

1 1.7.1 Paint or other Surface Coatings: 90 ppm.

2 1.7.2 Polyvinyl chloride (“PVC”): 200 ppm.

3 1.7.3 All other materials or components other than cubic zirconia (sometimes
4 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

5 1.4 “Manufactured” and “Manufactures” means to manufacture, produce, or
6 assemble.

7 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
8 with or without a suspension of finely divided coloring matter, which changes to a solid film
9 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
10 This term does not include printing inks or those materials which actually become a part of the
11 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
12 the substrate, such as by electroplating or ceramic glazing.

13 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or
14 supplies a Covered Product to Settling Defendant.

15 **2. INTRODUCTION**

16 2.1 The parties to this Consent Judgment are the Center for Environmental Health
17 (“CEH”) and defendant Top’s Handbag, Inc. (“Settling Defendant”). The Parties enter into this
18 Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth
19 in the operative First Amended Complaint in *CEH v. Bioworld Merchandising, Inc.*, Case No. RG
20 11-598596. The *Bioworld* case (consolidated under *CEH v. Lulu NYC LLC, et al.*, Lead Case No.
21 RG 09-459448) involves violations of Proposition 65 as to Lead in wallets, handbags, purses and
22 clutches. On August 15, 2012, CEH named Settling Defendant in the First Amended Complaint
23 in the *Bioworld* action via Doe Amendment.

24 2.2 On or about March 9, 2012, CEH served a 60-Day Notice of Violation under
25 Proposition 65, alleging that Settling Defendant violated Proposition 65 by exposing persons to
26 Lead contained in Covered Products without first providing a clear and reasonable Proposition 65
27 warning.

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1 2.3 Settling Defendant is a corporation that manufactures, distributes and/or offers
2 for sale Covered Products in the State of California or has done so in the past.

3 2.4 For purposes of this Consent Judgment only, CEH and Settling Defendant (the
4 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
5 the operative Complaints applicable to Settling Defendant and personal jurisdiction over Settling
6 Defendant as to the acts alleged in the Complaints, that venue is proper in the County of
7 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

8 2.5 Nothing in this Consent Judgment is or shall be construed as an admission by
9 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
10 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
11 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
12 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
13 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
14 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
15 this action.

16 **3. INJUNCTIVE RELIEF**

17 3.1 **Specification Compliance Date.** To the extent Settling Defendant has not
18 already done so, no more than 30 days after the Effective Date, Settling Defendant shall provide
19 the Lead Limit to its Vendors of Covered Products and shall instruct each Vendor to use
20 reasonable efforts to provide Covered Products that comply with the Lead Limit on a nationwide
21 basis.

22 3.2 **Compliance.**

23 3.2.1 Commencing on July 1, 2013, Settling Defendant shall not purchase,
24 import, Manufacture, sell or offer for sale any Covered Product that will be sold or offered
25 for sale to California consumers that exceeds the Lead Limit.

26 3.3 **Market Withdrawal of Covered Products.** On or before the Effective Date,
27 Settling Defendant shall have: (i) ceased shipping the specific products identified next to its name
28 on Exhibit A (the “Recall Products”) to stores and/or customers in California; (ii) withdrawn the

1 Recall Products from the market in California; and (iii) if the Recall Products were not withdrawn
2 from sale in California prior to the Effective Date, sent instructions to any of its stores and/or
3 customers that offer the Recall Products for sale in California to cease offering such Recall
4 Products for sale and to either return all Recall Products to Settling Defendant for destruction, or
5 to directly destroy the Recall Products. Any destruction of the Recall Products shall be in
6 compliance with all applicable laws. Within 60 days of the Effective Date, Settling Defendant
7 shall certify to CEH that Settling Defendant has complied with this Section 3.3. If there is a
8 dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in
9 court.

10 **4. ENFORCEMENT**

11 4.1 Any Party may, after meeting and conferring, by motion or application for an
12 order to show cause before this Court, enforce the terms and conditions contained in this Consent
13 Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment
14 shall be brought exclusively pursuant to Sections 4.2 through 4.3.

15 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section 3.2
16 by issuing a Notice of Violation pursuant to this Section 4.2.

17 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
18 Defendant within 45 days of the date the alleged violation(s) was or were observed,
19 provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling
20 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it
21 from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a
22 Covered Product so long as: (a) the identity of the supplier cannot be discerned from the
23 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
24 within 45 days of the date the supplier is identified by CEH.

25 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
26 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
27 (b) the location at which the Covered Product was offered for sale, (c) a description of the
28 Covered Product giving rise to the alleged violation, and of each material or component

1 that is alleged not to comply with the Lead Limit, including a picture of the Covered
2 Product and all identifying information on tags and labels, and (d) all test data obtained by
3 CEH regarding the Covered Product and related supporting documentation, including all
4 laboratory reports, quality assurance reports and quality control reports associated with
5 testing of the Covered Products. Such Notice of Violation shall be based at least in part
6 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
7 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
8 Notice of Violation, although any such testing may be used as additional support for a
9 Notice.

10 4.2.3 **Additional Documentation.** CEH shall promptly make available for
11 inspection and/or copying upon request by and at the expense of Settling Defendant, all
12 supporting documentation related to the testing of the Covered Products and associated
13 quality control samples, including chain of custody records, all laboratory logbook entries
14 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
15 from all analytical instruments relating to the testing of Covered Product samples and any
16 and all calibration, quality assurance, and quality control tests performed or relied upon in
17 conjunction with the testing of the Covered Products, obtained by or available to CEH that
18 pertains to the Covered Product's alleged noncompliance with Section 3.2.

19 4.2.4 **Multiple Notices.** If Settling Defendant has received more than four
20 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
21 fines, costs, penalties, or remedies are provided by law for failure to comply with the
22 Consent Judgment. For purposes of determining the number of Notices of Violation
23 pursuant to this Section 4.2.3, the following shall be excluded:

- 24 (a) Multiple notices identifying Covered Products Manufactured for or
25 sold to Settling Defendant from the same Vendor; and
26 (b) A Notice of Violation that meets one or more of the conditions of
27 Section 4.3.3(a).

28 4.3 **Notice of Election.** Within 30 days of receiving a Notice of Violation

1 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant
2 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
3 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be
4 deemed an election to contest the Notice of Violation. Any payments required under this Section
5 4.3 shall be made payable to the Center For Environmental Health and included with Settling
6 Defendant’s Notice of Election.

7 **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
8 Election shall include all then-available documentary evidence regarding the alleged
9 violation, including any test data. Within 30 days the parties shall meet and confer to
10 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
11 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
12 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
13 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
14 Section 4.1, Settling Defendant shall make a payment in the amount of \$12,500 and shall
15 comply with all of the non-monetary provisions of Section 4.3.2. If, at any time prior to
16 reaching an agreement or obtaining a decision from the Court, CEH or Settling Defendant
17 acquires additional test or other data regarding the alleged violation, it shall promptly
18 provide all such data or information to the other Party.

19 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
20 Settling Defendant shall include in its Notice of Election a detailed description of
21 corrective action that it has undertaken or proposes to undertake to address the alleged
22 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
23 Covered Product will no longer be offered by Settling Defendant or its customers for sale
24 in California. If there is a dispute over the sufficiency of the proposed corrective action or
25 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
26 meet and confer before seeking the intervention of the Court to resolve the dispute. In
27 addition to the corrective action, Settling Defendant shall be required to make a payment
28 as reimbursement for costs for investigating, preparing, sending and prosecuting Notices

1 of Violation, and to reimburse attorneys' fees and costs incurred in connection with these
2 activities, in the amount set forth in Section 4.3.3.

3 **4.3.3 Limitations in Non-Contested Matters.**

4 (a) If it elects not to contest a Notice of Violation before any motion
5 concerning the violation(s) at issue has been filed, the monetary liability of Settling
6 Defendant shall be limited to the payments required by this Section 4.3.3, if any.

7 (b) The payment shall be:

8 (i) Ten thousand dollars (\$10,000); or

9 (ii) One thousand seven hundred fifty dollars (\$1,750) if Settling
10 Defendant, prior to receiving and accepting for distribution or sale the
11 Covered Product identified in the Notice of Violation, obtained test results
12 demonstrating that all of the materials or components in the Covered
13 Product identified in the Notice of Violation complied with the Lead Limit,
14 and further provided that such test results meet the same quality criteria to
15 support a Notice of Violation as set forth in Section 4.2.2 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 Defendant
18 shall provide copies of such test results and supporting documentation to
19 CEH with its Notice of Election; or

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

24 **5. PAYMENTS**

25 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay a total
26 settlement amount of \$50,000 as set forth on Exhibit A, on or before the dates set forth on Exhibit
27 A. Each settlement payment shall be paid in three separate checks as set forth on Exhibit A and
28 shall be delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero

1 Street, San Francisco, California 94117-2212. Any failure by Settling Defendant to comply with
2 the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendant
3 in the amount of \$100 for each day the full payment is not received after the applicable date set
4 forth on Exhibit A. The late fees required under this Section shall be recoverable, together with
5 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 5 of this
6 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth on
7 Exhibit A between the following categories:

8 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). CEH shall
9 apportion this payment in accordance with Health & Safety Code § 25249.12 (25% to CEH and
10 75% to the State of California's Office of Environmental Health Hazard Assessment). The civil
11 penalty check shall be made payable to the Center For Environmental Health.

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

21 5.1.3 As reimbursement of a portion of CEH's reasonable attorneys' fees and
22 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
23 Law Group.

24 **6. MODIFICATION**

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

28 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall

1 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
2 modify the Consent Judgment.

3 **7. CLAIMS COVERED AND RELEASED**

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

15 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
16 and the Defendant Releasees constitutes compliance with Proposition 65 by Settling Defendant,
17 its Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
18 failure to warn about Lead contained in Covered Products that are distributed or sold by Settling
19 Defendant after the Effective Date.

20 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
21 action under Proposition 65 against any person other than a Settling Defendant, Defendant
22 Releasee, or Downstream Defendant Releasee.

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

12 8.3 Any Party may modify the person and address to whom the notice is to be sent
13 by sending each other Party notice by first class and electronic mail.

14 **9. COURT APPROVAL**

15 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
16 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
17 shall support entry of this Consent Judgment.

18 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
19 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
20 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

21 **10. ATTORNEYS' FEES**

22 10.1 Should CEH prevail on any motion, application for an order to show cause or
23 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
24 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
25 Settling Defendant prevail on any motion or application for an order to show cause or other
26 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
27 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
28 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,

1 Code of Civil Procedure §§ 2016, *et seq.*

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

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

6 **11. OTHER TERMS**

7 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
8 of California.

9 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
10 Defendant, and the successors or assigns of any of them.

11 11.3 This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
13 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
14 merged herein and therein. There are no warranties, representations, or other agreements between
15 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
16 implied, other than those specifically referred to in this Consent Judgment have been made by any
17 Party hereto. No other agreements not specifically contained or referenced herein, oral or
18 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No waiver of any of the
19 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
20 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
21 waiver.

22 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
23 that Settling Defendant might have against any other party, whether or not that party is a Settling
24 Defendant.

25 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment.

27 11.6 The stipulations to this Consent Judgment may be executed in counterparts and
28 by means of facsimile or portable document format (pdf), which taken together shall be deemed

1 to constitute one document.

2 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
5 Party.

6 11.8 The Parties, including their counsel, have participated in the preparation of this
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
10 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
11 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
12 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
13 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
14 this regard, the Parties hereby waive California Civil Code § 1654.

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16 **IT IS SO ORDERED:**

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18 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

Executive Director

Title

TOP'S HANDBAG, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

TOP'S HANDBAG, INC.



Signature

James Li

Printed Name

Vice president.

Title

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EXHIBIT A

Settling Defendant: Top's Handbag, Inc.

1. Recall Product:

Chains and Studs Shoulder Bag in Pink, SKU No. 1035110091, Style No. 070-14096 (CEH ID No. AB759)

2. Defendant's Settlement Payments and Allocation:

Total Settlement Payment: \$50,000

- On or before March 1, 2013, Settling Defendant shall pay \$25,000 in three separate checks as follows:
 - \$3,300 to Center for Environmental Health as civil penalty pursuant to Section 5.1.1.
 - \$4,950 to Center for Environmental Health as payment in lieu of civil penalty pursuant to Section 5.1.2.
 - \$16,750 to Lexington Law Group as attorneys' fees and costs pursuant to Section 5.1.3.
- On or before May 1, 2013, Settling Defendant shall pay \$25,000 in three separate checks as follows:
 - \$3,300 to Center for Environmental Health as civil penalty pursuant to Section 5.1.1.
 - \$4,950 to Center for Environmental Health as payment in lieu of civil penalty pursuant to Section 5.1.2.
 - \$16,750 to Lexington Law Group as attorneys' fees and costs pursuant to Section 5.1.3.

3. Person to Receive Notices Pursuant to Section 8:

Cameron Hopkins
A Professional Law Corporation
865 South Figueroa Street, Suite 1388
Los Angeles, CA 90017
cameron@hoplawfirm.com