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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. )  
 )  
 \_\_\_\_\_ )  
 )  
 AND CONSOLIDATED CASES. )  
 )  
 \_\_\_\_\_ )

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, RG 11-603764 and RG 12-658652)  
**[PROPOSED] CONSENT JUDGMENT AS TO FOREIGN EXCHANGE, INC.**

**1. DEFINITIONS**

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

1.2 “Covered Products” means Fashion Accessories that are (a) Manufactured by Settling Defendant, or (b) distributed 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           1.3           “Effective Date” means the date on which this Consent Judgment is entered by  
2 the Court.

3           1.4           “Fashion Accessories” means belts and 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 exists 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 24, 2013, the term “Manufactured” and “Manufactures” means to manufacture,  
produce, or assemble.

27 <sup>2</sup> As of May 24, 2013, “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 Foreign Exchange, Inc. (“Settling Defendant”).

6           2.2       Settling Defendant manufactures, distributes or offers Fashion Accessories for  
7 sale in the State of California or has done so in the past.

8           2.3       On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
9 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging  
10 Proposition 65 violations as to wallets, handbags, purses and clutches. The Court has  
11 consolidated the *Lulu* matter with a number of other related Proposition 65 cases.

12          2.4       On May 9, 2011 and January 15, 2013, CEH served 60-Day Notices of  
13 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated  
15 Proposition 65 by exposing persons to Lead contained in belts and footwear, without first  
16 providing a clear and reasonable Proposition 65 warning. On December 5, 2012, CEH filed the  
17 action entitled *CEH v. Fashion Eden*, Case No. RG 12-658652. On March 26, 2013, CEH named  
18 Settling Defendant as a “Belts Defendant” and “Footwear Defendant” in the *Fashion Eden* action  
19 via Doe Amendment.

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

25          2.6       Nothing in this Consent Judgment is or shall be construed as an admission by  
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 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
2 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
3 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
4 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
5 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
6 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
7 this action.

8 **3. INJUNCTIVE RELIEF**

9 3.1 **Specification Compliance Date.** To the extent it has not already done so, no  
10 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
11 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to  
12 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis. This  
13 Section 3.1 is not applicable with respect to Non-Suspect Materials.

14 3.2 **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall  
15 not purchase, import, Manufacture, or supply to an unaffiliated third party any Covered Product  
16 that will be sold or offered for sale to California consumers that exceeds the following Lead  
17 Limits:

18 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per  
19 million (“ppm”).

20 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

21 3.2.3 All other Accessible Components other than cubic zirconia (sometimes  
22 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

23 3.3 **Final Retail Compliance Date.** Commencing on the Effective Date, Settling  
24 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
25 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s  
26 direct customer sells or offers for sale to California consumers a Covered Product after the  
27 Effective Date, Settling Defendant is deemed to have “offered for sale to California consumers”  
28 that Covered Product.

1                   3.4           **Warnings for Covered Products.**

2                   3.4.1   **Interim Warning Option.** A Covered Product purchased, imported or  
3                   Manufactured by Settling Defendant before the Effective Date, may, as an alternative to  
4                   meeting the Lead Limits, be sold or offered for retail sale in California after the Effective  
5                   Date, with a Clear and Reasonable Warning that complies with the provisions of Section  
6                   3.4.2.

7                   3.4.2   **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
8                   Consent Judgment shall state either:

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

12                  Or

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

16                  This statement shall be prominently displayed on the Covered Product or the packaging of  
17                  the Covered Product with such conspicuousness, as compared with other words,  
18                  statements or designs as to render it likely to be read and understood by an ordinary  
19                  individual prior to sale. For internet, catalog or any other sale where the consumer is not  
20                  physically present and cannot see a warning displayed on the Covered Product or the  
21                  packaging of the Covered Product prior to purchase or payment, the warning statement  
22                  shall be displayed in such a manner that it is likely to be read and understood prior to the  
23                  authorization of or actual payment.

24                  3.5           **Action Regarding Specific Products.**

25                  3.5.1   On or before the Effective Date, Settling Defendant shall cease selling the  
26                  following specific products in California:

- 27                  • Belt in Brown, Item No. 41819

- 1 • Foreign Exchange Metal Loop Belt in Green; Item No. 67779; Style No.  
2 KGB0084
- 3 • Foreign Exchange Pink Twisted Multi Color Belt; Item No. 63367; Style No.  
4 PB5387
- 5 • Foreign Exchange Yellow Belt with Pretzel Weave Closure; Item No. 67806; Style  
6 No. PB5391
- 7 • Foreign Exchange Burgundy Simple Elastic Buckle Belt; Item No. 86208; Style  
8 No. H7609
- 9 • Foreign Exchange Animal Print Skinny Belt in Green; Item No. 67547; Style No.  
10 LBS-1101
- 11 • Wild Rose Cinderella Chic Heels in Red; Item No. WEB80001; Style No.  
12 POSY01

13 (the “Section 3.5 Products”). On or before the Effective Date, Settling Defendant shall  
14 also: (i) cease shipping the Section 3.5 Products to any of its customers that resell the  
15 Section 3.5 Products in California, and (ii) send instructions to its customers that resell the  
16 Section 3.5 Products in California instructing them to cease offering the Section 3.5  
17 Products for sale in California.

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

24 3.5.3 Any destruction of the Section 3.5 Products shall be in compliance with all  
25 applicable laws.

26 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide  
27 CEH with written certification from Settling Defendant confirming compliance with the  
28 requirements of this Section 3.5.

1 **4. ENFORCEMENT**

2 4.1 Any Party may, after meeting and conferring, by motion or application for an  
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
4 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent  
5 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3.

6 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
7 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.2.

8 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling  
9 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
10 provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling  
11 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it  
12 from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a  
13 Covered Product so long as: (a) the identity of the supplier cannot be discerned from the  
14 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served  
15 within 45 days of the date the supplier is identified by CEH.

16 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
17 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
18 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
19 Covered Product giving rise to the alleged violation, and of each Accessible Component  
20 that is alleged not to comply with the Lead Limits and/or each Accessible Component that  
21 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including  
22 a picture of the Covered Product and all identifying information on tags and labels, and  
23 (d) all test data obtained by CEH regarding the Covered Product and related supporting  
24 documentation, including all laboratory reports, quality assurance reports and quality  
25 control reports associated with testing of the Covered Products. Such Notice of Violation  
26 shall be based at least in part upon total acid digest testing performed by an independent  
27 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by  
28 themselves sufficient to support a Notice of Violation, although any such testing may be

1 used as additional support for a Notice. The Parties agree that the sample Notice of  
2 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of  
3 subsections (c) and (d) of this Section 4.2.2.

4 **4.2.3 Additional Documentation.** CEH shall promptly make available for  
5 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
6 supporting documentation related to the testing of the Covered Products and associated  
7 quality control samples, including chain of custody records, all laboratory logbook entries  
8 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
9 from all analytical instruments relating to the testing of Covered Product samples and any  
10 and all calibration, quality assurance, and quality control tests performed or relied upon in  
11 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
12 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
13 any exemplars of Covered Products tested.

14 **4.2.4 Multiple Notices.** If Settling Defendant has received more than four  
15 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
16 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
17 Consent Judgment. For purposes of determining the number of Notices of Violation  
18 pursuant to this Section 4.2.4, the following shall be excluded:

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

21 (b) A Notice of Violation that meets one or more of the conditions of  
22 Section 4.3.3(c).

23 **4.3 Notice of Election.** Within 30 days of receiving a Notice of Violation  
24 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant  
25 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
26 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be  
27 deemed an election to contest the Notice of Violation. Any contributions to the Fashion  
28 Accessory Testing Fund required under this Section 4 shall be made payable to The Center for



1 Environmental Health and included with Settling Defendant's Notice of Election.

2           **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
3 Election shall include all then-available documentary evidence regarding the alleged  
4 violation, including any test data. Within 30 days the parties shall meet and confer to  
5 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
6 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
7 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
8 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
9 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
10 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
11 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or  
12 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
13 other data regarding the alleged violation, it shall promptly provide all such data or  
14 information to the other Party.

15           **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,  
16 Settling Defendant shall include in its Notice of Election a detailed description of  
17 corrective action that it has undertaken or proposes to undertake to address the alleged  
18 violation. Any such correction shall, at a minimum, provide reasonable assurance that the  
19 Covered Product will no longer be offered by Settling Defendant or its customers for sale  
20 in California. If there is a dispute over the sufficiency of the proposed corrective action or  
21 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall  
22 meet and confer before seeking the intervention of the Court to resolve the dispute. In  
23 addition to the corrective action, Settling Defendant shall make a contribution to the  
24 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of  
25 Section 4.3.3 applies.

26           **4.3.3 Limitations in Non-Contested Matters.**

27           (a) If it elects not to contest a Notice of Violation before any motion  
28 concerning the violation(s) at issue has been filed, the monetary liability of Settling

1 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section  
2 4.3.3, 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 (\$1,750) 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 meet the same  
14 quality criteria to support a Notice of Violation as set forth in Section 4.2.2  
15 and that the testing was performed within two years prior to the date of the  
16 sales transaction on which the Notice of Violation is based. Settling  
17 Defendant shall provide copies of such test results and supporting  
18 documentation to CEH with its Notice of Election; 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 Effective Date.

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

8 **4.4 Additional Enforcement for Noncompliant Non-Covered Products.** If  
9 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a  
10 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that  
11 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to  
12 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide  
13 notice to Settling Defendant pursuant to this Section 4.4.

14 4.4.1 The notice shall contain the information required for a Notice of Violation  
15 in Section 4.2. If the information is insufficient to allow Settling Defendant to identify the  
16 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
17 further identifying information for the Noncompliant Non-Covered Product that is  
18 reasonably available to it.

19 4.4.2 Within 30 days of receiving a notice pursuant to Section 4.4, or of any  
20 requested further information sufficient to identify the Noncompliant Non-Covered  
21 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.  
22 The Notice of Election shall:

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

26 (b) Identify the manufacturer and other distributors in the chain of  
27 distribution of the Noncompliant Non-Covered Product, provided that such information is  
28 reasonably available; and

1 (c) Include either: (i) a statement that Settling Defendant elects not to  
2 proceed under this Section 4.4, in which case CEH may take further action including  
3 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant  
4 elects to proceed under this Section 4.4, with a description of corrective action that meets  
5 the conditions of Section 4.3.2, and a contribution to the Fashion Accessory Testing Fund  
6 in the amount required under Section 4.4.6, or (iii) a statement that Settling Defendant  
7 contends that the Noncompliant Non-Covered Product is released from liability by a  
8 Qualified Settlement under Section 4.4.4 along with a copy of such Qualified Settlement.

9 4.4.3 A party's disclosure pursuant to this Section 4.4 of any (i) test reports, (ii)  
10 confidential business information, or (iii) other information that may be subject to a claim  
11 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
12 or confidentiality, provided that the Party disclosing such information shall clearly  
13 designate it as confidential. Any Party receiving information designated as confidential  
14 pursuant to this Section 4.4.3 shall not disclose such information to any unrelated person  
15 or entity, and shall use such information solely for purposes of resolving any disputes  
16 under this Consent Judgment.

17 4.4.4 No further action is required of Settling Defendant under this Consent  
18 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability  
19 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
20 Covered Product by the terms of a separate settlement agreement or consent judgment  
21 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

22 4.4.5 If Settling Defendant elects not to proceed under Section 4.4, then neither  
23 Settling Defendant nor CEH has any further duty under this Section 4.4 and either may  
24 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
25 elects to proceed under Section 4.4.2(c)(ii), then compliance with that Section shall  
26 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

27 4.4.6 If Settling Defendant elects to proceed under this Section 4.4 and is not  
28 relieved of liability under Section 4.4.4, Settling Defendant shall make a contribution to

1 the Fashion Accessory Testing Fund in the amounts that follow unless one of the  
2 provisions of Section 4.3.3(c) applies, in which case the applicable amount specified in  
3 Section 4.3.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one  
4 of the person(s) identified by Settling Defendant pursuant to Section 4.4.2 (i) is a person  
5 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)  
6 has a principal place of business located within the United States, and \$10,000 for all  
7 other notices.

8 4.4.7 If Settling Defendant makes a contribution pursuant to this Section and at a  
9 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
10 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
11 Defendant shall be entitled to a refund of the lesser amount of its contribution or the  
12 settlement amount paid by such Vendor. If the settlement or consent judgment between  
13 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
14 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
15 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's  
16 settlement payment.

17 4.4.8 Any notice served by CEH pursuant to this Section 4.4 shall not be  
18 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.4  
19 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
20 than Settling Defendant.

## 21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent  
23 Judgment, Settling Defendant shall pay the total sum of \$55,000 as a settlement payment. The  
24 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to  
25 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San  
26 Francisco, California 94117. The funds paid by Settling Defendant shall be allocated between the  
27 following categories:

28 5.1.1 \$7,250 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),

1 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12  
2 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard  
3 Assessment). The civil penalty check shall be made payable to the Center For Environmental  
4 Health.

5 5.1.2 \$10,900 as a payment in lieu of civil penalty to CEH pursuant to Health &  
6 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use  
7 such funds to continue its work educating and protecting people from exposures to toxic  
8 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
9 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots  
10 environmental justice groups working to educate and protect people from exposures to toxic  
11 chemicals. The method of selection of such groups can be found at the CEH web site at  
12 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the  
13 Center For Environmental Health.

14 5.1.3 \$36,850 as reimbursement of a portion of CEH’s reasonable attorneys’ fees  
15 and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the  
16 Lexington Law Group.

## 17 **6. MODIFICATION**

18 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
19 time by express written agreement of the Parties with the approval of the Court, or by an order of  
20 this Court upon motion and in accordance with law.

21 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
22 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
23 modify the Consent Judgment.

## 24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
26 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
27 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
28 (“Defendant Releasees”), and each entity to whom it directly or indirectly distributes or sells

1 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
2 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)  
3 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
4 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
5 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by  
6 Settling Defendant prior to the Effective Date.

7 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
8 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered  
9 Products.

10 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
11 action under Proposition 65 against any person other than Settling Defendant, Defendant  
12 Releasee, or Downstream Defendant Releasee.

13 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action  
14 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
15 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to  
16 California consumers that does not comply with the Lead Limits after the Effective Date; and (c)  
17 is not sold or offered for sale with compliant Proposition 65 warnings under this Consent  
18 Judgment.

19 **8. NOTICE**

20 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
21 notice shall be sent by first class and electronic mail to:

22 Eric S. Somers  
23 Lexington Law Group  
24 503 Divisadero Street  
25 San Francisco, CA 94117  
26 esomers@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
28 Judgment, the notice shall be sent by first class and electronic mail to:

1 John Park  
2 Kim Park Choi & Yi  
3 3435 Wilshire Blvd., Suite 2150  
4 Los Angeles, CA 90010  
5 johnpark@kpcylaw.com

6 8.3 Any Party may modify the person and address to whom the notice is to be sent  
7 by sending the other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
10 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
11 shall support entry of this Consent Judgment.

12 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
13 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
14 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

15 **10. ATTORNEYS' FEES**

16 10.1 Should CEH prevail on any motion, application for an order to show cause or  
17 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
18 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
19 Settling Defendant prevail on any motion application for an order to show cause or other  
20 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
21 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
22 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
23 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
24 Code of Civil Procedure §§ 2016, *et seq.*

25 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
26 its own attorneys' fees and costs.

27 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
28 sanctions pursuant to law.

**11. TERMINATION**

11.1 This Consent Judgment shall be terminable by CEH or Settling Defendant at



1 any time after January 1, 2019, upon the provision of 30 days advanced written notice; such  
2 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
3 Court of Alameda County.

4 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall  
5 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
6 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
7 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
8 7.1 and 12.1 shall survive any termination.

9 **12. OTHER TERMS**

10 12.1 The terms of this Consent Judgment shall be governed by the laws of the State  
11 of California.

12 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
13 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
14 assigns of any of them.

15 12.3 This Consent Judgment contains the sole and entire agreement and  
16 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
17 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
18 merged herein and therein. There are no warranties, representations, or other agreements between  
19 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
20 implied, other than those specifically referred to in this Consent Judgment have been made by any  
21 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
22 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
23 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
24 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
25 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
26 whether or not similar, nor shall such waiver constitute a continuing waiver.

27 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
28 that Settling Defendant might have against any other party, whether or not that party is a Settling

1 Defendant.

2 12.5 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

4 12.6 The stipulations to this Consent Judgment may be executed in counterparts  
5 and by means of facsimile or portable document format (pdf), which taken together shall be  
6 deemed to constitute one document.

7 12.7 Each signatory to this Consent Judgment certifies that he or she is fully  
8 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
9 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
10 Party.

11 12.8 The Parties, including their counsel, have participated in the preparation of  
12 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
13 This Consent Judgment was subject to revision and modification by the Parties and has been  
14 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
15 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
16 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
17 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
18 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
19 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

20

21 **IT IS SO ORDERED:**

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23 Dated: \_\_\_\_\_, 2013

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\_\_\_\_\_  
The Honorable Steven A. Brick  
Judge of the Superior Court

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**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**



Signature



Printed Name



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**FOREIGN EXCHANGE, INC.**

Signature

Printed Name

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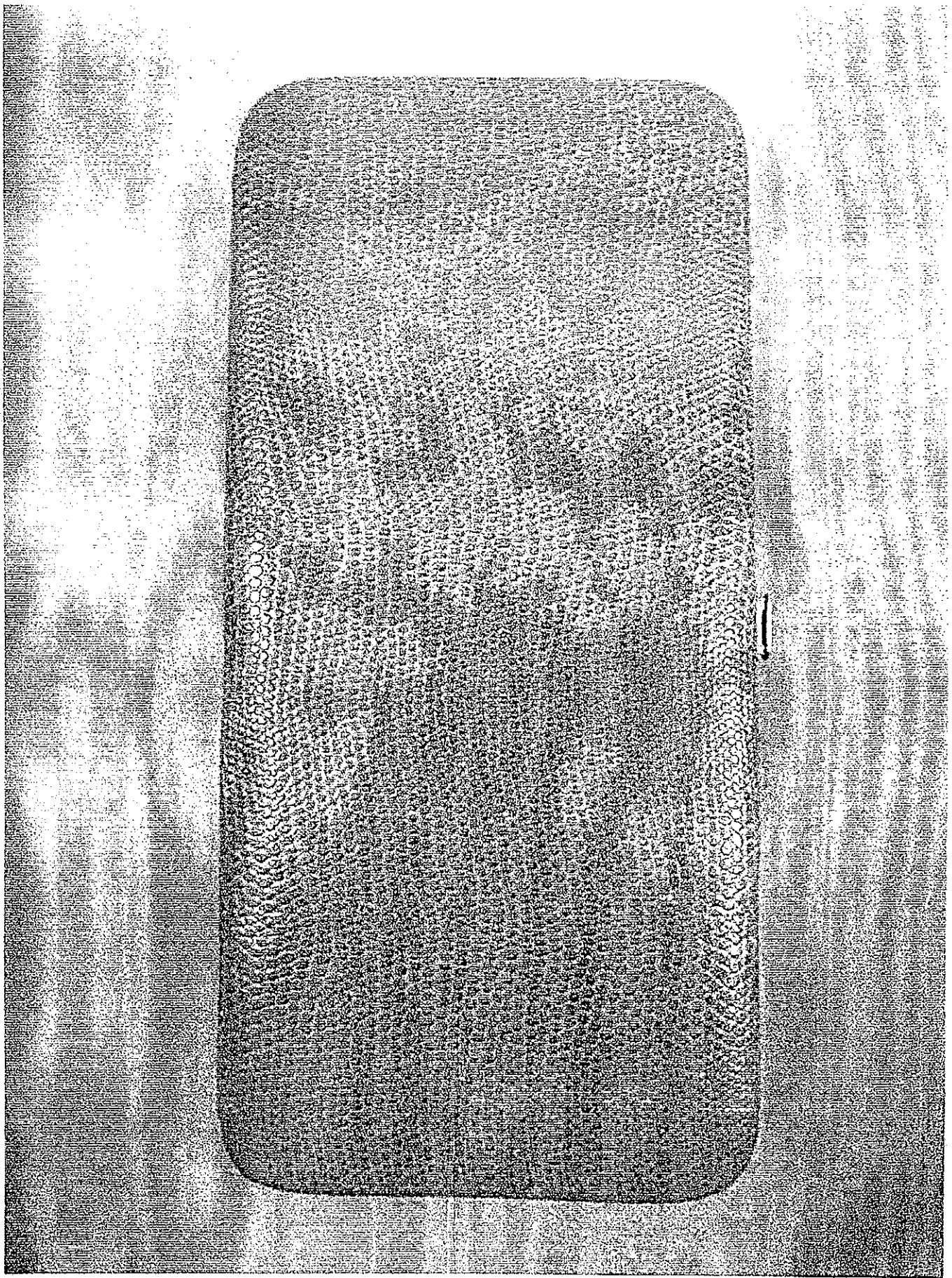
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*Albert Han*  
\_\_\_\_\_  
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# **Exhibit A**



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OF

INTELLIGENCE

UNITED STATES

DEPARTMENT OF JUSTICE

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



925-828-1440  
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## 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](http://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