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ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 26 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.

) 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)

~~PROPOSED~~ CONSENT  
JUDGMENT AS TO SELECT  
DISTRIBUTION

AND CONSOLIDATED CASES.

**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 footwear that are Manufactured, distributed, or sold or offered for sale by Settling Defendant.

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

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

1.5 "Manufactured" and "Manufactures" means to manufacture, produce, or

1 assemble.

2 1.6 "Paint or other Surface Coatings" means a fluid, semi-fluid, or other material,  
3 with or without a suspension of finely divided coloring matter, which changes to a solid film  
4 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.  
5 This term does not include printing inks or those materials which actually become a part of the  
6 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
7 the substrate, such as by electroplating or ceramic glazing.

8 1.7 "Vendor" means a person or entity that Manufactures, imports, distributes, or  
9 supplies a Covered Product to Settling Defendant.

## 10 2. INTRODUCTION

11 2.1 The parties to this Consent Judgment ("Parties") are the Center for  
12 Environmental Health ("CEH") and defendant Select Distribution ("Settling Defendant").

13 2.2 On or about March 25, 2011, CEH served a 60-Day Notice of Violation under  
14 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
15 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by  
16 exposing persons to Lead contained in footwear, without first providing a clear and reasonable  
17 Proposition 65 warning.

18 2.3 Settling Defendant manufactures, distributes or offers Covered Products for  
19 sale in the State of California or has done so in the past.

20 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
21 Case No. RG 09-459448, and on January 19, 2010, CEH filed the action entitled *CEH v.*  
22 *Zappos.com, Inc., et al.*, Case No. RG 10-494513. On March 3, 2010, the *Lulu* and *Zappos* cases  
23 were consolidated for pre-trial purposes along with other related cases pending in Alameda  
24 County Superior Court. On or about July 26, 2011, CEH filed the operative Third Amended  
25 Complaint in the *Zappos* action, naming Settling Defendant as a defendant in that action.

26 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this  
27 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
28 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling

1 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
2 and that this Court has jurisdiction to enter this Consent Judgment.

3           2.6           Nothing in this Consent Judgment is or shall be construed as an admission by  
4 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
5 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
6 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
7 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
8 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
9 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
10 this action.

11 **3.       INJUNCTIVE RELIEF**

12           3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
13 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
14 Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to provide  
15 Covered Products that comply with the Lead Limits on a nationwide basis.

16           3.2           **Lead Limits.**

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

20                       3.2.1   Paint or other Surface Coatings on Accessible Components: 90 parts per  
21 million ("ppm").

22                       3.2.2   Polyvinyl chloride ("PVC") Accessible Components: 200 ppm.

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

25           3.3           **Final Retail Compliance Date.** Commencing on December 1, 2012, Settling  
26 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
27 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant's  
28 direct customer sells or offers for sale to California consumers a Covered Product after December

1, 2012, Settling Defendant is deemed to “offer for sale in California” that Covered Product.

**3.4 Action Regarding Specific Products.**

3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the Draven Shapes High Top in Green and Pink, SKU No. 317372-010, Style No. SMDR034 (“Section 3.4 Product”) in California. On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.4 Product to any of its customers that resell the Section 3.4 Product in California, and (ii) send instructions to its customers that resell the Section 3.4 Product in California instructing them either to (a) return the Section 3.4 Product to the Settling Defendant for destruction; or (b) directly destroy the Section 3.4 Product.

3.4.2 Any destruction of Section 3.4 Product shall be in compliance with all applicable laws.

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

**4. ENFORCEMENT**

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

4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling Defendant on or after that date, for example, a unique brand name or characteristic system of product numbering or labeling. Upon written request by CEH, but no more than once in any calendar year, Settling Defendant shall, within 30 days of receiving a request from CEH, update the information provided to CEH pursuant to this Section 4.2 by notifying CEH of a means sufficient to allow CEH to identify Covered Products currently supplied or offered by that Settling Defendant. If CEH is unable to determine whether a particular product is a Covered

1 Product as to a Settling Defendant based on the information provided to CEH pursuant to this  
2 Section 4.2, Settling Defendant shall cooperate in good faith with CEH in determining whether  
3 the product at issue is a Covered Product and, if so, the identity of the Settling Defendant  
4 responsible for selling the product. Information provided to CEH pursuant to this Section 4.2,  
5 including but not limited to the identities of parties to contracts between Settling Defendant and  
6 third parties, may be designated by Settling Defendant as competitively sensitive confidential  
7 business information, and if so designated shall not be disclosed to any person without the written  
8 permission of Settling Defendant. Any motions or pleadings or any other court filings that may  
9 reveal information designated as competitively sensitive confidential business information  
10 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and  
11 2.550, *et seq.*

12 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
13 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

14 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling  
15 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
16 provided, however, that CEH may have up to an additional 45 days to provide Settling  
17 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it  
18 from its laboratory.

19 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
20 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
21 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
22 Covered Product giving rise to the alleged violation, and of each Accessible Component  
23 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
24 Product and all identifying information on tags and labels, and (d) all test data obtained by  
25 CEH regarding the Covered Product and related supporting documentation, including all  
26 laboratory reports, quality assurance reports and quality control reports associated with  
27 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
28 upon total acid digest testing performed by an independent accredited laboratory. Wipe,

1 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
2 Notice of Violation, although any such testing may be used as additional support for a  
3 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
4 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
5 4.3.2.

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

16 **4.3.4 Multiple Notices.** If Settling Defendant has received more than four  
17 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
18 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
19 Consent Judgment. For purposes of determining the number of Notices of Violation  
20 pursuant to this Section 4.3.4, 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 4.4.3(b).

25 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation  
26 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant  
27 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
28 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be

1 deemed an election to contest the Notice of Violation.

2           **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
3 Election shall include all then-available documentary evidence regarding the alleged  
4 violation, including any test data. Within 30 days the parties shall meet and confer to  
5 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
6 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
7 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
8 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
9 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
10 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
11 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or  
12 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
13 other data regarding the alleged violation, it shall promptly provide all such data or  
14 information to the other Party.

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

26           **4.4.3 Limitations in Non-Contested Matters.**

27           (a) If it elects not to contest a Notice of Violation before any motion  
28 concerning the violation(s) at issue has been filed, the monetary liability of Settling

1 Defendant shall be limited to the contributions required by this Section 4.4.3, if any.

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

3 (i) One thousand seven hundred fifty dollars (\$1750) if Settling  
4 Defendant, prior to receiving and accepting for distribution or sale the  
5 Covered Product identified in the Notice of Violation, obtained test results  
6 demonstrating that all of the Accessible Components in the Covered  
7 Product identified in the Notice of Violation complied with the applicable  
8 Lead Limits, and further provided that such test results meet the same  
9 quality criteria to support a Notice of Violation as set forth in Section 4.3.2  
10 and that the testing was performed within two years prior to the date of the  
11 sales transaction on which the Notice of Violation is based. Settling  
12 Defendant shall provide copies of such test results and supporting  
13 documentation to CEH with its Notice of Election; or

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

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

27 **5. PAYMENTS**

28 **5.1 Payments by Settling Defendant.** On or before May 1, 2012, Settling Defendant



1 shall pay the sum of \$15,000 by check payable to the Lexington Law Group. On or before  
2 October 1, 2012, Settling Defendant shall pay the sum of \$15,000 by check payable to the  
3 Lexington Law Group, for a total sum of \$30,000 as a settlement payment. To the extent the  
4 Court does not approve this Consent Judgment before a payment is due, the funds paid by Settling  
5 Defendant shall be held in trust pending the Court's approval of this Consent Judgment or  
6 returned if the Court issues a final Order denying CEH's motion for entry of the Consent  
7 Judgment. Any failure by Settling Defendant to comply with the payment terms herein shall be  
8 subject to a stipulated late fee in the amount of \$100 for each day after the delivery date the  
9 payment is received. The late fees required under this Section shall be recoverable, together with  
10 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4.1 of this  
11 Consent Judgment. The settlement payments for Settling Defendant shall be delivered to the  
12 offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco,  
13 California 94117, and allocated as set forth below between the following categories:

14           5.1.1 Settling Defendant shall pay the sum of \$3,930 as a civil penalty pursuant  
15 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with  
16 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of  
17 Environmental Health Hazard Assessment).

18           5.1.2 Settling Defendant shall also pay the sum of \$5,900 as a payment in lieu of  
19 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of  
20 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and  
21 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part  
22 of its Community Environmental Action and Justice Fund, CEH will use four percent of such  
23 funds to award grants to grassroots environmental justice groups working to educate and protect  
24 people from exposures to toxic chemicals. The method of selection of such groups can be found  
25 at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

26           5.2 Settling Defendant shall also separately pay to the Lexington Law Group the sum  
27 of \$20,170 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.

28 **6. MODIFICATION**

1           6.1           **Written Consent.** This Consent Judgment may be modified from time to  
2 time by express written agreement of the Parties with the approval of the Court, or by an order of  
3 this Court upon motion and in accordance with law.

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

7   **7.       CLAIMS COVERED AND RELEASED**

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

18           7.2           Compliance with the terms of this Consent Judgment by Settling Defendant  
19 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered  
20 Products.

21           7.3           Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
22 action under Proposition 65 against any person other than (i) a Settling Defendant, Defendant  
23 Releasee, or Downstream Defendant Releasee, or (ii) any customer or retailer of Settling  
24 Defendant who is not a party to this lawsuit for any violation of Proposition 65 that could have  
25 been asserted based on Lead contained in footwear sold by Settling Defendant.

26           7.4           Nothing in Section 7 affects CEH’s right to commence or prosecute an action  
27 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
28 of Settling Defendant under Section 3.3; and (b) sells or offers for sale a Covered Product to

1 California consumers that does not comply with the Lead Limits after the applicable Final Retail  
2 Compliance Date set forth in Section 3.3.

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 Howard Hirsch  
7 Lexington Law Group  
8 503 Divisadero Street  
9 San Francisco, CA 94117  
10 hhirsch@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 Heidi Muckenthaler  
14 General Manager  
15 Select Distribution  
16 1763 Placentia Ave.  
17 Costa Mesa, CA 92627  
18 heidi@draven.com

19 8.3 Any Party may modify the person and address to whom the notice is to be sent  
20 by sending each other Party notice by first class and electronic mail.

21 **9. COURT APPROVAL**

22 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
23 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
24 shall support entry of this Consent Judgment.

25 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
26 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
27 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

28 **10. ATTORNEYS' FEES**

Should CEH prevail on any motion, application for an order to show cause or  
other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
Settling Defendant prevail on any motion application for an order to show cause or other

1 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
2 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
3 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
4 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
5 Code of Civil Procedure §§ 2016, *et seq.*

6 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
7 its own attorneys' fees and costs.

8 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
9 sanctions pursuant to law.

## 10 **11. TERMINATION**

11 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant  
12 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such  
13 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
14 Court of Alameda County.

15 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall  
16 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
17 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided  
18 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and 7.1  
19 shall survive any termination.

## 20 **12. OTHER TERMS**

21 12.1 The terms of this Consent Judgment shall be governed by the laws of the State  
22 of California.

23 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
24 Defendant, and the successors or assigns of any of them.

25 12.3 This Consent Judgment contains the sole and entire agreement and  
26 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
27 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
28 merged herein and therein. There are no warranties, representations, or other agreements between

1 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
2 implied, other than those specifically referred to in this Consent Judgment have been made by any  
3 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
4 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
5 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
6 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
7 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
8 whether or not similar, nor shall such waiver constitute a continuing waiver.

9           12.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
10 that any Settling Defendant might have against any other party, whether or not that party is a  
11 Settling Defendant.

12           12.5       This Court shall retain jurisdiction of this matter to implement or modify the  
13 Consent Judgment.

14           12.6       The stipulations to this Consent Judgment may be executed in counterparts  
15 and by means of facsimile or portable document format (pdf), which taken together shall be  
16 deemed to constitute one document.

17           12.7       Each signatory to this Consent Judgment certifies that he or she is fully  
18 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
19 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
20 Party.

21           12.8       The Parties, including their counsel, have participated in the preparation of  
22 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
23 This Consent Judgment was subject to revision and modification by the Parties and has been  
24 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
25 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
26 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
27 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
28 be resolved against the drafting Party should not be employed in the interpretation of this Consent

1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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3 **IT IS SO ORDERED:**

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5 Dated: \_\_\_\_\_, 2012

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The Honorable Steven A. Brick  
Judge of the Superior Court

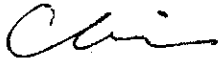
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8 **IT IS SO STIPULATED:**

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**CENTER FOR ENVIRONMENTAL HEALTH**

10



11

Signature

12

CHARLIE PILAZZO

13

Printed Name

14

15

ASSOCIATE DIRECTOR

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Title

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19

**SELECT DISTRIBUTION**

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Signature

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Printed Name

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Title

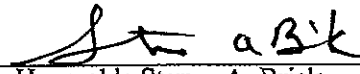
28

1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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3 **IT IS SO ORDERED:**

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5 Dated: <u>July 26, 2012</u> <u>3/12</u> , 2012	 The Honorable Steven A. Brick Judge of the Superior Court
---	--

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8 **IT IS SO STIPULATED:**

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10 **CENTER FOR ENVIRONMENTAL HEALTH**

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**SELECT DISTRIBUTION**

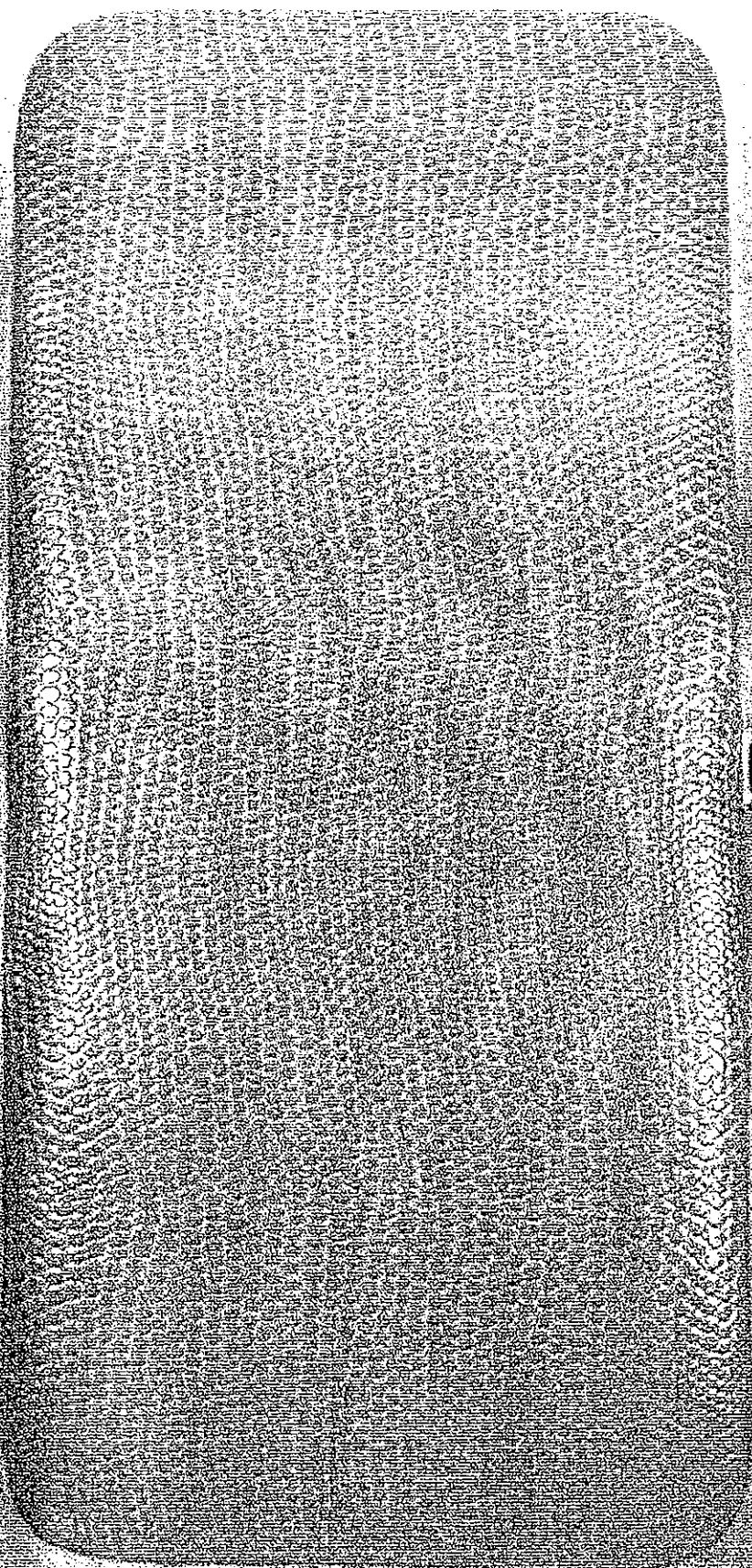
  
 Signature

LOUIS B DORFMAN  
 Printed Name

President  
 Title

# **Exhibit A**





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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