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K. McCoy, Exec. Off./Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)


LULU NYC LLC, et al.,)

Defendants.)

AND CONSOLIDATED CASES.)

Lead Case No. RG-09-459448

(Consolidated with Case Nos. RG 10-494289, RG 10-494513, RG 10-494517, RG 11-598595, RG 11-598596, RG 11-603764 and RG 12-658652)


[PROPOSED] CONSENT
JUDGMENT AS TO THE TJX
COMPANIES, INC., T.J. MAXX OF
CA, LLC, MARSHALLS OF CA,
LLC, MARSHALLS OF MA, 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 a Settling Defendant, or (b) distributed for resale or sold for resale by a Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by a Settling Defendant that 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; provided, however, that the terms of this Consent Judgment apply to
5 each Settling Defendant only as to those Fashion Accessories designated for that Settling
6 Defendant on Exhibit A.

7 1.5 “Lead Limits” means the maximum concentrations of lead and lead
8 compounds (“Lead”) by weight specified in Section 3.2.

9 1.6 “Manufactured” and “Manufactures” means to manufacture, produce, or
10 assemble.

11 1.7 “Non-Suspect Materials” means natural materials other than leather that have
12 been determined not to exceed lead limits for children’s products by the final rule of the
13 Consumer Product Safety Commission set forth at 16 C.F.R. § 1500.91(d) and (e), as it exists on
14 June 1, 2010.

15 1.8 “Private Label Covered Product” means a Fashion Accessory that bears a
16 private label where (i) the product (or its container) is labeled with the brand or trademark of a
17 person other than a manufacturer of the product, (ii) the person with whose brand or trademark
18 the product (or container) is labeled has authorized or caused the product to be so labeled, and
19 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

20 1.9 “Private Labeler” means an owner or licensee of a brand or trademark on the
21 label of a consumer product which bears a private label; provided, however, that Settling
22 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
23 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s
24 brand or trademark.

25 1.10 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
26 with or without a suspension of finely divided coloring matter, which changes to a solid film
27 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
28 This term does not include printing inks or those materials which actually become a part of the

1 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
2 the substrate, such as by electroplating or ceramic glazing.

3 1.11 "Vendor" means a person or entity that Manufactures, imports, distributes, or
4 supplies a Fashion Accessory to a Settling Defendant, and that is not itself a Settling Defendant.

5 **2. INTRODUCTION**

6 2.1 The parties to this Consent Judgment ("Parties") are the Center for
7 Environmental Health ("CEH") and defendants The TJX Companies, Inc., and its operating
8 subsidiaries, including but not limited to, T.J. Maxx of CA, LLC, Marshalls of CA, LLC, and
9 Marshalls of MA, Inc. (collectively, the "Settling Defendants").

10 2.2 Commencing in August 2010, CEH served multiple 60-Day Notices of
11 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendants violated
13 Proposition 65 by exposing persons to Lead contained in Fashion Accessories, without first
14 providing a clear and reasonable Proposition 65 warning.

15 2.3 Each Settling Defendant manufactures, distributes or offers Fashion
16 Accessories for sale in the State of California or has done so in the past.

17 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*,
18 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
19 Proposition 65 violations as to wallets, handbags, purses and clutches. Since then, CEH has filed
20 several actions alleging Proposition 65 violations as to Lead in Fashion Accessories that have
21 been consolidated for pre-trial purposes under Lead Case No. RG 09-459448. On November 3,
22 2010, CEH filed the Second Amended Complaint in *CEH v. Zappos.com, Inc., et al.*, Case No.
23 RG 10-494513, naming Settling Defendants as defendants in that action. On October 5, 2011,
24 CEH filed the original Complaint in *CEH v. Bioworld Merchandising, Inc., et al.*, Case No. RG
25 11-598596, naming Marshalls of CA, LLC and Marshalls of MA, Inc. as defendants in that
26 action. The operative First Amended Complaint in the *Bioworld* action is hereby amended to
27 include allegations as to Marshalls of CA, LLC and Marshalls of MA, Inc. only as to lead in belts.
28

1 2.5 On November 3, 2010, the Court approved an Amended Consent Judgment
2 between CEH and a large group of defendants, including The TJX Companies, Inc. and T.J.
3 Maxx of CA, LLC. The Amended Consent Judgment resolved CEH's claims in these
4 consolidated cases with respect to Fashion Accessories other than footwear. Because the
5 Amended Consent Judgment does not apply to The TJX Companies, Inc.'s and T.J. Maxx of CA,
6 LLC's sales of footwear, and in order to resolve the Parties' dispute as to whether the Amended
7 Consent Judgment applies to Marshalls of CA, LLC and Marshalls of MA, Inc., which are
8 wholly-owned subsidiaries of The TJX Companies, Inc., CEH and Settling Defendants now seek
9 to enter into this Consent Judgment. The Amended Consent Judgment will continue to apply to
10 The TJX Companies, Inc. and T.J. Maxx of CA, LLC with respect to Fashion Accessories other
11 than footwear.

12 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this
13 Court has jurisdiction over the allegations of violations contained in the operative Complaint
14 applicable to each Settling Defendant (the "Complaint") and personal jurisdiction over each
15 Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
16 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

17 2.7 Nothing in this Consent Judgment is or shall be construed as an admission by
18 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
19 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
20 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
21 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
22 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
23 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
24 this action.

25 **3. INJUNCTIVE RELIEF**

26 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
27 more than 30 days after the Effective Date, each Settling Defendant shall provide the Lead Limits
28 to its Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to

1 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis. This
2 Section 3.1 is not applicable with respect to Non-Suspect Materials.

3 **3.2 Lead Limits.**

4 A Settling Defendant shall not purchase, import, Manufacture, or supply to an
5 unaffiliated third party any Covered Product that will be sold or offered for sale to California
6 consumers that exceeds the following Lead Limits:

7 3.2.1 Commencing on the Effective Date, Paint or other Surface Coatings on
8 Accessible Components: 90 parts per million (“ppm”).

9 3.2.2 Commencing on the Effective Date, leather (including composited leather)
10 Accessible Components: 300 ppm. In the alternative, Covered Products containing
11 multiple patches of different scrap leathers may be sold with a clear and reasonable
12 warning provided pursuant to the requirements of Section 3.4.

13 3.2.3 Commencing on the Effective Date, polyvinyl chloride (“PVC”)
14 Accessible Components: 200 ppm.

15 3.2.4 Commencing on the Effective Date, for all other Accessible Components
16 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones:
17 300 ppm.

18 **3.3 Final Retail Compliance Date.** Commencing on the Effective Date, a
19 Settling Defendant shall not sell or offer for sale in California any Covered Product that exceeds
20 the Lead Limits specified in Section 3.2. For purposes of this Section 3.3, when a Settling
21 Defendant’s direct customer sells or offers for sale to California consumers a Covered Product
22 after the Effective Date, the Settling Defendant is deemed to “offer for sale in California” that
23 Covered Product.

24 **3.4 Warnings for Covered Products.**

25 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported or
26 Manufactured by a Settling Defendant before the Effective Date, may, as an alternative to
27 meeting the Lead Limits, be sold or offered for retail sale in California after the Effective
28

1 Date, with a Clear and Reasonable Warning that complies with the provisions of Section
2 3.4.2.

3 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
4 Consent Judgment shall state either:

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

8 Or

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

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

20 **3.5 Action Regarding Specific Products.**

21 3.5.1 On or before the Effective Date, each Settling Defendant shall cease selling
22 the specific products identified as Section 3.5 Products next to its name on Exhibit A (the
23 “Section 3.5 Products”) in California. On or before the Effective Date, each Settling
24 Defendant shall also: (i) cease shipping the Section 3.5 Products to any of its customers
25 that resell the Section 3.5 Products in California, and (ii) send instructions to its customers
26 that resell the Section 3.5 Products in California instructing them to cease offering such
27 Section 3.5 Products for sale in California.

28 3.5.2 If a Settling Defendant has not complied with Section 3.5.1 prior to

1 executing this Consent Judgment, it shall instruct its California stores and/or customers
2 that resell the Section 3.5 Products either to (i) return all the Section 3.5 Products to the
3 Settling Defendant for destruction; or (ii) directly destroy the Section 3.5 Products; or (iii)
4 sell the Section 3.5 Products with a Clear and Reasonable Warning that complies with the
5 provisions of Section 3.4.2.

6 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all
7 applicable laws.

8 3.5.4 Within sixty days of the Effective Date, each Settling Defendant shall
9 provide CEH with written certification from the Settling Defendant confirming
10 compliance with the requirements of this Section 3.5.

11 **4. ENFORCEMENT**

12 4.1 Any Party may, after meeting and conferring, by motion or application for an
13 order to show cause before this Court, enforce the terms and conditions contained in this Consent
14 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent
15 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3.

16 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
17 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.2.

18 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on the Settling
19 Defendant(s) that CEH alleges to have violated Section 3.2 or 3.3 within 45 days of the
20 date the alleged violation(s) was or were observed, provided, however, that CEH may
21 have up to an additional 45 days to provide the Settling Defendant with the test data
22 required by Section 4.2.2(d) below if it has not yet obtained it from its laboratory.

23 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
24 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
25 (b) the location at which the Covered Product was offered for sale, (c) a description of the
26 Covered Product giving rise to the alleged violation, and of each Accessible Component
27 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
28 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including

1 a picture of the Covered Product and all identifying information on tags and labels, and
2 (d) all test data obtained by CEH regarding the Covered Product and related supporting
3 documentation, including all laboratory reports, quality assurance reports and quality
4 control reports associated with testing of the Covered Products. Such Notice of Violation
5 shall be based at least in part upon total acid digest testing performed by an independent
6 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
7 themselves sufficient to support a Notice of Violation, although any such testing may be
8 used as additional support for a Notice. The Parties agree that the sample Notice of
9 Violation attached hereto as Exhibit B is sufficient in form to satisfy the requirements of
10 subsections (c) and (d) of this Section 4.2.2.

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

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

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

28 (b) A Notice of Violation that meets one or more of the conditions of

1 Section 4.3.3(c).

2 4.3 **Notice of Election.** Within 30 days of receiving a Notice of Violation
3 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), the Settling
4 Defendant shall provide written notice to CEH stating whether it elects to contest the allegations
5 contained in the Notice of Violation (“Notice of Election”). Failure to provide a Notice of
6 Election shall be deemed an election to contest the Notice of Violation.

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

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

1 contribution to the Fashion Accessory Testing Fund in the amount of \$10,000, unless one
2 of the provisions of Section 4.3.3 applies.

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

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

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

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

12 (i) One thousand seven hundred fifty dollars (\$1750) if the Settling
13 Defendant, prior to receiving and accepting for distribution or sale the
14 Covered Product identified in the Notice of Violation, obtained test results
15 demonstrating that all of the Accessible Components in the Covered
16 Product identified in the Notice of Violation complied with the applicable
17 Lead Limits, and further provided that such test results would be sufficient
18 to support a Notice of Violation and that the testing was performed within
19 two years prior to the date of the sales transaction on which the Notice of
20 Violation is based. The Settling Defendant shall provide copies of such
21 test results and supporting documentation to CEH with its Notice of
22 Election; or

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

28 (iii) One thousand five hundred dollars (\$1500) for a Settling

1 Defendant that is in violation of Section 3.3 only insofar as that Section
2 deems the Settling Defendant to have “offered for sale” a product sold at
3 retail by that Settling Defendant’s customer, provided however, that no
4 contribution is required or payable if the Settling Defendant has already
5 been required to pay a total of ten thousand dollars (\$10,000) pursuant to
6 this subsection. This subsection shall apply only to Covered Products that
7 the Settling Defendant demonstrates were shipped prior to the applicable
8 Shipping Compliance Date specified in Section 3.2.

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

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

19 4.4.1 The notice shall contain the information required for a Notice of Violation
20 in Section 4.2. If the information is insufficient to allow the Settling Defendant to identify
21 the Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide
22 any further identifying information for the Noncompliant Non-Covered Product that is
23 reasonably available to it.

24 4.4.2 Within 30 days of receiving a notice pursuant to Section 4.4, or of any
25 requested further information sufficient to identify the Noncompliant Non-Covered
26 Product, whichever is later, the Settling Defendant shall serve a Notice of Election on
27 CEH. The Notice of Election shall:

28 (a) Identify to CEH (by proper name, address of principal place of

1 business and telephone number) the person or entity that sold the Noncompliant Non-
2 Covered Product to the Settling Defendant;

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

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

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

23 4.4.4 No further action is required of the Settling Defendant under this Consent
24 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
25 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
26 Covered Product by the terms of a separate settlement agreement or consent judgment
27 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

28 4.4.5 If the Settling Defendant elects not to proceed under Section 4.4, then

1 neither the Settling Defendant nor CEH has any further duty under this Section 4.4 and
2 either may pursue any available remedies under Proposition 65 or otherwise. If the
3 Settling Defendant elects to proceed under Section 4.4.2(c)(ii), then compliance with that
4 Section shall constitute compliance with Proposition 65 as to that Noncompliant Non-
5 Covered Product.

6 4.4.6 If the Settling Defendant elects to proceed under this Section 4.4 and is not
7 relieved of liability under Section 4.4.4, the Settling Defendant shall make a contribution
8 to the Fashion Accessory Testing Fund in the amounts that follow unless one of the
9 provisions of Section 4.3.3(c) applies, in which case the applicable amount specified in
10 Section 4.3.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one
11 of the person(s) identified by the Settling Defendant pursuant to Section 4.4.2 (i) is a
12 person in the course of doing business as defined in Health & Safety Code § 25249.11(b)
13 and (ii) has a principal place of business located within the United States, and \$10,000 for
14 all other notices.

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

24 4.4.8 Any notice served by CEH pursuant to this Section 4.4 shall not be
25 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.4
26 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
27 than a Settling Defendant.
28

1 **5. PAYMENTS**

2 **5.1 Payments by Settling Defendants.** Within five (5) days of entry of this Consent
3 Judgment, Settling Defendants shall pay the total sum of \$85,000 as a settlement payment.
4 Settling Defendants shall be jointly and severally liable for this payment obligation, and CEH
5 reserves the right to pursue any of the Settling Defendants for any failure to provide a timely
6 payment. The total settlement amount for Settling Defendants shall be paid in three separate
7 checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503
8 Divisadero Street, San Francisco, California 94117. The funds paid by the Settling Defendants
9 shall be allocated between the following categories:

10 5.1.1 \$11,270 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
11 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
12 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
13 Assessment). The civil penalty check shall be made payable to the Center For Environmental
14 Health.

15 5.1.2 \$16,900 as a payment in lieu of civil penalty to CEH pursuant to Health &
16 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
17 such funds to continue its work educating and protecting people from exposures to toxic
18 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
19 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
20 environmental justice groups working to educate and protect people from exposures to toxic
21 chemicals. The method of selection of such groups can be found at the CEH web site at
22 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
23 Center For Environmental Health.

24 5.1.3 \$56,830 as reimbursement of a portion of CEH’s reasonable attorneys’ fees
25 and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the
26 Lexington Law Group.

27 **6. MODIFICATION**

28 **6.1 Written Consent.** This Consent Judgment may be modified from time to

1 time by express written agreement of the Parties with the approval of the Court, or by an order of
2 this Court upon motion and in accordance with law.

3 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
4 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
5 modify the Consent Judgment.

6 **7. CLAIMS COVERED AND RELEASED**

7 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
8 behalf of itself and the public interest and The TJX Companies, Inc., T.J. Maxx of CA, LLC,
9 Marshalls of CA, LLC, and Marshalls of MA, Inc. (“Released Defendants”), and each of their
10 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
11 employees, and attorneys (“Defendant Releasees”), and each entity to whom they directly or
12 indirectly distribute or sell Covered Products, including but not limited to distributors,
13 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
14 (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or could have
15 been asserted in the Complaint against Released Defendants, Defendant Releasees, and
16 Downstream Defendant Releasees, based on failure to warn about alleged exposure to Lead
17 contained in Fashion Accessories that were sold by a Released Defendant prior to the Effective
18 Date.

19 7.2 Compliance with the terms of this Consent Judgment by a Settling Defendant
20 constitutes compliance with Proposition 65 with respect to Lead in that Settling Defendant’s
21 Covered Products.

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

25 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
26 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
27 of a Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
28 California consumers that does not comply with the Lead Limits after the applicable Final Retail

1 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant
2 Proposition 65 warnings under this Consent Judgment.

3 **8. NOTICE**

4 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by first class and electronic mail to:

6 Eric Somers
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 esomers@lexlawgroup.com

11 8.2 When Settling Defendant is entitled to receive any notice under this Consent
12 Judgment, the notice shall be sent by first class and electronic mail to:

13 General Counsel
14 The TJX Companies, Inc.
15 770 Cochituate Road
16 Framingham, MA 01701-4666

17 With a copy to:

18 Jeffrey B. Margulies
19 Norton Rose Fulbright
20 555 South Flower Street, 41st Floor
21 Los Angeles, CA 90071
22 jeff.margulies@nortonrosefulbright.com

23 8.3 Any Party may modify the person and address to whom the notice is to be sent
24 by sending each other Party notice by first class and electronic mail.

25 **9. COURT APPROVAL**

26 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
27 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
28 shall support entry of this Consent Judgment.

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

10. ATTORNEYS' FEES

10.1 Should CEH prevail on any motion, application for an order to show cause or

1 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
2 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should a
3 Settling Defendant prevail on any motion application for an order to show cause or other
4 proceeding, the Settling Defendant may be awarded its reasonable attorneys' fees and costs as a
5 result of such motion or application upon a finding by the Court that CEH's prosecution of the
6 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
7 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
8 1986, Code of Civil Procedure §§ 2016, *et seq.*

9 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
10 its own attorneys' fees and costs.

11 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
12 sanctions pursuant to law.

13 **11. TERMINATION**

14 11.1 This Consent Judgment shall be terminable by CEH or by any Settling
15 Defendant as to that Settling Defendant at any time after January 1, 2019, upon the provision of
16 30 days advanced written notice; such termination shall be effective upon the subsequent filing of
17 a notice of termination with Superior Court of Alameda County.

18 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
19 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
20 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
21 provided further that if a Settling Defendant is the terminating Party, the provisions of Sections 5,
22 7.1 and 12.1 shall survive any termination.

23 **12. OTHER TERMS**

24 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
25 of California.

26 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
27 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
28 assigns of any of them.

1 12.3 This Consent Judgment contains the sole and entire agreement and
2 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
3 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
4 merged herein and therein. There are no warranties, representations, or other agreements between
5 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
6 implied, other than those specifically referred to in this Consent Judgment have been made by any
7 Party hereto. No other agreements not specifically contained or referenced herein, oral or
8 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
14 that any Settling Defendant might have against any other party, whether or not that party is a
15 Settling Defendant.

16 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 12.6 The stipulations to this Consent Judgment may be executed in counterparts
19 and by means of facsimile or portable document format (pdf), which taken together shall be
20 deemed to constitute one document.

21 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
23 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
24 Party.

25 12.8 The Parties, including their counsel, have participated in the preparation of
26 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
27 This Consent Judgment was subject to revision and modification by the Parties and has been
28 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
4 be resolved against the drafting Party should not be employed in the interpretation of this Consent
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9 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

10 **IT IS SO ORDERED:**

11 12 Dated: <u>DEC 20 2013</u> , 2013	13 14 Wynne Carvill 15 _____ 16 The Honorable Wynne Carvill 17 Judge of the Superior Court
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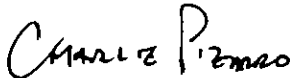
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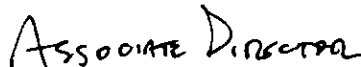
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THE TJX COMPANIES, INC.

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Printed Name

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IT IS SO STIPULATED:

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THE TJX COMPANIES, INC.

Ann McCauley

Signature

ANN McCauley

Printed Name

Executive Vice President

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T.J. MAXX OF CA, LLC

Ann McCauley

Signature

ANN McCauley

Printed Name

SECRETARY

Title

MARSHALLS OF CA, LLC

Ann McCauley

Signature

ANN McCauley

Printed Name

SECRETARY

Title

MARSHALLS OF MA, INC.

Ann McCauley

Signature

ANN McCauley

Printed Name

SECRETARY

Title

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**Exhibit A
Settling Defendants**

Settling Defendants: The TJX Companies, Inc.
T. J. Maxx of CA, LLC

1. Fashion Accessories Applicable to Defendants

- Wallets, Handbags, Purses, Clutches and Totes
- Belts
- Footwear

2. Section 3.5 Product:

A. Gianneti Wedge Sandal in Orange, SKU No. 96V; 25-6510-357156-001699-15-1

1 **Settling Defendants:** Marshalls of CA, LLC
2 Marshalls of MA, Inc.

3
4 **1. Fashion Accessories Applicable to Defendants**

5 Wallets, Handbags, Purses, Clutches and Totes

6 Belts

7 Footwear

8
9 **2. Section 3.5 Products:**

10 Amy Kathryn Handbag in Yellow & Black, SKU No. 1219-006964573-03900-10; 1219-
006964573-004999-14-2 (CEH ID No. AB695)

11 Handbag in Yellow, SKU No. 7229-2905-873927-81; 1272-015062501-000999-16-2 (CEH ID
12 No. AB725L)

13 Gomax Sandals in Yellow, SKU No. 2523-2310-454047-81; 1225-028646813-01499-05-2;
14 ICON-66 (CEH ID No. VS223L)

15 Mila Paoli Wedge Sandal in Yellow, SKU No. 2565-6500-182228-96V; 1225-012526716-
16 001699-15-1 (CEH ID No. VS385L)

17 MMS Design Studio Handbag in Brown; SKU No. 1219-016299517-002999-21-2; 1921-2195-
18 484167-81 (CEH ID No. FAT145)

19 Miztique Handbag in Red, SKU No. 1219-016307522-002999-21-2 (CEH ID No. FAT146)

20 Miztique Handbag in Red, SKU No. 1219-014041475-003499-19-2 (CEH ID No. FAT150)

21 MMS Handbag in Dark Brown, SKU No. 1219-013980951-003499-19-2 (CEH ID No. FAT152)

22 Expressions NYC Clutch in Dark Brown, SKU No. 1219-016144473-001499-22-1; 1925--2505--
23 472674-96V (CEH ID No. FAT155)

24 Deux Lux Handbag in Coral, Style No. DL1209-127 CORAL (CEH ID No. FAT444)

25 R & Em Handbag in Red, Style No. M092D35G RED, SKU No. 8-46632-17612-2 (CEH ID No.
26 FAT445)

27 Steve Madden Crossbody Handbag in Mustard & Turquoise, SKU No. 7-62670-02204-0 (CEH
28 ID No. FAT494)

Natasha Rosette Purse in Yellow, Item No. 1219-019107877-001499-07-2 (CEH ID No.
FAT495)

Miss Gustto Margharita Handbag in Red; SKU No. 8-45109-00945-1; Style No. 100700- MG
Margharita; Serial No. 100060112-84510900-MG07926 (CEH ID No. FAT624)

1 Alyssa U.S.A. Handbag in Orange; Marshalls SKU No. 1928-2890-802259-81; Style No. 60618
OR; Item No. A0384-1S (CEH ID No. FAT1189)

2
3 Marshalls "Past Season" Handbag in Orange; SKU No. 1984-8415-763510-83 (CEH ID No.
FAT1190)

4 Bebe Cheetah Print Handbag, SKU No. 8-49153-00163-8, Marshalls Item No. 1219-034703070-
5 00499-14, Style No: 9PU566TR (CEH ID No. FAT1273)

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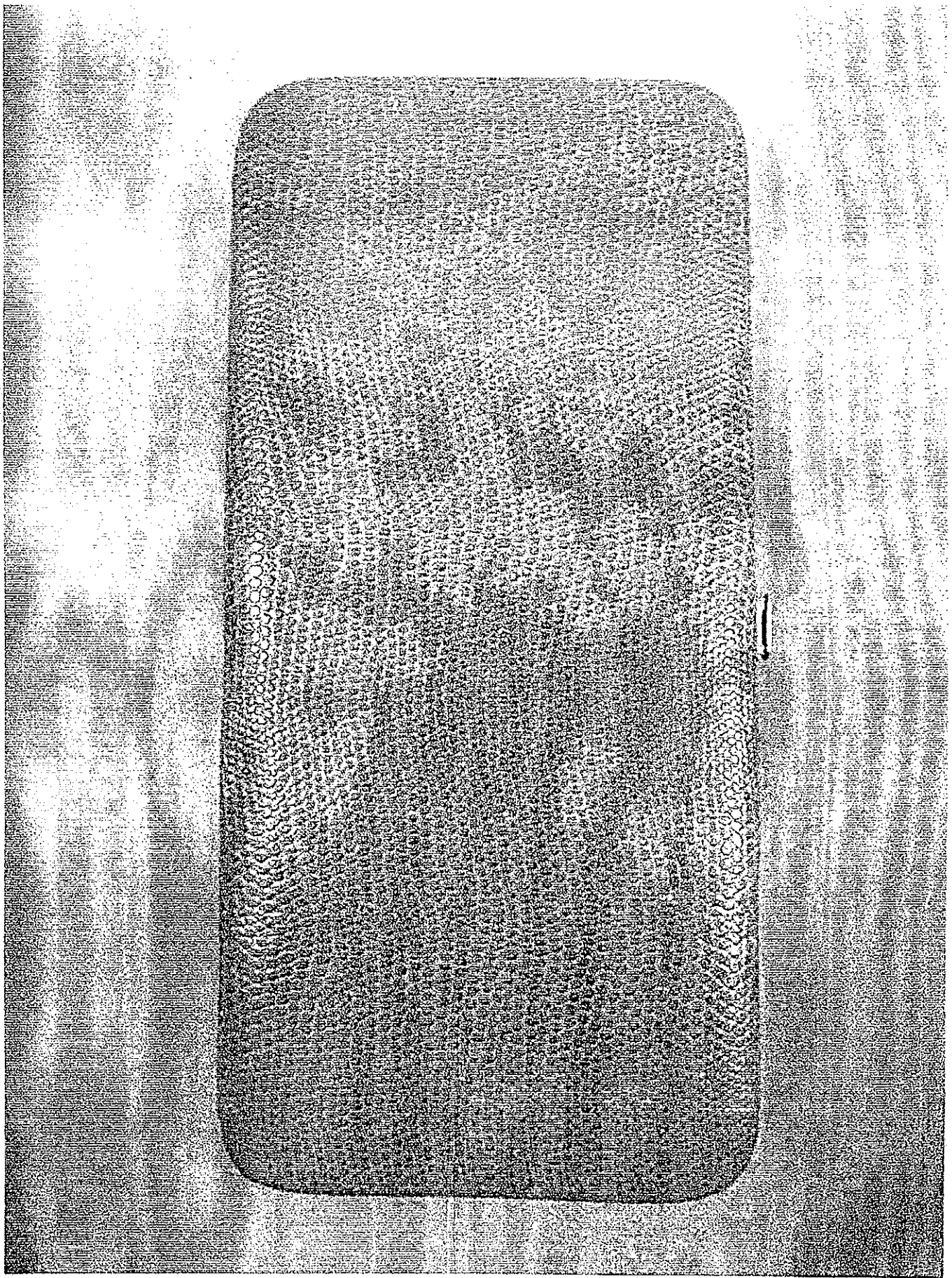
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Exhibit B



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Handwritten text, possibly a list or index, oriented vertically. The characters are difficult to decipher due to the image quality and orientation.

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