

1 1.4 “Manufactured” and “Manufactures” means to manufacture, produce, or
2 assemble.

3 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
4 with or without a suspension of finely divided coloring matter, which changes to a solid film
5 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
6 This term does not include printing inks or those materials which actually become a part of the
7 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
8 the substrate, such as by electroplating or ceramic glazing.

9 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or
10 supplies a Covered Product to Settling Defendant.

11 **2. INTRODUCTION**

12 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
13 Environmental Health (“CEH”) and defendant ACI International (“Settling Defendant”).

14 2.2 On April 2, 2015, CEH served a 60-Day Notice of Violation under Proposition
15 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
16 Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney General,
17 the District Attorneys of every County in the State of California, and the City Attorneys for every
18 City in the State of California with a population greater than 750,000. The Notice alleges that
19 Settling Defendant violated Proposition 65 by exposing persons to Lead contained in footwear
20 without first providing a clear and reasonable Proposition 65 warning.

21 2.3 On April 8, 2015, CEH filed the action *Center for Environmental Health v.*
22 *Charming Charlie LLC, et al.*, Case No. RG 15-765590, in the Superior Court of California for
23 Alameda County. On or about October 5, 2015, CEH named Settling Defendant as a defendant in
24 that action pursuant to California Code of Civil Procedure § 474.

25 2.4 Settling Defendant manufactures, distributes and/or offers for sale Covered
26 Products in the State of California or has done so in the past.

27 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
28 Court has jurisdiction over the allegations of violations contained in the operative Complaint

1 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
2 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
3 and that this Court has jurisdiction to enter this Consent Judgment.

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

12 **3. INJUNCTIVE RELIEF**

13 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
14 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
15 Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to provide
16 Covered Products that comply with the Lead Limits on a nationwide basis.

17 3.2 **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall
18 not purchase, import, Manufacture, distribute, supply to an unaffiliated third party, or sell or
19 offer for sale any Covered Product that will be sold or offered for sale to California consumers
20 that contains a material or is made of a component that exceeds the following Lead Limits:

21 3.2.1 Paint or other Surface Coatings: 90 parts per million (“ppm”).

22 3.2.2 Polyvinyl chloride (“PVC”): 200 ppm.

23 3.2.3 All other materials or components other than cubic zirconia (sometimes
24 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

25 For purposes of this Section 3.2, when Settling Defendant’s direct customer, or
26 retailers for whom Settling Defendant acts as a buying or purchasing agent, sells or offers for sale
27 to California consumers a Covered Product after the Effective Date, Settling Defendant is deemed
28 to have “offered for sale to California consumers” that Covered Product.

1 **3.3 Action Regarding Specific Products.**

2 3.3.1 On or before the Effective Date, to the extent it has not already done so,
3 Settling Defendant shall cease selling in California the Perry Ellis Portfolio Harris Shoes
4 in Light Brown, Ross SKU No. 400117701096, Style No. PEAC20105M-19, Style Name
5 HARRIS (the “Section 3.3 Product”). On or before the Effective Date, Settling Defendant
6 shall also: (i) cease shipping the Section 3.3 Product to any of its stores and/or customers
7 that resell the Section 3.3 Product in California, and (ii) send instructions to its stores
8 and/or customers that resell the Section 3.3 Product in California instructing them either
9 to: (a) return all of the Section 3.3 Product to Settling Defendant for destruction; or (b)
10 directly destroy the Section 3.3 Product.

11 3.3.2 Any destruction of the Section 3.3 Product shall be in compliance with all
12 applicable laws.

13 3.3.3 Upon request, Settling Defendant shall provide CEH with written
14 certification from Settling Defendant confirming compliance with the requirements of this
15 Section 3.3.

16 **4. ENFORCEMENT**

17 4.1 Any Party may, after meeting and conferring, by motion or application for an
18 order to show cause before this Court, enforce the terms and conditions contained in this Consent
19 Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment
20 shall be brought exclusively pursuant to Sections 4.2 through 4.3.

21 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section
22 3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

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

1 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
2 within 45 days of the date the supplier is identified by CEH.

3 **4.2.2 Supporting Documentation.** The Notice of Violation shall, at a
4 minimum, set forth for each Covered Product: (a) the date(s) the alleged violation(s) was
5 observed, (b) the location at which the Covered Product was offered for sale, (c) a
6 description of the Covered Product giving rise to the alleged violation, and of each
7 material or component that is alleged not to comply with the Lead Limits, including a
8 picture of the Covered Product and all identifying information on tags and labels, and (d)
9 all test data obtained by CEH regarding the Covered Product and related supporting
10 documentation, including all laboratory reports, quality assurance reports and quality
11 control reports associated with testing of the Covered Products. Such Notice of Violation
12 shall be based at least in part upon total acid digest testing performed by an independent
13 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
14 themselves sufficient to support a Notice of Violation, although any such testing may be
15 used as additional support for a Notice. The Parties agree that the sample Notice of
16 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
17 subsections (c) and (d) of this Section 4.2.2.

18 **4.2.3 Additional Documentation.** CEH shall promptly make available for
19 inspection and/or copying upon request by and at the expense of Settling Defendant, all
20 supporting documentation related to the testing of the Covered Products and associated
21 quality control samples, including chain of custody records, all laboratory logbook entries
22 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
23 from all analytical instruments relating to the testing of Covered Product samples and any
24 and all calibration, quality assurance, and quality control tests performed or relied upon in
25 conjunction with the testing of the Covered Products, obtained by or available to CEH that
26 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
27 any exemplars of Covered Products tested.

28

1 4.2.4 **Multiple Notices.** If Settling Defendant has received more than four
2 Notices of Violation in any 12-month period, at CEH’s option, CEH may seek whatever
3 fines, costs, penalties, or remedies are provided by law for failure to comply with the
4 Consent Judgment. For purposes of determining the number of Notices of Violation
5 pursuant to this Section 4.2.4, the following shall be excluded:

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

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

10 4.3 **Notice of Election.** Within 30 days of receiving a Notice of Violation
11 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant
12 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
13 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be
14 deemed an election to contest the Notice of Violation. Any contributions to the Fashion
15 Accessory Testing Fund required under this Section 4.3 shall be made payable to The Center for
16 Environmental Health and included with Settling Defendant’s Notice of Election.

17 4.3.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
18 Election shall include all then-available documentary evidence regarding the alleged
19 violation, including any test data. Within 30 days the parties shall meet and confer to
20 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
21 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
22 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
23 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
24 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
25 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
26 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or
27 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
28 other data regarding the alleged violation, it shall promptly provide all such data or

1 information to the other Party.

2 4.3.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
3 Settling Defendant shall include in its Notice of Election a detailed description of
4 corrective action that it has undertaken or proposes to undertake to address the alleged
5 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
6 Covered Product will no longer be offered by Settling Defendant or its customers for sale
7 in California. If there is a dispute over the sufficiency of the proposed corrective action or
8 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
9 meet and confer before seeking the intervention of the Court to resolve the dispute. In
10 addition to the corrective action, Settling Defendant shall make a contribution to the
11 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
12 Section 4.3.3 applies.

13 4.3.3 **Limitations in Non-Contested Matters.**

14 (a) If it elects not to contest a Notice of Violation before any motion
15 concerning the violation(s) at issue has been filed, the monetary liability of Settling
16 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section
17 4.3.3, if any.

18 (b) If more than one Settling Defendant has manufactured, sold, offered
19 for sale or distributed a Covered Product identified in a non-contested Notice of Violation,
20 only one required contribution may be assessed against all Settling Defendants as to the
21 noticed Covered Product.

22 (c) The contribution to the Fashion Accessory Testing Fund shall be:

23 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
24 Defendant, prior to receiving and accepting for distribution or sale the
25 Covered Product identified in the Notice of Violation, obtained test results
26 demonstrating that all of the materials or components in the Covered
27 Product identified in the Notice of Violation complied with the applicable
28 Lead Limits, and further provided that such test results meet the same

1 quality criteria to support a Notice of Violation as set forth in Section 4.2.2
2 and that the testing was performed within two years prior to the date of the
3 sales transaction on which the Notice of Violation is based. Settling
4 Defendant shall provide copies of such test results and supporting
5 documentation to CEH with its Notice of Election; or

6 (ii) One thousand five hundred dollars (\$1,500) if Settling
7 Defendant is in violation of Section 3.2 only insofar as that Section deems
8 Settling Defendant to have “offered for sale to California consumers” a
9 product sold at retail by Settling Defendant’s customer, provided however,
10 that no contribution is required or payable if Settling Defendant has already
11 been required to pay a total of ten thousand dollars (\$10,000) pursuant to
12 this subsection. This subsection shall apply only to Covered Products that
13 Settling Defendant demonstrates were shipped prior to the Effective Date;
14 or

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

19 **5. PAYMENTS**

20 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
21 Date, Settling Defendant shall pay the total sum of \$40,000 as a settlement payment. The total
22 settlement amount for Settling Defendant shall be paid in three separate checks and delivered to
23 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
24 Francisco, California 94117-2212, and made payable and allocated as follows:

25 5.1.1 Settling Defendant shall pay the sum of \$5,250 as a civil penalty pursuant
26 to Health & Safety Code § 25249.7(b). CEH shall apportion this payment in accordance with
27 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
28

1 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
2 Center for Environmental Health.

3 5.1.2 Settling Defendant shall pay the sum of \$7,900 as a payment in lieu of civil
4 penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
5 Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and
6 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
7 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
8 funds to award grants to grassroots environmental justice groups working to educate and protect
9 people from exposures to toxic chemicals. The method of selection of such groups can be found
10 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
11 made payable to the Center for Environmental Health.

12 5.1.3 Settling Defendant shall also separately pay the sum of \$26,850 to the
13 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and
14 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
15 Law Group.

16 **6. MODIFICATION**

17 6.1 **Written Consent.** This Consent Judgment may be modified from time to
18 time by express written agreement of the Parties with the approval of the Court, or by an order of
19 this Court upon motion and in accordance with law.

20 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
21 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
22 modify the Consent Judgment.

23 **7. CLAIMS COVERED AND RELEASED**

24 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
25 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
26 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
27 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
28 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,

1 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)
2 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
3 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
4 to warn about alleged exposure to Lead contained in Covered Products that were sold by Settling
5 Defendant, or for which Settling Defendant acted as a buying or purchasing agent prior to the
6 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 Covered Products sold by
9 Settling Defendant.

10 7.3 This Consent Judgment resolves all monetary claims CEH has asserted against
11 Settling Defendant and any of its Downstream Defendant Releasees under Fashion Accessory
12 Testing Fund Notices of Violation issued or to be issued by CEH that are related to the Section
13 3.3 Products.

14 **8. NOTICE**

15 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
16 notice shall be sent by first class and electronic mail to:

17 Eric S. Somers
18 Lexington Law Group
19 503 Divisadero Street
20 San Francisco, CA 94117
21 esomers@lexlawgroup.com

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent
23 Judgment, the notice shall be sent by first class and electronic mail to:

24 Anna M. Liao
25 Vice President and General Counsel
26 ACI International,
27 844 Moraga Drive
28 Los Angeles, CA 90049
29 aliau@aciint.com

30 Jeffrey Margulies
31 William Troutman
32 Norton Rose Fulbright US LLP

1 555 South Flower Street, 41st Floor
2 Los Angeles, CA 90071
3 jeff.margulies@nortonrosefulbright.com
4 william.troutman@nortonrosefulbright.com

5 8.3 Any Party may modify the person and address to whom the notice is to be sent
6 by sending each other Party notice by first class and electronic mail.

7 **9. COURT APPROVAL**

8 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
9 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
10 shall support entry of this Consent Judgment.

11 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
12 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
13 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

14 **10. ATTORNEYS' FEES**

15 10.1 Should CEH prevail on any motion, application for an order to show cause or
16 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
17 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
18 Settling Defendant prevail on any motion application for an order to show cause or other
19 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
20 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
21 or application lacked substantial justification. For purposes of this Consent Judgment, the term
22 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
23 Code of Civil Procedure §§ 2016, *et seq.*

24 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
25 its own attorneys' fees and costs.

26 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
27 sanctions pursuant to law.

28 **11. TERMINATION**

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

1 at any time after January 1, 2020, 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 and 7 shall survive any termination and provided
7 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and 7.1
8 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 the successors or assigns of any of them.

14 12.3 This Consent Judgment contains the sole and entire agreement and
15 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
16 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
17 merged herein and therein. There are no warranties, representations, or other agreements between
18 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
19 implied, other than those specifically referred to in this Consent Judgment have been made by any
20 Party hereto. No other agreements not specifically contained or referenced herein, oral or
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
22 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
23 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
24 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
25 whether or not similar, nor shall such waiver constitute a continuing waiver.

26 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
27 that Settling Defendant might have against any other party, whether or not that party is a Settling
28 Defendant.

1 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
2 Consent Judgment.

3 12.6 The stipulations to this Consent Judgment may be executed in counterparts
4 and by means of facsimile or portable document format (pdf), which taken together shall be
5 deemed to constitute one document.

6 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
7 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
8 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
9 Party.

10 12.8 The Parties, including their counsel, have participated in the preparation of
11 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
12 This Consent Judgment was subject to revision and modification by the Parties and has been
13 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
14 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
15 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
16 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
17 be resolved against the drafting Party should not be employed in the interpretation of this Consent
18 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

19

20 **IT IS SO ORDERED:**

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22 Dated: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

[Handwritten Signature]

Signature

CARLOS I. ZANNO

Printed Name

Associate Director

Title

ACI INTERNATIONAL

Signature

Printed Name

Title

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

ACI INTERNATIONAL

Anna M. Liao

Signature

Anna M. Liao

Printed Name

VP and General 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