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**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 15 2012

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.)
)
) _____)
)
) 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, and RG-11-603764)
KM
**~~PROPOSED~~ CONSENT
JUDGMENT AS TO DEFENDANT
TOSS DESIGNS, INC.**

1 **1. DEFINITIONS**

2 1.1 “Accessible Component” means a component of a Covered Product that could
3 be touched by a person during normal or reasonably foreseeable use.

4 1.2 “Covered Products” means wallets, handbags, purses, and clutches that are
5 Manufactured, distributed or sold or offered for sale by Settling Defendant.

6 1.3 “Effective Date” means the date on which this Consent Judgment is entered by
7 the Court.

8 1.4 “Lead Limits” means the maximum concentrations of lead and lead
9 compounds (“Lead”) by weight specified in Section 3.2.

10 1.5 “Manufactured” and “Manufactures” means to manufacture, produce, or
11 assemble.

12 1.6 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
13 with or without a suspension of finely divided coloring matter, which changes to a solid film
14 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
15 This term does not include printing inks or those materials which actually become a part of the
16 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
17 the substrate, such as by electroplating or ceramic glazing.

18 1.7 “Vendor” means a person or entity that Manufactures, imports, distributes, or
19 supplies a Covered Product to Settling Defendant.

20 **2. INTRODUCTION**

21 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and Toss Designs, Inc. (“Settling Defendant”).

23 2.2 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
24 Case No. RG 09-459448, and on January 19, 2010, CEH filed the action entitled *CEH v. Bag*
25 *Bazaar*, Case No. RG10-494517, in the Superior Court of California for Alameda County,
26 alleging Proposition 65 violations as to wallets, handbags, purses and clutches. On March 3,
27 2010, the *Lulu* and *Bag Bazaar* cases were consolidated for pre-trial purposes with the following
28 related cases pending in Alameda County Superior Court: (a) *CEH v. Ashley Stewart*, Case No.

1 RG10-494289; and (b) *CEH v. Zappos.com, Inc.*, Case No. RG10-494513. On February 8, 2012,
2 the following cases were also consolidated for pre-trial purposes with the *Lulu* consolidated cases:
3 (a) *CEH v. Bioworld Merchandising, Inc.*, Case No. RG11-598596; (b) *CEH v. Yoki Shoes LLC*,
4 Case No. RG11-598595; and (c) *CEH v. Armani Exchange, Inc.*, Case No. RG11-603764.

5 2.3 On or about August 17, 2010, CEH served a 60-Day Notice of Violation under
6 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
7 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by
8 exposing persons to Lead contained in Covered Products, without first providing a clear and
9 reasonable Proposition 65 warning. On or about November 3, 2010, CEH filed a Second
10 Amended Complaint in *CEH v. Bag Bazaar*, Case No. RG10-494517, naming Settling Defendant
11 as a defendant in that action. On July 26, 2011, CEH filed the operative Third Amended
12 Complaint in the *Bag Bazaar* action (the “Complaint”).

13 2.4 Settling Defendant manufactures, distributes or offers Covered Products for
14 sale in the State of California or has done so in the past.

15 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
16 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
17 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
18 the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

19 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
20 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
21 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
22 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
23 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
24 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
25 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
26 this action.

27 **3. INJUNCTIVE RELIEF**

28 3.1 **Specification Compliance Date.** To the extent it has not already done so, no

1 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
2 Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to provide
3 Covered Products that comply with the Lead Limits on a nationwide basis.

4 **3.2 Lead Limits.**

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

8 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
9 million (“ppm”).

10 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

11 3.2.3 All other Accessible Components other than cubic zirconia (sometimes
12 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

13 **3.3 Final Retail Compliance Date.** Commencing on December 1, 2012, Settling
14 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead
15 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s
16 direct customer sells or offers for sale to California consumers a Covered Product after December
17 1, 2012, Settling Defendant is deemed to “offer for sale in California” that Covered Product.

18 **3.4 Action Regarding Specific Products.**

19 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
20 Toss Designs Handbag, SKU No. 8-77571-00125-0 (the “Section 3.4 Product”) in
21 California. On or before the Effective Date, Settling Defendant shall also: (i) cease
22 shipping the Section 3.4 Product to any of its customers that resell the Section 3.4 Product
23 in California, and (ii) send instructions to its customers that resell the Section 3.4 Product
24 in California instructing them either to (a) return all the Section 3.4 Products to the
25 Settling Defendant for destruction; or (b) directly destroy the Section 3.4 Products.

26 3.4.2 Any destruction of Section 3.4 Products shall be in compliance with all
27 applicable laws.

28

1 3.4.3 Within sixty days of the Effective Date, Settling Defendant shall provide
2 CEH with written certification from Settling Defendant confirming compliance with the
3 requirements of this Section 3.4.

4 **4. ENFORCEMENT**

5 4.1 Any Party may, after meeting and conferring, by motion or application for an
6 order to show cause before this Court, enforce the terms and conditions contained in this Consent
7 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent
8 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

9 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
10 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
11 Defendant on or after that date, for example, a unique brand name or characteristic system of
12 product numbering or labeling. Upon written request by CEH, but no more than once in any
13 calendar year, Settling Defendant shall, within 30 days of receiving a request from CEH, update
14 the information provided to CEH pursuant to this Section 4.2 by notifying CEH of a means
15 sufficient to allow CEH to identify Covered Products currently supplied or offered by Settling
16 Defendant. If CEH is unable to determine whether a particular product is a Covered Product as to
17 Settling Defendant based on the information provided to CEH pursuant to this Section 4.2,
18 Settling Defendants shall cooperate in good faith with CEH in determining whether the product at
19 issue is a Covered Product. Information provided to CEH pursuant to this Section 4.2, including
20 but not limited to the identities of parties to contracts among Settling Defendants or between
21 Settling Defendants and third parties, may be designated by Settling Defendant as competitively
22 sensitive confidential business information, and if so designated shall not be disclosed to any
23 person without the written permission of Settling Defendant. Any motions or pleadings or any
24 other court filings that may reveal information designated as competitively sensitive confidential
25 business information pursuant to this Section shall be submitted in accordance with California
26 Rules of Court 8.46 and 2.550, *et seq.*

27 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
28 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

1 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation Settling
2 Defendant within 45 days of the date the alleged violation(s) was or were observed,
3 provided, however, that CEH may have up to an additional 45 days to provide Settling
4 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it
5 from its laboratory.

6 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
7 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
8 (b) the location at which the Covered Product was offered for sale, (c) a description of the
9 Covered Product giving rise to the alleged violation, and of each Accessible Component
10 that is alleged not to comply with the Lead Limits, including a picture of the Covered
11 Product and all identifying information on tags and labels, and (d) all test data obtained by
12 CEH regarding the Covered Product and related supporting documentation, including all
13 laboratory reports, quality assurance reports and quality control reports associated with
14 testing of the Covered Products. Such Notice of Violation shall be based at least in part
15 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
16 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
17 Notice of Violation, although any such testing may be used as additional support for a
18 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A
19 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section
20 4.3.2.

21 4.3.3 **Additional Documentation.** CEH shall promptly make available for
22 inspection and/or copying upon request by and at the expense of Settling Defendant, all
23 supporting documentation related to the testing of the Covered Products and associated
24 quality control samples, including chain of custody records, all laboratory logbook entries
25 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
26 from all analytical instruments relating to the testing of Covered Product samples and any
27 and all calibration, quality assurance, and quality control tests performed or relied upon in
28 conjunction with the testing of the Covered Products, obtained by or available to CEH that

1 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
2 any exemplars of Covered Products tested.

3 4.3.4 **Multiple Notices.** If Settling Defendant has received more than four
4 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
5 fines, costs, penalties, or remedies are provided by law for failure to comply with the
6 Consent Judgment. For purposes of determining the number of Notices of Violation
7 pursuant to this Section 4.3.4, the following shall be excluded:

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

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

12 4.4 **Notice of Election.** Within 30 days of receiving a Notice of Violation
13 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant
14 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
15 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
16 deemed an election to contest the Notice of Violation.

17 4.4.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
18 Election shall include all then-available documentary evidence regarding the alleged
19 violation, including any test data. Within 30 days the parties shall meet and confer to
20 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
21 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
22 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
23 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
24 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
25 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
26 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or
27 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
28 other data regarding the alleged violation, it shall promptly provide all such data or

1 information to the other Party.

2 4.4.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
3 Settling Defendant shall include in its Notice of Election a detailed description of
4 corrective action that it has undertaken or proposes to undertake to address the alleged
5 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
6 Covered Product will no longer be offered by Settling Defendant or its customers for sale
7 in California. If there is a dispute over the sufficiency of the proposed corrective action or
8 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
9 meet and confer before seeking the intervention of the Court to resolve the dispute. In
10 addition to the corrective action, Settling Defendant shall make a contribution to the
11 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
12 Section 4.4.3 applies.

13 4.4.3 **Limitations in Non-Contested Matters.**

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

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

18 (i) One thousand seven hundred fifty dollars (\$1750) if Settling
19 Defendant, prior to receiving and accepting for distribution or sale the
20 Covered Product identified in the Notice of Violation, obtained test results
21 demonstrating that all of the Accessible Components in the Covered
22 Product identified in the Notice of Violation complied with the applicable
23 Lead Limits, and further provided that such test results meet the same
24 quality criteria to support a Notice of Violation as set forth in Section 4.3.2
25 and that the testing was performed within two years prior to the date of the
26 sales transaction on which the Notice of Violation is based. Settling
27 Defendant shall provide copies of such test results and supporting
28 documentation to CEH with its Notice of Election;

1 (ii) One thousand five hundred dollars (\$1500) if Settling
2 Defendant is in violation of Section 3.3 only insofar as that Section deems
3 the Settling Defendant to have “offered for sale” a product sold at retail by
4 Settling Defendant’s customer, provided however, that no contribution is
5 required or payable if Settling Defendant has already been required to pay
6 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This
7 subsection shall apply only to Covered Products that Settling Defendant
8 demonstrates were shipped prior to the Effective Date.

9 (iii) 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 **5. PAYMENTS**

14 5.1 **Payments by Settling Defendant.** On or before May 1, 2012, Settling
15 Defendant shall pay the sum of \$7,500 by check payable to the Lexington Law Group. On or
16 before October 1, 2012, Settling Defendant shall pay the sum of \$7,500 by check payable to the
17 Lexington Law Group, for a total sum of \$15,000 as a settlement payment. To the extent the
18 Court does not approve this Consent Judgment before a payment is due, the funds paid by Settling
19 Defendant shall be held in trust pending the Court’s approval of this Consent Judgment or
20 returned if the Court issues a final Order denying CEH’s motion for entry of the Consent
21 Judgment. Any failure by Settling Defendant to comply with the payment terms herein shall be
22 subject to a stipulated late fee in the amount of \$100 for each day after the delivery date the
23 payment is received. The late fees required under this Section shall be recoverable, together with
24 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 4.1 of this
25 Consent Judgment. The settlement payments for Settling Defendant shall be delivered to the
26 offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco,
27 California 94117.

28 5.2 The funds paid by Settling Defendant shall be allocated as set forth below between

1 the following categories:

2 5.2.1 \$1,930 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
3 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
4 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
5 Assessment).

6 5.2.2 \$2,900 as a payment in lieu of civil penalty to CEH pursuant to Health &
7 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
8 such funds to continue its work educating and protecting people from exposures to toxic
9 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
10 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
11 environmental justice groups working to educate and protect people from exposures to toxic
12 chemicals. The method of selection of such groups can be found at the CEH web site at
13 www.ceh.org/justicefund.

14 5.2.3 \$10,170 as reimbursement of a portion of reasonable attorneys’ fees and
15 costs.

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 the other Party prior to filing a motion to modify the
22 Consent Judgment.

23 **7. CLAIMS COVERED AND RELEASED**

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

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

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 Settling Defendant, Defendant
11 Releasee, or Downstream Defendant Releasee.

12 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
13 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
14 of Settling Defendant under Section 3.3; and (b) sells or offers for sale a Covered Product to
15 California consumers that does not comply with the Lead Limits after the Final Retail
16 Compliance Date set forth in Section 3.3.

17 **8. NOTICE**

18 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
19 notice shall be sent by first class and electronic mail to:

20 Howard Hirsch
21 Lexington Law Group
22 503 Divisadero Street
23 San Francisco, CA 94117
24 hhirsch@lexlawgroup.com

25 8.2 When Settling Defendant is entitled to receive any notice under this Consent
26 Judgment, the notice shall be sent by first class and electronic mail to:

27 Melissa Jones
28 Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
majones@stoel.com

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 and 7 shall survive any termination and provided
4 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and 7.1
5 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 the successors or assigns of any of them.

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

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

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

28 12.6 The stipulations to this Consent Judgment may be executed in counterparts

1 and by means of facsimile or portable document format (pdf), which taken together shall be
2 deemed to constitute one document.

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

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

16

17 **IT IS SO ORDERED:**

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19 Dated: Aug 15, 2012

STEVEN A. BRICK
The Honorable Steven A. Brick
Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: <u>May 3</u> , 2012	CENTER FOR ENVIRONMENTAL HEALTH  _____ <u>CHARLIE PIZARRO</u> Printed Name <u>ASSOCIATE DIRECTOR</u> Title
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Dated: _____, 2012	TOSS DESIGNS, INC. _____ _____ Printed Name _____ Title
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IT IS SO STIPULATED:

Dated: _____, 2012	CENTER FOR ENVIRONMENTAL HEALTH _____ _____ Printed Name _____ Title
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Dated: <u>April 25</u> , 2012	TOSS DESIGNS, INC. <u>Jennifer Hogan</u> _____ Jennifer Hogan Printed Name <u>Owner</u> _____ Title
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Exhibit A



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OFFICE

OF

THE

UNITED

STATES

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