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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 02 2012

*N. Dyster*, Exec. Off./Clerk

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. )  

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

**1. DEFINITIONS**

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

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

1           1.3           “Effective Date” means the date on which this Consent Judgment is entered by  
2 the Court.

3           1.4           “Fashion Accessories” means: (i) wallets, handbags, purses, and clutches; (ii)  
4 belts; and (iii) footwear.

5           1.5           “Lead Limits” means the maximum concentrations of lead and lead  
6 compounds (“Lead”) by weight specified in Section 3.2.

7           1.6           “Manufactured” and “Manufactures” means to manufacture, produce, or  
8 assemble.

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 CFR § 1500.91(d) and (e), as it exists on  
12 the Effective Date.

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>1</sup>, as amended from time to time.

25 \_\_\_\_\_  
26 <sup>1</sup> As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other  
27 material, with or without a suspension of finely divided coloring matter, which changes to a solid  
28 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other  
surface. This term does not include printing inks or those materials which actually become a part  
of the substrate, such as the pigment in a plastic article, or those materials which are actually  
bonded to the substrate, such as by electroplating or ceramic glazing.

1           2.11       “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 (each, a “Party” and collectively, the  
5 “Parties”) are the Center for Environmental Health (“CEH”) and defendant QVC, Inc. (“Settling  
6 Defendant”).

7           2.2       Settling Defendant sells and distributes Fashion Accessories that are shipped  
8 to the State of California or has done so in the past.

9           2.3       On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
10 Case No. RG 09-459448, and on January 19, 2010, CEH filed the action entitled *CEH v. Bag*  
11 *Bazaar*, Case No. RG 10-494517, alleging Proposition 65 violations as to wallets, handbags,  
12 purses and clutches. On March 3, 2010, the *Lulu* and *Bag Bazaar* cases were consolidated for  
13 pre-trial purposes with the following related cases: (a) *CEH v. Ashley Stewart*, Case No. RG10-  
14 494289; and (b) *CEH v. Zappos.com, Inc.*, Case No. RG 10-494513. On February 8, 2012, the  
15 following cases were also consolidated for pre-trial purposes with the *Lulu* consolidated cases: (a)  
16 *CEH v. Bioworld Merchandising, Inc.*, Case No. RG 11-598596; (b) *CEH v. Yoki Shoes LLC*,  
17 Case No. RG 11-598595; and (c) *CEH v. Armani Exchange, Inc.*, Case No. RG 11-603764.

18           2.4       On May 27, 2010, May 9, 2011 and February 7, 2012 CEH issued 60-day  
19 Notices of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act  
20 of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) to QVC alleging that it exposed  
21 consumers in California to lead in wallets, handbags, purses, clutches, footwear and belts sold by  
22 QVC without first providing a Proposition 65 warning. On or about November 3, 2010, CEH  
23 filed a Second Amended Complaint in *CEH v. Bag Bazaar* and on or about July 26, 2011 CEH  
24 filed the operative Third Amended Complaint in *CEH v. Ashley Stewart*, naming Settling  
25 Defendant as defendants in those actions. On July 26, 2011, CEH filed the operative Third  
26 Amended Complaint in the *Bag Bazaar* action. On April 11, 2012, CEH filed the operative First  
27 Amended Complaint in *CEH v. Yoki Shoes*, naming Settling Defendant as a defendant in that  
28 action.

1           2.5           For purposes of this Consent Judgment only, the Parties waive any right to  
2 contest: (i) jurisdiction over the allegations of violations contained in the operative Complaint  
3 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling  
4 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of  
5 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

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

### 14   **3.    INJUNCTIVE RELIEF**

15           3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
16 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
17 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to  
18 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis. This  
19 Section 3.1 is not applicable with respect to Non-Suspect Materials.

#### 20           3.2           **Lead Limits.**

21                       Settling Defendant shall not purchase, import, or Manufacture any Covered  
22 Product that will be sold or offered for sale to California consumers that exceeds the following  
23 Lead Limits:

24                       3.2.1 Commencing on the Effective Date, Paint or other Surface Coatings on  
25 Accessible Components: 90 parts per million ("ppm").

26                       3.2.2 Commencing on the Effective Date, leather (including composited leather)  
27 Accessible Components: 300 ppm. In the alternative, Covered Products containing  
28 multiple patches of different scrap leathers may be sold with a clear and reasonable

1 warning provided pursuant to the requirements of Section 3.4.

2 3.2.3 Commencing on the Effective Date, polyvinyl chloride (“PVC”)  
3 Accessible Components: 200 ppm.

4 3.2.4 Commencing on the Effective Date, for all other Accessible Components  
5 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or  
6 rhinestones: 300 ppm.

7 3.3 **Final Retail Compliance Date.** Commencing on December 1, 2012, Settling  
8 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
9 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s  
10 direct customer sells or offers for sale to California consumers a Covered Product after the  
11 applicable Final Retail Compliance Date, Settling Defendant is deemed to “offer for sale in  
12 California” that Covered Product. For purposes of this Section 3.3, Settling Defendant shall not  
13 be deemed to “offer for sale in California” a Covered Product when its direct customer is not an  
14 entity in the business of marketing, promoting, selling or distributing consumer products (a “Non-  
15 Retail Entity”).

16 3.4 **Warnings for Covered Products.**

17 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported<sup>2</sup> or  
18 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to  
19 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,  
20 2012, with a Clear and Reasonable Warning that complies with the provisions of Section  
21 3.4.2.

22 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
23 Consent Judgment shall state either:

24 WARNING: This product contains lead, a chemical known to the State of  
25 California to cause birth defects or other reproductive harm. Do not allow children  
26

27 <sup>2</sup> A Covered Product shall be deemed purchased or imported prior to the Effective Date if the  
28 relevant purchase order, consignment order or drop ship order was issued by QVC prior to the  
Effective Date.

1 to mouth or chew.

2 Or

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

6 This statement shall be prominently displayed on the Covered Product or the packaging of  
7 the Covered Product with such conspicuousness, as compared with other words,  
8 statements or designs as to render it likely to be read and understood by an ordinary  
9 individual prior to sale.<sup>3</sup> For internet, catalog or any other sale where the consumer is not  
10 physically present and cannot see a warning displayed on the Covered Product or the  
11 packaging of the Covered Product prior to purchase or payment, the warning statement  
12 shall be displayed in such a manner that it is likely to be read and understood prior to the  
13 authorization of or actual payment.

14 **3.5 Action Regarding Specific Products.**

15 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the  
16 following specific products in California for as long as such products do not comply with  
17 the Lead Limits: (i) Kathy Van Zealand Napa Top Zip Handbag – Mustard, SKU No.  
18 09265370871001, Item No. A85573-477000, (ii) Isaac Mizrahi Live Braided Metal Link  
19 Belt in Dijon, Item No. A203882, (iii) Kenneth Jay Lane Butterfly Handbag in Green,  
20 Item No. A82225-061000, (iv) Joan Rivers City Scene Python Pattern Tote in Green, Item  
21 No. A97805-061000, (v) Fiore by Isabella Fiore Leather Heart/Peace Messenger in  
22 Saffron, Item No. A92449-848000, (vi) Roccatella Glove Leather Haley Convertible  
23 Satchel in Mustard, Item No. A210555-477000 (collectively, the “Section 3.5 Products”).  
24 On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the  
25 Section 3.5 Products to any of its customers that resell the Section 3.5 Products in  
26

27 <sup>3</sup> For purposes of clarification, this warning statement set forth in Section 3.4.2 shall apply only  
28 with respect to Covered Products that do not meet the Lead Limits as set forth in this Consent  
Judgment.

1 California (excluding any Non-Retail Entity), and (ii) send instructions to its customers  
2 that resell the Section 3.5 Products in California (excluding any Non-Retail Entity)  
3 instructing them to cease offering such Section 3.5 Products for sale in California.

4 3.5.2 If Settling Defendant has not complied with Section 3.5.1 prior to  
5 executing this Consent Judgment, it shall instruct its California stores and/or customers  
6 that resell the Section 3.5 Products (excluding any Non-Retail Entity) either to (i) return  
7 all the Section 3.5 Products to the Settling Defendant for destruction; or (ii) directly  
8 destroy the Section 3.5 Products; or (iii) sell the Section 3.5 Products with a Clear and  
9 Reasonable Warning that complies with the provisions of Section 3.4.2.

10 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all  
11 applicable laws.

12 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide  
13 CEH with written certification from Settling Defendant confirming compliance with the  
14 requirements of this Section 3.5.

15 **4. ENFORCEMENT**

16 4.1 Any Party may, after meeting and conferring, by motion or application for an  
17 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
18 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent  
19 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

20 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH  
21 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling  
22 Defendant on or after that date, for example, a unique brand name or characteristic system of  
23 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,  
24 including but not limited to the identities of parties to contracts between Settling Defendant and  
25 third parties, may be designated by Settling Defendant as competitively sensitive confidential  
26 business information, and if so designated shall not be disclosed to any person without the written  
27 permission of Settling Defendant. Any motions or pleadings or any other court filings that may  
28 reveal information designated as competitively sensitive confidential business information

1 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and  
2 2.550, *et seq.*

3 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
4 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

5 4.3.1 **Service of Notice.** CEH must serve the Notice of Violation on Settling  
6 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
7 provided, however, that CEH may have up to an additional 45 days to provide Settling  
8 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it  
9 from its laboratory. Failure to either (i) serve the Notice of Violation within 45 days of  
10 the date the alleged violation(s) was or were observed, or (ii) provide Settling Defendant  
11 with the test data required by Section 4.3.2(d) within such subsequent 45 day period, shall  
12 constitute a waiver of CEH's right to pursue Settling Defendant for the alleged  
13 violation(s). However, nothing herein shall preclude CEH from issuing subsequent Notice  
14 of Violation on a future observed violation involving the same Covered Product.

15 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
16 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
17 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
18 Covered Product giving rise to the alleged violation, and of each Accessible Component  
19 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
20 Product and all identifying information on tags and labels, and (d) all test data obtained by  
21 CEH regarding the Covered Product and related supporting documentation, including all  
22 laboratory reports, quality assurance reports and quality control reports associated with  
23 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
24 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
25 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
26 Notice of Violation, although any such testing may be used as additional support for a  
27 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
28 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section



1 4.3.2.

2 4.3.3 **Additional Documentation.** CEH shall promptly make available for  
3 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
4 supporting documentation related to the testing of the Covered Products and associated  
5 quality control samples, including chain of custody records, all laboratory logbook entries  
6 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
7 from all analytical instruments relating to the testing of Covered Product samples and any  
8 and all calibration, quality assurance, and quality control tests performed or relied upon in  
9 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
10 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
11 any exemplars of Covered Products tested.

12 4.3.4 **Multiple Notices.** If Settling Defendant has received more than four  
13 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
14 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
15 Consent Judgment. For purposes of determining the number of Notices of Violation  
16 pursuant to this Section 4.3.4, the following shall be excluded:

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

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

21 4.4 **Notice of Election.** Within 45 days of receiving a Notice of Violation  
22 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant  
23 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
24 the Notice of Violation ("Notice of Election"), provided, however, that, upon providing written  
25 notice to CEH, QVC may have up to an additional 45 days to provide the Notice of Election if it  
26 has not yet obtained testing data from its laboratory. Failure to provide a Notice of Election shall  
27 be deemed an election to contest the Notice of Violation.

28 4.4.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of

1 Election shall include all then-available documentary evidence regarding the alleged  
2 violation, including any test data. Within 30 days the Parties shall meet and confer to  
3 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
4 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
5 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
6 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
7 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
8 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
9 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or  
10 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
11 other data regarding the alleged violation, it shall promptly provide all such data or  
12 information to the other Party.

13 **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested,  
14 Settling Defendant shall include in its Notice of Election a detailed description of  
15 corrective action that it has undertaken or proposes to undertake to address the alleged  
16 violation. Any such correction shall, at a minimum, provide reasonable assurance that the  
17 non-compliant Covered Product will no longer be offered by Settling Defendant or its  
18 customers (excluding any Non-Retail Entity)) for sale in California. If there is a dispute  
19 over the sufficiency of the proposed corrective action or its implementation, CEH shall  
20 promptly notify Settling Defendant and the Parties shall meet and confer before seeking  
21 the intervention of the Court to resolve the dispute. In addition to the corrective action,  
22 Settling Defendant shall make a contribution to the Fashion Accessory Testing Fund in the  
23 amount of \$10,000, unless one of the provisions of Section 4.4.3 applies.

24 **4.4.3 Limitations in Non-Contested Matters.**

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

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

1 (i) One thousand seven hundred fifty dollars (\$1750) if Settling  
2 Defendant, prior to receiving and accepting for distribution or sale the  
3 Covered Product identified in the Notice of Violation, obtained test results  
4 demonstrating that all of the Accessible Components in the Covered  
5 Product identified in the Notice of Violation complied with the applicable  
6 Lead Limits, and further provided that such test results would be sufficient  
7 to support a Notice of Violation and that the testing was performed within  
8 two years prior to the date of the sales transaction on which the Notice of  
9 Violation is based. Settling Defendant shall provide copies of such test  
10 results and supporting documentation to CEH with its Notice of Election;

11 (ii) Not required or payable, if the Notice of Violation concerns a  
12 Non-Suspect Material; provided, however, that the foregoing exemption  
13 shall not apply if the Settling Defendant has received more than three  
14 Notices of Violation in an 18-month period for the same Non-Suspect  
15 Material that was supplied by more than one Vendor; or

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

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

1           4.5           **Additional Enforcement for Noncompliant Non-Covered Products.** If  
2 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a  
3 Fashion Accessory: (i) that is not a Covered Product, (ii) that contains Lead in an amount that  
4 exceeds any of the applicable Lead Limits, and (iii) for which Settling Defendant did not provide  
5 a clear and reasonable warning as required by Proposition 65 (“Noncompliant Non-Covered  
6 Product”), then prior to CEH serving a 60-Day Notice under Proposition 65 on Settling  
7 Defendant, CEH shall provide notice to Settling Defendant pursuant to this Section 4.5.

8           4.5.1 The notice shall contain the information required for a Notice of Violation  
9 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the  
10 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
11 further identifying information for the Noncompliant Non-Covered Product that is  
12 reasonably available to it.

13           4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any  
14 requested further information sufficient to identify the Noncompliant Non-Covered  
15 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.  
16 The Notice of Election shall:

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

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

23           (c) Include either: (i) a statement that Settling Defendant elects not to  
24 proceed under this Section 4.5, in which case CEH may take further action including  
25 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant  
26 elects to proceed under this Section 4.5, with a description of corrective action that meets  
27 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund  
28 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant

1 contends that the Noncompliant Non-Covered Product is released from liability by a  
2 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

3 4.5.3 A Party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)  
4 confidential business information, or (iii) other information that may be subject to a claim  
5 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
6 or confidentiality, provided that the Party disclosing such information shall clearly  
7 designate it as confidential. Any Party receiving information designated as confidential  
8 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person  
9 or entity, and shall use such information solely for purposes of resolving any disputes  
10 under this Consent Judgment.

11 4.5.4 No further action is required of Settling Defendant under this Consent  
12 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability  
13 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
14 Covered Product by the terms of a separate settlement agreement or consent judgment  
15 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

16 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither  
17 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may  
18 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
19 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall  
20 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

21 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not  
22 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to  
23 the Fashion Accessory Testing Fund in the amounts that follow unless one of the  
24 provisions of Section 4.4.3(b) applies, in which case the applicable amount specified in  
25 Section 4.4.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one  
26 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person  
27 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)  
28 has a principal place of business located within the United States, and \$10,000 for all

1 other notices.

2 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a  
3 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
4 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
5 Defendant shall be entitled to a refund of the lesser amount of its contribution or the  
6 settlement amount paid by such Vendor. If the settlement or consent judgment between  
7 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
8 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
9 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's  
10 settlement payment.

11 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be  
12 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5  
13 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
14 than a Settling Defendant.

15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent  
17 Judgment, Settling Defendant shall pay the total sum of \$75,000 as a settlement payment. The  
18 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to  
19 the offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San  
20 Francisco, California 94117, and made payable and allocated as follows:

21 5.1.1 Settling Defendant shall pay the sum of \$9,800 pursuant to Health & Safety  
22 Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety  
23 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental  
24 Health Hazard Assessment). The payment pursuant to this Section shall be made payable to the  
25 Center For Environmental Health.

26 5.1.2 Settling Defendant shall also pay the sum of \$15,100 as a payment in lieu  
27 of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of  
28 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and

1 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part  
2 of its Community Environmental Action and Justice Fund, CEH will use four percent of such  
3 funds to award grants to grassroots environmental justice groups working to educate and protect  
4 people from exposures to toxic chemicals. The method of selection of such groups can be found  
5 at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be  
6 made payable to the Center For Environmental Health.

7 5.1.3 Settling Defendant shall also separately pay to the Lexington Law Group  
8 the sum of \$50,100 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.  
9 The payment pursuant to this Section shall be made payable to the Lexington Law Group.

## 10 6. MODIFICATION

11 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
12 time by express written agreement of the Parties with the approval of the Court, or by an order of  
13 this Court upon motion and in accordance with law.

14 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
15 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
16 modify the Consent Judgment.

## 17 7. CLAIMS COVERED AND RELEASED

18 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
19 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
20 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
21 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell  
22 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
23 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")  
24 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
25 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
26 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by  
27 Settling Defendant prior to the Effective Date.

28 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant

1 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered  
2 Products.

3 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an  
4 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
5 Releasee, or Downstream Defendant Releasee.

6 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action  
7 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
8 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to  
9 California consumers that does not comply with the Lead Limits after the applicable Final Retail  
10 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant  
11 Proposition 65 warnings under this Consent Judgment.

12 **8. NOTICE**

13 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
14 notice shall be sent by certified mail or reputable overnight carrier and electronic mail to:

15 Howard Hirsch  
16 Lexington Law Group  
17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 hhirsch@lexlawgroup.com

20 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
21 Judgment, the notice shall be sent by certified mail or reputable overnight carrier and electronic  
22 mail to:

23 William F. Tarantino  
24 Morrison & Foerster LLP  
25 425 Market Street  
26 San Francisco, CA 94105  
27 WTarantino@mof.com

28 With a copy to:

QVC, Inc.  
Attn: General Counsel  
1200 Wilson Drive  
West Chester, PA 19380



1           8.3           Any Party may modify the person and address to whom the notice is to be sent  
2 by sending each other Party notice by first class and electronic mail.

3 **9. COURT APPROVAL**

4           9.1           This Consent Judgment shall become effective upon entry by the Court. CEH  
5 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
6 shall support entry of this Consent Judgment.

7           9.2           If this Consent Judgment is not entered by the Court, it shall be of no force or  
8 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
9 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10 **10. ATTORNEYS' FEES**

11           10.1           Should CEH prevail on any motion, application for an order to show cause or  
12 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
13 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
14 Settling Defendant prevail on any motion application for an order to show cause or other  
15 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
16 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
17 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
18 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
19 Code of Civil Procedure §§ 2016, *et seq.*

20           10.2           Except as otherwise provided in this Consent Judgment, each Party shall bear  
21 its own attorneys' fees and costs.

22           10.3           Nothing in this Section 10 shall preclude a Party from seeking an award of  
23 sanctions pursuant to law.

24 **11. TERMINATION**

25           11.1           This Consent Judgment shall be terminable by CEH or by Settling Defendant  
26 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such  
27 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
28 Court of Alameda County.

1           11.2       Should this Consent Judgment be terminated pursuant to this Section, it shall  
2 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
3 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
4 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
5 7.1 and 12.1 shall survive any termination.

6       **12.   OTHER TERMS**

7           12.1       The terms of this Consent Judgment shall be governed by the laws of the State  
8 of California.

9           12.2       This Consent Judgment shall apply to and be binding upon CEH and Settling  
10 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
11 assigns of any of them.

12          12.3       This Consent Judgment contains the sole and entire agreement and  
13 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15 merged herein and therein. There are no warranties, representations, or other agreements between  
16 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
17 implied, other than those specifically referred to in this Consent Judgment have been made by any  
18 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
19 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
20 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
21 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
22 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
23 whether or not similar, nor shall such waiver constitute a continuing waiver.

24          12.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
25 that any Settling Defendant might have against any other party, whether or not that party is a  
26 Settling Defendant.

27          12.5       This Court shall retain jurisdiction of this matter to implement or modify the  
28 Consent Judgment.

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

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

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

**IT IS SO ORDERED:**

Dated: <u>May 2</u> , 2012	<b>STEVEN A. BRICK</b> The Honorable Steven A. Brick Judge of the Superior Court
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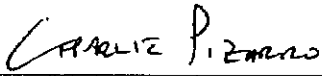
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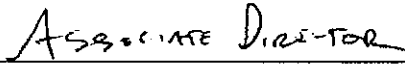
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Signature



Printed Name



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QVC, INC.

Signature

Printed Name

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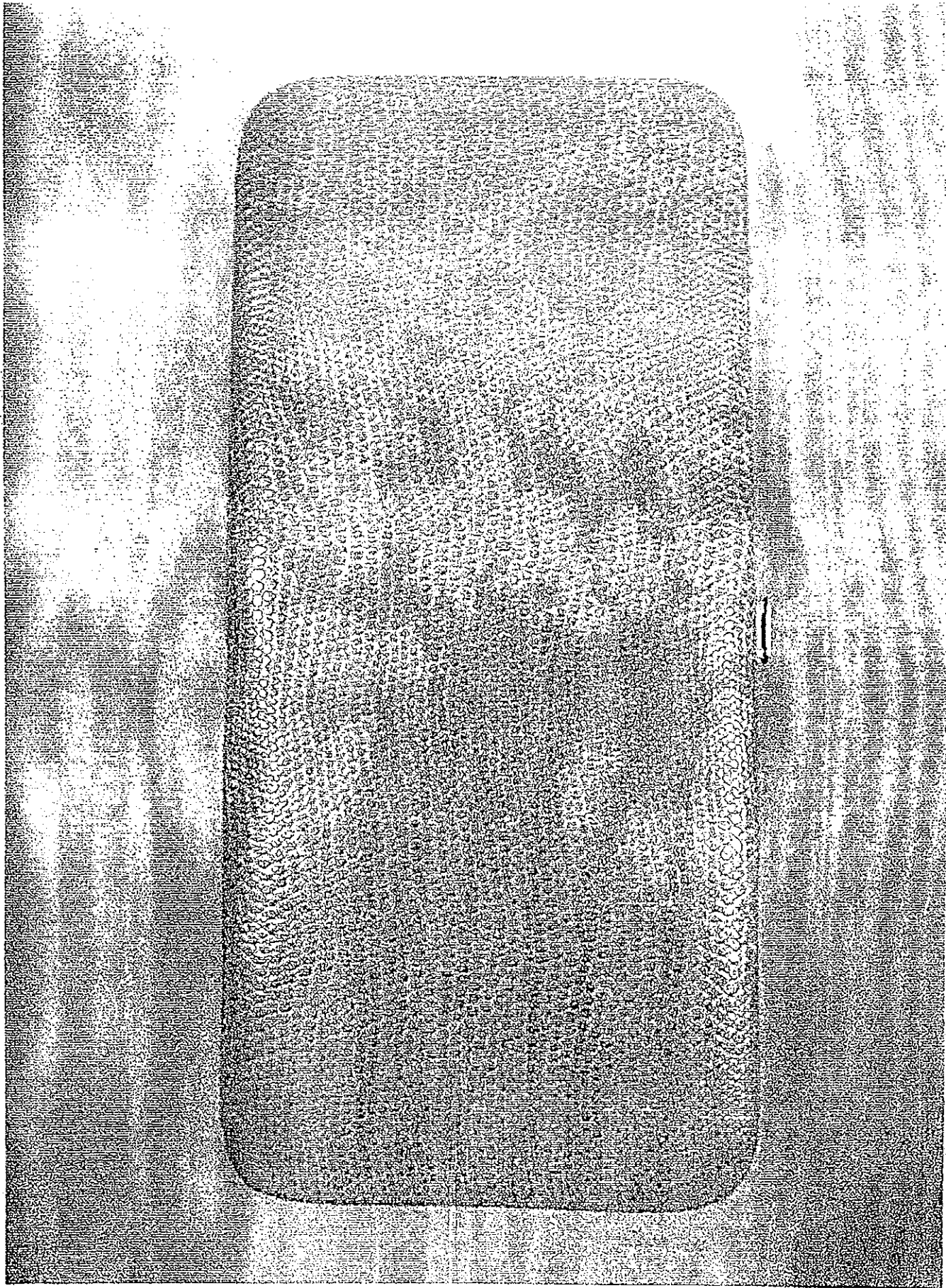
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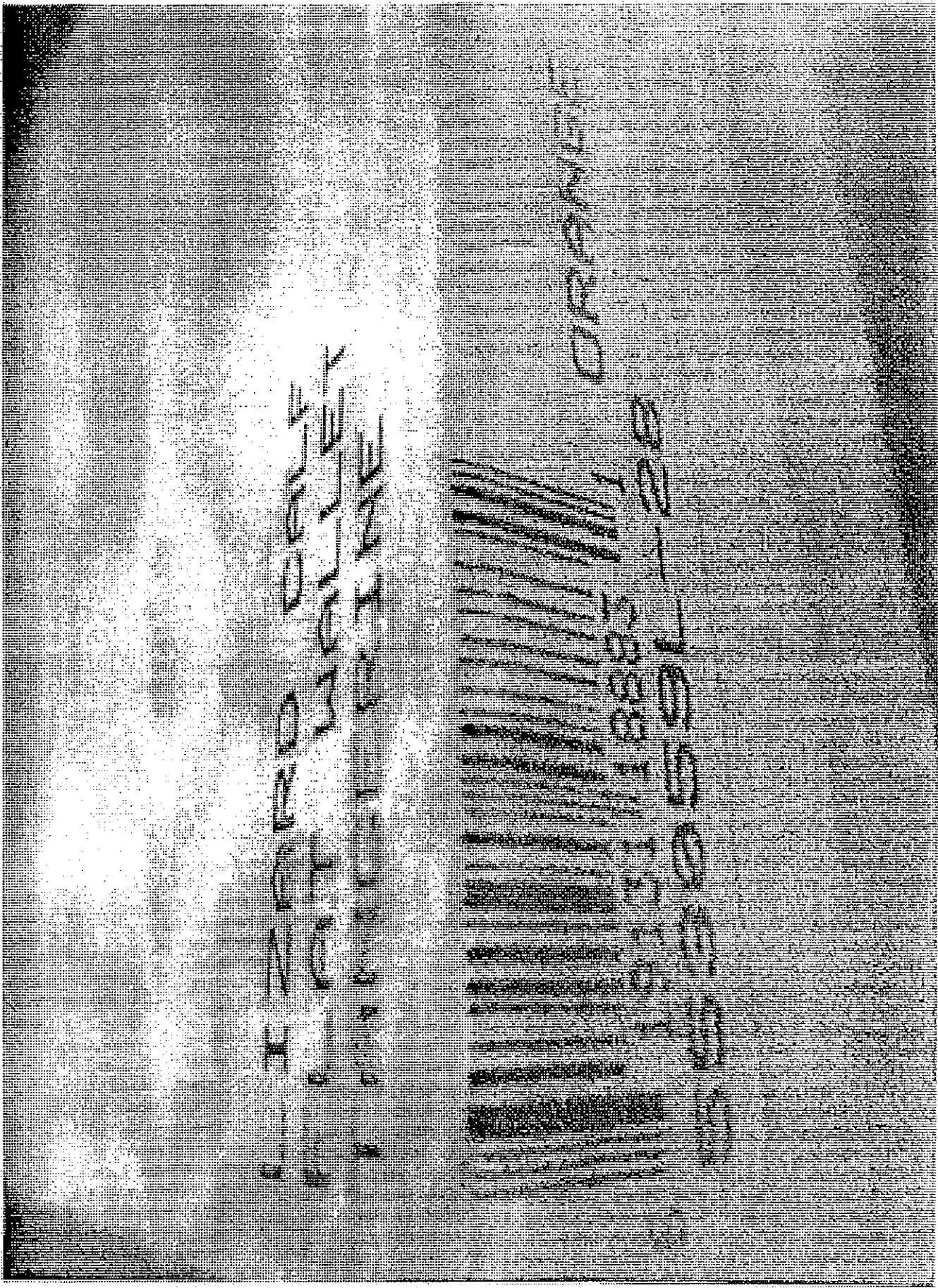
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Signature

*Lorraine R. Hayes*  
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*S. Vice President*  
\_\_\_\_\_  
Title

# **Exhibit A**







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](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