

ENCLOSURE  
FILED  
ALAMEDA COUNTY

DEC 20 2013

K. McCoy, 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.

) 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)

*VM*  
) **[PROPOSED] CONSENT**  
) **JUDGMENT AS TO RESTRICTED**  
) **FOOTWEAR, INC.**

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

**1. DEFINITIONS**

1.1 "Covered Products" means footwear that is Manufactured, distributed, sold or offered for sale by Settling Defendant.

1.2 "Effective Date" means the date on which this Consent Judgment is entered by the Court.

1.3 "Lead Limits" means the maximum concentrations of lead and lead compounds ("Lead") by weight specified in Section 3.2.

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 Restricted Footwear, Inc. (“Settling Defendant”).

14           2.2           On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
15 Case No. RG 09-459448, alleging Proposition 65 violations as to wallets, handbags, purses and  
16 clutches. On January 19, 2010, CEH filed the action entitled *CEH v. Zappos.com, Inc., et al.*,  
17 Case No. RG 10-494513, alleging Proposition 65 violations as to footwear. On March 3, 2010,  
18 the *Lulu* and *Zappos* cases were consolidated for pre-trial purposes along with other related cases  
19 pending in Alameda County Superior Court.

20           2.3           On or about August 17, 2010, CEH served a 60-Day Notice of Violation under  
21 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
22 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by  
23 exposing persons to Lead contained in footwear, without first providing a clear and reasonable  
24 Proposition 65 warning. On November 3, 2010, CEH filed the Second Amended Complaint in  
25 the *Zappos* action, naming Settling Defendant as a defendant in that action. On July 26, 2011,  
26 CEH filed the operative Third Amended Complaint in *Zappos*.

27           2.4           Settling Defendant manufactures, distributes and/or offers for sale Covered  
28 Products in the State of California or has done so in the past.

1           2.5           For purposes of this Consent Judgment only, the Parties stipulate that this  
2 Court has 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, that venue is proper in the County of Alameda,  
5 and that this Court has jurisdiction to enter this Consent Judgment.

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

15 **3.       INJUNCTIVE RELIEF**

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

20           3.2           **Lead Limits.**

21                       Except as set forth in Section 3.5 below, commencing on the Effective Date,  
22 Settling Defendant shall not purchase, import, Manufacture, or supply to an unaffiliated third  
23 party any Covered Product that will be sold or offered for sale to California consumers that  
24 contains a material or is made of a component that exceeds the following Lead Limits:

25                       3.2.1   Paint or other Surface Coatings: 90 parts per million (“ppm”).

26                       3.2.2   Polyvinyl chloride (“PVC”): 200 ppm.

27                       3.2.3   All other materials or components other than cubic zirconia (sometimes  
28 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

1           3.3           **Final Retail Compliance Date.** Commencing on the Effective Date, Settling  
2 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
3 Limits specified in Section 3.2 above or that does not contain a Clear and Reasonable Warning as  
4 set forth in Section 3.5 below. For purposes of this Section 3.3, when Settling Defendant’s direct  
5 customer sells or offers for sale to California consumers a Covered Product after the Effective  
6 Date, Settling Defendant is deemed to “offer for sale in California” that Covered Product.

7           3.4           **Lead Testing.** In order to ensure compliance with the Lead Limits (or that  
8 Lead warnings under Section 3.5.1 are only provided for Covered Products that actually contain  
9 Lead), Settling Defendant shall implement a testing program that shall at a minimum contain the  
10 following features:

11                   3.4.1    Within thirty days of receipt of Covered Products from the manufacturer,  
12                   use an x-ray fluorescence (“XRF”) machine to test the Lead content of all of the materials  
13                   or components in each style and color of each Covered Product.

14                   3.4.2    Ensure that the person or persons conducting the test are trained in the use  
15                   of the XRF machine.

16                   3.4.3    Keep written records of the test results as well as the related purchase  
17                   orders for a period of at least four years from the date of test and make such records  
18                   available to CEH upon reasonable request.

19                   3.4.4    Ensure that the written test records reflect the purchase order and style  
20                   name and/or number for the particular Covered Product tested.

21           3.5           **Limited Warning Option for Covered Products.** From the Effective Date  
22 through the end of calendar year 2016, a Covered Product may, as an alternative to meeting the  
23 Lead Limits, be sold or offered for retail sale in California by Settling Defendant with a Clear and  
24 Reasonable Warning that complies with the provisions of Section 3.6.

25                   3.5.1    A Clear and Reasonable Warning may only be provided for Covered  
26                   Products that based on test data do not meet the Lead Limits or Covered Products that  
27                   Settling Defendant reasonably believes contain listed chemicals other than lead.

1           3.5.2 From the Effective Date through the end of Calendar 2016, Defendant shall  
2 make good faith efforts to purchase materials for Covered Products sold in California that  
3 meet the Lead Limits so that warnings for lead under this subparagraph will be minimized.  
4 Should Settling Defendant be unable to purchase materials for Covered Products that meet  
5 the Lead Limits for all Covered Products it sells in California by the end of calendar 2016,  
6 the Parties will meet and confer about the reasons therefore and any commercial necessity  
7 on the part of Settling Defendant for any further warning allowance. Should the parties  
8 agree on any such further warning allowance after meeting and conferring, they shall file a  
9 stipulated amendment to this consent judgment as to any further agreed warning  
10 allowance. Should the Parties be unable to agree on any further warning allowance after  
11 meeting and conferring, Settling Defendant may bring a motion to amend this Consent  
12 Judgment seeking a further warning allowance based on commercial necessity. In any  
13 such motion, the burden of proof on the commercial necessity of any further warning  
14 allowance shall be on Settling Defendant.

15           3.5.3 At CEH's reasonable written request on or about January 15<sup>th</sup> of each  
16 calendar year that Settling Defendant provides warnings pursuant to Section 3.5 of this  
17 Consent Judgment, Settling Defendant shall provide CEH with a written report listing by  
18 name, product code number, SKU or other identifier, and annual California unit sales for  
19 each Covered Product for which a Clear and Reasonable Warning was provided because it  
20 exceeded the Lead Limits, and the factual basis upon which Settling Defendant  
21 determined that such Covered Products did not meet the Lead Limits.

22           3.6           **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
23 Consent Judgment shall state either:

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

27                   Or

1           WARNING: This product contains [lead, a] chemical[s] known to the State of  
2           California to cause cancer, birth defects or other reproductive harm. Do not mouth  
3           or chew.

4           Bracketed language may be included at Settling Defendant’s option. This statement shall  
5           be prominently displayed on the Covered Product or the packaging of the Covered  
6           Product with such conspicuousness, as compared with other words, statements or designs  
7           as to render it likely to be read and understood by an ordinary individual prior to sale. For  
8           internet, catalog or any other sale where the consumer is not physically present and cannot  
9           see a warning displayed on the Covered Product or the packaging of the Covered Product  
10          prior to purchase or payment, the warning statement shall be displayed in such a manner  
11          that it is likely to be read and understood prior to the authorization of or actual payment.

12          **3.7           Action Regarding Specific Products.**

13                 3.7.1   On or before the Effective Date, Settling Defendant shall cease selling the  
14                 Restricted Cheri Wedge Heels in Yellow, SKU No. 8-46557-11688-3 (“Section 3.7  
15                 Product”) in California. On or before the Effective Date, Settling Defendant shall also: (i)  
16                 cease shipping the Section 3.7 Product to any of its stores and/or customers that resell the  
17                 Section 3.7 Product in California, and (ii) send instructions to its stores and/or customers  
18                 that resell the Section 3.7 Product in California instructing them either to: (a) return all the  
19                 Section 3.7 Product to Settling Defendant for destruction; or (b) directly destroy the  
20                 Section 3.7 Product.

21                 3.7.2   Any destruction of a Section 3.7 Product shall be in compliance with all  
22                 applicable laws.

23                 3.7.3   Within sixty days of the Effective Date, Settling Defendant shall provide  
24                 CEH with written certification confirming compliance with the requirements of this  
25                 Section 3.7.

26          **4.           ENFORCEMENT**

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

1 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent  
2 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3. Where CEH seeks to  
3 enforce the Lead Limits as to Settling Defendant's Covered Products, CEH may only pursue  
4 enforcement under the provisions of this Section 4 against Settling Defendant, and may not  
5 commence a separate enforcement action against any other party or non-party for any such  
6 Covered Product.

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

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

18 4.2.2 **Supporting Documentation.** The Notice of Violation shall, as applicable,  
19 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
20 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
21 Covered Product giving rise to the alleged violation, and of each material or component  
22 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
23 Product and all identifying information on tags and labels, (d) all test data obtained by  
24 CEH regarding the Covered Product and related supporting documentation, including all  
25 laboratory reports, quality assurance reports and quality control reports associated with  
26 testing of the Covered Products, and (e) all evidence that no Clear and Reasonable  
27 Warning was provided. As applicable, such Notice of Violation shall be based at least in  
28 part upon total acid digest testing performed by an independent accredited laboratory.

1 Wipe, swipe, XRF, and swab testing are not by themselves sufficient to support a Notice  
2 of Violation, although any such testing may be used as additional support for a Notice.  
3 The Parties agree that the sample Notice of Violation attached hereto as Exhibit A is  
4 sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
5 4.2.2.

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

16 4.2.4 **Multiple Notices.** If Settling Defendant has received more than four  
17 Notices of Violation in any 12-month period that it has elected not to contest or contested  
18 and lost, at CEH's option, CEH may seek whatever fines, costs, penalties, or remedies are  
19 provided by law for failure to comply with the Consent Judgment. For purposes of  
20 determining the number of Notices of Violation, the following shall be excluded:

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

23 (b) A Notice of Violation that meets one or more of the conditions of  
24 Section 4.3.3(b).

25 4.3 **Notice of Election.** Within 30 days of receiving a Notice of Violation  
26 pursuant to Section 4.2 (or any mutually agreed written extension), including all test data required  
27 pursuant to 4.2.2(d), Settling Defendant shall provide written notice to CEH stating whether it  
28 elects to contest the allegations contained in the Notice of Violation ("Notice of Election").



1 Failure to provide a Notice of Election shall be deemed an election to contest the Notice of  
2 Violation. Any contributions to the Fashion Accessory Testing Fund required under this Section  
3 4.3 shall be made payable to The Center for Environmental Health and included with Settling  
4 Defendant's Notice of Election.

5           **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
6 Election shall include all then-available documentary evidence regarding the alleged  
7 violation, including any test data and/or evidence that Settling Defendant sold the Covered  
8 Product with a Clear and Reasonable Warning in compliance with Section 3.5. Within 30  
9 days the parties shall meet and confer to attempt to resolve their dispute. Should such  
10 attempts at meeting and conferring fail, CEH may file an enforcement motion or  
11 application pursuant to Section 4.1. If Settling Defendant withdraws its Notice of Election  
12 to contest the Notice of Violation before any motion concerning the violations alleged in  
13 the Notice of Violation is filed pursuant to Section 4.1, Settling Defendant shall make a  
14 contribution to the Proposition 65 Fashion Accessory Testing Fund in the amount of  
15 \$10,000 and shall comply with all of the non-monetary provisions of Section 4.3.1. If, at  
16 any time prior to reaching an agreement or obtaining a decision from the Court, CEH or  
17 Settling Defendant acquires additional test or other data regarding the alleged violation, it  
18 shall promptly provide all such data or information to the other Party.

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

1 Section 4.3.3 applies.

2 **4.3.3 Limitations in Non-Contested Matters.**

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

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

7 (i) Zero if a Notice of Election not to contest is one of the first  
8 three Non-Contested Notices from Settling Defendant following the Effective Date  
9 of this Consent Judgment and is accompanied by the immediately preceding four  
10 fiscal quarters of federal 941 tax forms each showing that Settling Defendant had  
11 less than ten employees provided that Settling Defendant takes the corrective  
12 action as to the Covered Product as specified in Section 4.3.2;

13 (ii) Except as provided in Section 4.3.3(b)(i), one thousand  
14 seven hundred fifty dollars (\$1,750) if Settling Defendant sold the Covered  
15 Product without a Clear and Reasonable Warning in compliance with Section 3.5,  
16 but prior to receiving and accepting for distribution or sale the Covered Product  
17 identified in the Notice of Violation, obtained documented XRF test results  
18 pursuant to Section 3.4 demonstrating that all of the materials or components in  
19 the Covered Product identified in the Notice of Violation complied with the  
20 applicable Lead Limits, and further provided that such testing was performed  
21 within one year of the date of manufacture of the Covered Product on which the  
22 Notice of Violation is based. Settling Defendant shall provide copies of such test  
23 results and supporting documentation to CEH with its Notice of Election; or

24 (iii) Except as provided in Section 4.3.3(b)(i), one thousand five  
25 hundred dollars (\$1,500) if Settling Defendant is in violation of Section 3.3  
26 only insofar as that Section deems Settling Defendant to have “offered for  
27 sale” a product sold at retail by Settling Defendant’s customer, provided  
28 however, that no contribution is required or payable if Settling Defendant

1 has already been required to pay a total of ten thousand dollars (\$10,000)  
2 pursuant to this subsection. This subsection shall apply only to Covered  
3 Products that Settling Defendant demonstrates were shipped prior to the  
4 Effective Date and which for which the contribution is not Zero pursuant to  
5 Sections 4.3.3(b)(i) above.

6 (c) To the extent CEH identifies a Notice of Violation involving  
7 Settling Defendant's Covered Products and sends a Notice of Violation to one of Settling  
8 Defendant's customers under a CEH settlement with that customer, CEH shall also  
9 concurrently send a Notice of Violation to Settling Defendant under this Consent  
10 Judgment. If more than one settling defendant with CEH has manufactured, sold, offered  
11 for sale or distributed a Covered Product identified in a Notice of Violation, only one  
12 required contribution may be assessed against all Settling Defendants as to the Covered  
13 Product subject to the Notice of Violation under this Section .

## 14 **5. PAYMENTS**

15 **5.1 Payments by Settling Defendant.** Within five (5) business days of the  
16 Effective Date, Settling Defendant shall pay the total sum of \$45,000 as a settlement payment.  
17 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a  
18 stipulated late fee to be paid by such Settling Defendant in the amount of \$100 for each day the  
19 full payment is not received after the date five (5) business days after the Effective Date. The late  
20 fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in  
21 an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. 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 \$5,930 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 \$8,900 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](http://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 \$30,170 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, its parents, subsidiaries, affiliated  
26 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 prior to the Effective Date.

6 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
7 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered  
8 Products sold by Settling Defendant and Downstream Defendant Releasees.

9 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
10 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
11 Releasee, or Downstream Defendant Releasee.

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 first class and electronic mail to:

15 Eric S. Somers  
16 Lexington Law Group  
17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 esomers@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 first class and electronic mail to:

22 Joanne Yang  
23 President  
24 Restricted Footwear, Inc.  
25 17448 Railroad Street  
26 City Of Industry CA, 91748-1025

27 With a copy to:

28 James Robert Maxwell  
Rogers Joseph O’Donnell  
311 California Street, 10th Floor  
San Francisco, CA 94104  
jrm@rjo.com

8.3 Any Party may modify the person and address to whom the notice is to be sent

1 by sending each other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
4 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
5 shall support entry of this Consent Judgment.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
7 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. ATTORNEYS' FEES**

10 10.1 Should CEH prevail on any motion, application for an order to show cause or  
11 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
12 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
13 Settling Defendant prevail on any motion, application for an order to show cause or other  
14 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
15 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
16 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
17 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
18 Code of Civil Procedure §§ 2016, *et seq.*

19 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
20 its own attorneys' fees and costs.

21 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
22 sanctions pursuant to law.

23 **11. TERMINATION**

24 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant  
25 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such  
26 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
27 Court of Alameda County.

28 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall

1 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
2 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided  
3 further that if Settling Defendant is the terminating Party, the provisions of Sections 0 and 7.1  
4 shall survive any termination.

5 **12. OTHER TERMS**

6 12.1 The terms of this Consent Judgment shall be governed by the laws of the State  
7 of California.

8 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
9 Defendant, and the successors or assigns of any of them.

10 12.3 This Consent Judgment contains the sole and entire agreement and  
11 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
12 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
13 merged herein and therein. There are no warranties, representations, or other agreements between  
14 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
15 implied, other than those specifically referred to in this Consent Judgment have been made by any  
16 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
17 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
18 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
19 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
20 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
21 whether or not similar, nor shall such waiver constitute a continuing waiver.

22 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
23 that Settling Defendant might have against any other party, whether or not that party is a Settling  
24 Defendant.

25 12.5 This Court shall retain jurisdiction of this matter to implement or modify the  
26 Consent Judgment.

27 12.6 The stipulations to this Consent Judgment may be executed in counterparts  
28 and by means of facsimile or portable document format (pdf), which taken together shall be

1 deemed to constitute one document.

2           12.7       Each signatory to this Consent Judgment certifies that he or she is fully  
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
5 Party.

6           12.8       The Parties, including their counsel, have participated in the preparation of  
7 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
8 This Consent Judgment was subject to revision and modification by the Parties and has been  
9 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
10 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
11 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
12 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
13 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
14 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

15

16 **IT IS SO ORDERED:**

17

18 Dated: DEC 20 2013, 2013

**Wynne Carvill**

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

19

20

21

22

23

24

25

26

27

28



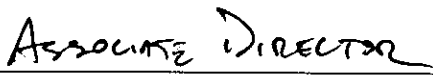
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Printed Name

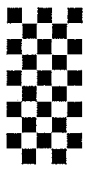
  
\_\_\_\_\_  
Title

**RESTRICTED FOOTWEAR, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO STIPULATED:

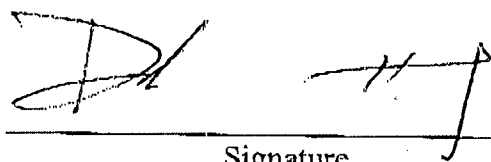
CENTER FOR ENVIRONMENTAL HEALTH

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

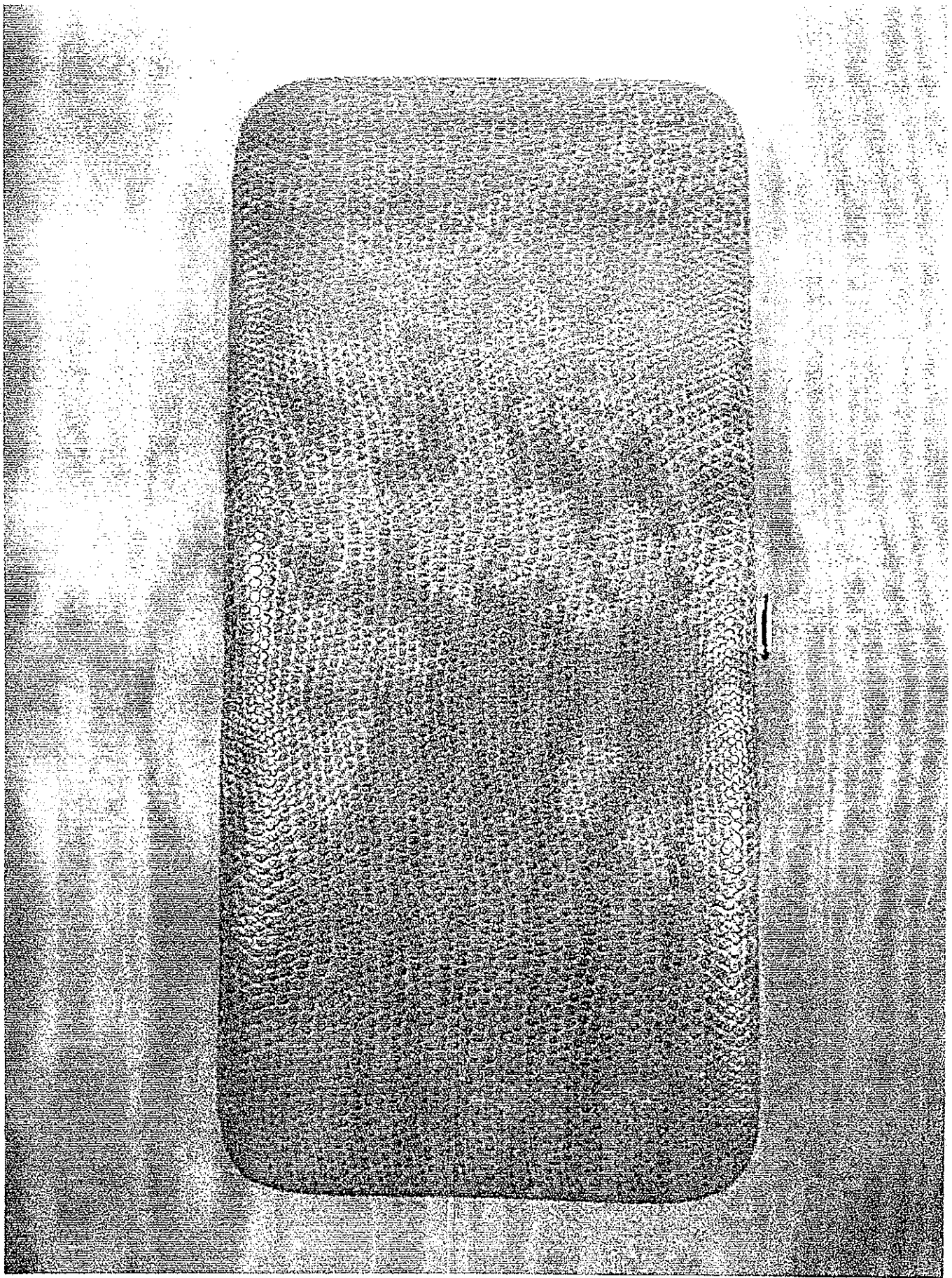
RESTRICTED FOOTWEAR, INC.

  
\_\_\_\_\_  
Signature

Dawson Huang  
\_\_\_\_\_  
Printed Name

CFD Chief Financial Officer  
\_\_\_\_\_  
Title

# **Exhibit A**



Handwritten text, possibly a list or index, consisting of several lines of characters.

Handwritten text, possibly a list or index, consisting of several lines of characters.

Handwritten text, possibly a list or index, consisting of several lines of characters.

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