or customers that resell the Section 3.3 Products in California, and (ii) send
17 instructions to their stores and/or customers that resell the Section 3.3 Products in
18 California instructing them either to: (a) return all the Section 3.3 Products to Settling
19 Defendants for destruction; or (b) directly destroy the Section 3.3 Products.

20 3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all
21 applicable laws.

22 3.3.3 Within sixty days of the Effective Date, Settling Defendants shall provide
23 CEH with written certification from Settling Defendants confirming compliance with the
24 requirements of this Section 3.3.

25 **4. ENFORCEMENT**

26 4.1 Any Party may, after meeting and conferring, by motion or application for an
27 order to show cause before this Court, enforce the terms and conditions contained in this Consent
28

1 Judgment. Enforcement of the terms and conditions of Sections 3.1 and 3.2 of this Consent
2 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3.

3 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
4 3.1 or 3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

5 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
6 Defendants within 45 days of the date the alleged violation(s) was or were observed,
7 provided, however, that CEH may have up to an additional 45 days to provide Settling
8 Defendants with the test data required by Section 4.2.2(d) below if it has not yet obtained
9 it from its laboratory.

10 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
11 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
12 (b) the location at which the Covered Product was offered for sale, (c) a description of the
13 Covered Product giving rise to the alleged violation, and of each material or component
14 that is alleged not to comply with the Lead Limits, including a picture of the Covered
15 Product and all identifying information on tags and labels, and (d) all test data obtained by
16 CEH regarding the Covered Product and related supporting documentation, including all
17 laboratory reports, quality assurance reports and quality control reports associated with
18 testing of the Covered Products. Such Notice of Violation shall be based at least in part
19 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
20 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
21 Notice of Violation, although any such testing may be used as additional support for a
22 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A
23 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section
24 4.2.2.

25 4.2.3 **Additional Documentation.** CEH shall promptly make available for
26 inspection and/or copying upon request by and at the expense of Settling Defendants, all
27 supporting documentation related to the testing of the Covered Products and associated
28 quality control samples, including chain of custody records, all laboratory logbook entries

1 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
2 from all analytical instruments relating to the testing of Covered Product samples and any
3 and all calibration, quality assurance, and quality control tests performed or relied upon in
4 conjunction with the testing of the Covered Products, obtained by or available to CEH that
5 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
6 any exemplars of Covered Products tested.

7 **4.2.4 Multiple Notices.** If Settling Defendants have received more than four
8 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
9 fines, costs, penalties, or remedies are provided by law for failure to comply with the
10 Consent Judgment. For purposes of determining the number of Notices of Violation
11 pursuant to this Section 4.2.4, a Notice of Violation that meets one or more of the
12 conditions of Section 4.3.3(b) shall be excluded:

13 **4.3 Notice of Election.** Within 30 days of receiving a Notice of Violation
14 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendants
15 shall provide written notice to CEH stating whether they elect to contest the allegations contained
16 in the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
17 deemed an election to contest the Notice of Violation.

18 **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
19 Election shall include all then-available documentary evidence regarding the alleged
20 violation, including any test data. Within 30 days the parties shall meet and confer to
21 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
22 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
23 Defendants withdraw their Notice of Election to contest the Notice of Violation before
24 any motion concerning the violations alleged in the Notice of Violation is filed pursuant to
25 Section 4.1, Settling Defendants shall make a contribution to the Proposition 65 Fashion
26 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
27 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or
28 obtaining a decision from the Court, CEH or Settling Defendants acquire additional test or

1 other data regarding the alleged violation, they shall promptly provide all such data or
2 information to the other Party.

3 4.3.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
4 Settling Defendants shall include in their Notice of Election a detailed description of
5 corrective action that they have undertaken or propose to undertake to address the alleged
6 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
7 Covered Product will no longer be offered by Settling Defendants or their customers for
8 sale in California. If there is a dispute over the sufficiency of the proposed corrective
9 action or its implementation, CEH shall promptly notify Settling Defendants and the
10 Parties shall meet and confer before seeking the intervention of the Court to resolve the
11 dispute. In addition to the corrective action, Settling Defendants shall make a contribution
12 to the Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the
13 provisions of Section 4.3.3 applies.

14 4.3.3 **Limitations in Non-Contested Matters.**

15 (a) If Settling Defendants elect not to contest a Notice of Violation
16 before any motion concerning the violation(s) at issue has been filed, the monetary
17 liability of Settling Defendants shall be limited to the contributions required by this
18 Section 4.3.3, if any.

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

20 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
21 Defendants, prior to receiving and accepting for distribution or sale the
22 Covered Product identified in the Notice of Violation, obtained test results
23 demonstrating that the materials or components in the Covered Product
24 identified in the Notice of Violation complied with the applicable Lead
25 Limits, and further provided that such test results meet the same quality
26 criteria to support a Notice of Violation as set forth in Section 4.3.2 and
27 that the testing was performed within two years prior to the date of the
28 sales transaction on which the Notice of Violation is based. Settling

1 Defendants shall provide copies of such test results and supporting
2 documentation to CEH with their Notice of Election; or

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

7 **5. PAYMENTS**

8 **5.1 Payments by Settling Defendants.** Within ten (10) days of the Effective Date,
9 Settling Defendants shall pay the total sum of \$75,000 as a settlement payment. The total
10 settlement amount for Settling Defendants shall be paid in three separate checks and delivered to
11 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
12 Francisco, California 94117-2212, and made payable and allocated as follows:

13 5.1.1 Settling Defendants shall pay the sum of \$9,930 as a civil penalty pursuant
14 to Health & Safety Code § 25249.7(b). CEH shall apportion this payment in accordance with
15 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
16 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
17 Center For Environmental Health.

18 5.1.2 Settling Defendants shall pay the sum of \$14,900 as a payment in lieu of
19 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
20 Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and
21 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
22 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
23 funds to award grants to grassroots environmental justice groups working to educate and protect
24 people from exposures to toxic chemicals. The method of selection of such groups can be found
25 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
26 made payable to the Center For Environmental Health.

27 5.1.3 Settling Defendants shall also separately pay the sum of \$50,170 to the
28 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and

1 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
2 Law Group.

3 **6. MODIFICATION**

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

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

10 **7. CLAIMS COVERED AND RELEASED**

11 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
12 behalf of itself and the public interest and Settling Defendants, and their parents, subsidiaries,
13 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
14 ("Defendant Releasees") of any violation of Proposition 65 that was or could have been asserted
15 in the Complaint against Settling Defendants, Defendant Releasees, and Downstream Defendant
16 Releasees, based on failure to warn about alleged exposure to Lead contained in Covered
17 Products that were sold by Settling Defendants prior to the Effective Date.

18 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
19 constitutes compliance with Proposition 65 with respect to Lead in Covered Products sold by
20 Settling Defendants.

21 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
22 action under Proposition 65 against any person other than a Settling Defendant or Defendant
23 Releasee.

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1 **8. NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

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

9 8.2 When Settling Defendants are entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 Joyce Crucillo
12 Chief Litigation Counsel
13 American Apparel, Inc.
14 747 Warehouse Street
15 Los Angeles, CA 90021
16 joycec@americanapparel.net

17 With a copy to:

18 Jeffrey B. Margulies
19 Fulbright & Jaworski L.L.P.
20 555 South Flower Street, 41st Floor
21 Los Angeles, CA 90071
22 jmargulies@fulbright.com

23 8.3 Any Party may modify the person and address to whom the notice is to be sent
24 by sending each other Party notice by first class and electronic mail.

25 **9. COURT APPROVAL**

26 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
27 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
28 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

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

9 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
10 its own attorneys' fees and costs.

11 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
12 sanctions pursuant to law.

13 **11. TERMINATION**

14 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendants
15 at any time after January 1, 2019, upon the provision of 30 days advanced written notice; such
16 termination shall be effective upon the subsequent filing of a notice of termination with Superior
17 Court of Alameda County.

18 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
19 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
20 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided
21 further that if Settling Defendants are the terminating Parties, the provisions of Sections 5 and 7.1
22 shall survive any termination.

23 **12. OTHER TERMS**

24 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
25 of California.

26 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
27 Defendants, and the successors or assigns of any of them.

28 12.3 This Consent Judgment contains the sole and entire agreement and

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

12 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
13 that any Settling Defendant might have against any other party, whether or not that party is a
14 Settling Defendant.

15 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 12.6 The stipulations to this Consent Judgment may be executed in counterparts
18 and by means of facsimile or portable document format (pdf), which taken together shall be
19 deemed to constitute one document.

20 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
23 Party.

24 12.8 The Parties, including their counsel, have participated in the preparation of
25 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
26 This Consent Judgment was subject to revision and modification by the Parties and has been
27 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
28 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any

1 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
2 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
3 be resolved against the drafting Party should not be employed in the interpretation of this Consent
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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IT IS SO ORDERED:

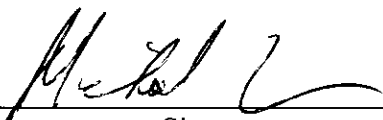
Dated: _____, 2013

The Honorable Steven A. Brick
Judge of the Superior Court

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

MICHAEL GREEN

Printed Name

EXECUTING DIRECTOR

Title

AMERICAN APPAREL INC.

Signature

Printed Name

Title

AMERICAN APPAREL (USA), LLC

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Printed Name

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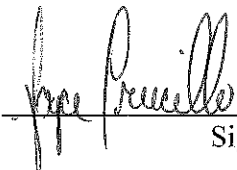
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Signature

Printed Name

Title

AMERICAN APPAREL INC.



Signature

JOYCE CRUCILLO

Printed Name

CHIEF LITIGATION COUNSEL

Title

AMERICAN APPAREL (USA), LLC



Signature

JOYCE CRUCILLO

Printed Name

CHIEF LITIGATION COUNSEL

Title

Exhibit A



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ORANGE

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