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ENDORSED
FILED
ALAMEDA COUNTY

JUL 18 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~~ *VM* CONSENT
JUDGMENT AS TO FRANCESCA'S
COLLECTIONS, INC.

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

YOKI SHOES, LLC, et al.,)

Defendants.)

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

BIOWORLD MERCHANDISING, INC., et al.,)

Defendants.)

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1. DEFINITIONS

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

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

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

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

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

1.6 “Manufactured” and “Manufactures” have the meaning defined in Section 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended from time to time.

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

1.8 “Private Labeler” means an owner or licensee of a brand or trademark on the label of a consumer product which bears a private label; provided, however, that Settling

¹ As of May 1, 2011, the term “Manufactured” and “Manufactures” means to manufacture, produce, or assemble.

1 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
2 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party's
3 brand or trademark.

4 1.9 "Paint or other Surface Coatings" has the meaning defined in 16 C.F.R.
5 § 1303.2(b)², as amended from time to time.

6 1.10 "Vendor" means a person or entity that Manufactures, imports, distributes, or
7 supplies a Fashion Accessory to Settling Defendant.

8 2. INTRODUCTION

9 2.1 The parties to this Consent Judgment ("Parties") are the Center for
10 Environmental Health ("CEH") and defendant Francesca's Collections, Inc. ("Settling
11 Defendant").

12 2.2 On July 1, 2011, CEH served two 60-Day Notices of Violation on Settling
13 Defendant under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that the Settling Defendant
15 violated Proposition 65 by exposing persons to Lead contained in 1) wallets, handbags, purses,
16 and clutches, and 2) footwear, without first providing a clear and reasonable Proposition 65
17 warning.

18 2.3 Settling Defendant offers Fashion Accessories for sale in the State of
19 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, in the Superior Court of California for Alameda County, alleging
22 Proposition 65 violations as to wallets, handbags, purses and clutches.

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25 ² As of May 1, 2011, "Paint or other Surface Coatings" means a fluid, semi-fluid, or other
26 material, with or without a suspension of finely divided coloring matter, which changes to a solid
27 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other
28 surface. This term does not include printing inks or those materials which actually become a part
of the substrate, such as the pigment in a plastic article, or those materials which are actually
bonded to the substrate, such as by electroplating or ceramic glazing.

1 2.5 On October 5, 2011, CEH filed an action against Settling Defendant (and
2 others) entitled *CEH v. Yoki Shoes LLC*, Case No. RG11598595, in the Superior Court of
3 California for Alameda County, alleging violation of Proposition 65 with regard to the
4 “manufacture, distribution, sale and/or use” of “footwear made with leather, vinyl or imitation
5 leather materials” (the “*Yoki Action*”).

6 2.6 On October 5, 2011, CEH filed an action against Settling Defendant (and
7 others) entitled *CEH v. Bioworld Merchandising, Inc.*, Case No. RG11598596, in the Superior
8 Court of California for Alameda County, alleging violation of Proposition 65 with regard to the
9 “manufacture, distribution, sale and/or use” of “wallets, handbags, purses and clutches made with
10 leather, vinyl or imitation leather materials” (the “*Bioworld Action*”).

11 2.7 On or about February 8, the *Yoki Action* and the *Bioworld Action* (among
12 other cases) were consolidated with the *Lulu Action* for pre-trial purposes under Lead Case No.
13 RG 09-459448.

14 2.8 For purposes of this Consent Judgment only, the Parties stipulate that this
15 Court has jurisdiction over the allegations of violations contained in the operative Complaint
16 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
17 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
18 and that this Court has jurisdiction to enter this Consent Judgment.

19 2.9 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 current Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts
3 to provide Fashion Accessories 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 Leather (including composited leather) Accessible Components: 300 ppm.

11 3.2.3 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

12 3.2.4 All other Accessible Components other than cubic zirconia (sometimes
13 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

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

20 **3.4 Action Regarding Specific Products.**

21 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
22 following specific products in California: (i) Street Level Folded Flap Clutch in Yellow,
23 SKU No. 25729, Style No. 1000, and (ii) Sandal in Yellow, Item No. 52909, Style Name:
24 Dolce (collectively, the “Section 3.4 Products”). On or before the Effective Date, Settling
25 Defendant shall also: (i) cease shipping the Section 3.4 Products to any of its customers
26 that resell the Section 3.4 Products in California, and (ii) send instructions to its customers
27 that resell the Section 3.4 Products in California instructing them to cease offering such
28 Section 3.4 Products for sale in California.

1 3.4.2 If Settling Defendant has not complied with Section 3.4.1 prior to
2 executing this Consent Judgment, it shall instruct its California stores and/or customers
3 that resell the Section 3.4 Products either to (i) return all the Section 3.4 Products to the
4 Settling Defendant for destruction; or (ii) directly destroy the Section 3.4 Products.

5 3.4.3 Any destruction of Section 3.4 Products shall be in compliance with all
6 applicable laws.

7 3.4.4 Within sixty days of the Effective Date, Settling Defendant shall provide
8 CEH with written certification from Settling Defendant confirming compliance with the
9 requirements of this Section 3.4.

10 **4. ENFORCEMENT**

11 4.1 Any Party may, after meeting and conferring, by motion or application for an
12 order to show cause before this Court, enforce the terms and conditions contained in this Consent
13 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent
14 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

15 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
16 of a means sufficient to allow CEH to identify any Covered Products currently supplied or offered
17 by Settling Defendant as of that date, for example, a unique brand name or characteristic system
18 of product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,
19 including but not limited to the identities of parties to contracts between Settling Defendant and
20 third parties, may be designated by Settling Defendant as competitively sensitive confidential
21 business information, and if so designated shall not be disclosed to any person without the written
22 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
23 reveal information designated as competitively sensitive confidential business information
24 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and
25 2.550, *et seq.*

26 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
27 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

28 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling

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

5 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
6 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
7 (b) the location at which the Covered Product was offered for sale, (c) a description of the
8 Covered Product giving rise to the alleged violation, and of each Accessible Component
9 that is alleged not to comply with the Lead Limits, including a picture of the Covered
10 Product and all identifying information on tags and labels, and (d) all test data obtained by
11 CEH regarding the Covered Product and related supporting documentation, including all
12 laboratory reports, quality assurance reports and quality control reports associated with
13 testing of the Covered Products. Such Notice of Violation shall be based at least in part
14 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
15 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
16 Notice of Violation, although any such testing may be used as additional support for a
17 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A
18 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section
19 4.3.2.

20 **4.3.3 Additional Documentation.** CEH shall promptly make available for
21 inspection and/or copying upon request by and at the expense of Settling Defendant, all
22 supporting documentation related to the testing of the Covered Products and associated
23 quality control samples, including chain of custody records, all laboratory logbook entries
24 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
25 from all analytical instruments relating to the testing of Covered Product samples and any
26 and all calibration, quality assurance, and quality control tests performed or relied upon in
27 conjunction with the testing of the Covered Products, obtained by or available to CEH that
28

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 test data regarding the alleged violation. Within
19 30 days the parties shall meet and confer to attempt to resolve their dispute. Should such
20 attempts at meeting and conferring fail, CEH may file an enforcement motion or
21 application pursuant to Section 4.1. If Settling Defendant withdraws its Notice of Election
22 to contest the Notice of Violation before any motion concerning the violations alleged in
23 the Notice of Violation is filed pursuant to Section 4.1, Settling Defendant shall make a
24 contribution to the Proposition 65 Fashion Accessory Testing Fund in the amount of
25 \$12,000 and shall comply with all of the non-monetary provisions of Section 4.4.2. If, at
26 any time prior to reaching an agreement or obtaining a decision from the Court, CEH or
27 Settling Defendant acquires additional test data regarding the alleged violation, it shall
28 promptly provide all such test data to the other Party.

1 **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested,
2 Settling Defendant shall include in its Notice of Election a detailed description of
3 corrective action that it has undertaken or proposes to undertake to address the alleged
4 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
5 specifically identified Covered Product will no longer be offered by Settling Defendant or
6 its customers for sale in California. If there is a dispute over the sufficiency of the
7 proposed corrective action or its implementation, CEH shall promptly notify Settling
8 Defendant and the Parties shall meet and confer before seeking the intervention of the
9 Court to resolve the dispute. In addition to the corrective action, Settling Defendant shall
10 make a contribution to the Fashion Accessory Testing Fund in the amount of \$10,000,
11 unless one of the provisions of Section 4.4.3 applies.

12 **4.4.3 Limitations in Non-Contested Matters.**

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

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

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

27 (ii) One thousand five hundred dollars (\$1500) if Settling
28 Defendant is in violation of Section 3.3 only insofar as that Section deems

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

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

12 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If
13 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
14 Fashion Accessory: (i) that is not a Covered Product, (ii) that contains Lead in an amount that
15 exceeds any of the applicable lead limits, and (iii) for which Settling Defendant did not provide a
16 clear and reasonable warning as required by Proposition 65 (“Noncompliant Non-Covered
17 Product”), then prior to CEH serving a 60-Day Notice under Proposition 65 on Settling
18 Defendant, CEH shall provide notice to Settling Defendant pursuant to this Section 4.5.

19 4.5.1 The notice shall contain the information required for a Notice of Violation
20 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the
21 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
22 further identifying information for the Noncompliant Non-Covered Product that is
23 reasonably available to it.

24 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
25 requested further information sufficient to identify the Noncompliant Non-Covered
26 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
27 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 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;

6 (c) Include either: (i) a statement that Settling Defendant elects not to
7 proceed under this Section 4.5, in which case CEH may take further action including
8 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant
9 elects to proceed under this Section 4.5, with a description of corrective action that meets
10 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund
11 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant
12 contends that the Noncompliant Non-Covered Product is released from liability by a
13 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

14 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
15 confidential business information, or (iii) other information that may be subject to a claim
16 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
17 or confidentiality, provided that the Party disclosing such information shall clearly
18 designate it as confidential. Any Party receiving information designated as confidential
19 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
20 or entity, and shall use such information solely for purposes of resolving any disputes
21 under this Consent Judgment.

22 4.5.4 No further action is required of Settling Defendant under this Consent
23 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
24 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
25 Covered Product by the terms of a separate settlement agreement or consent judgment
26 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

27 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
28 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may

1 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
2 elects to proceed under Section 4.5.2(b)(ii), then compliance with that Section shall
3 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

4 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
5 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
6 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
7 provisions of Section 4.4.3(b) applies, in which case the applicable amount specified in
8 Section 4.4.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one
9 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person
10 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
11 has a principal place of business located within the United States, and \$10,000 for all
12 other notices.

13 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a
14 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
15 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
16 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
17 settlement amount paid by such Vendor. If the settlement or consent judgment between
18 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
19 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
20 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
21 settlement payment.

22 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
23 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
24 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
25 than a Settling Defendant.

26 **5. PAYMENTS**

27 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent
28 Judgment, Settling Defendant shall pay the total sum of \$60,000 as a settlement payment. The

1 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to
2 the offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San
3 Francisco, California 94117, and made payable and allocated as follows:

4 5.1.1 Settling Defendant shall pay the sum of \$7,930 as a civil penalty pursuant
5 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
6 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
7 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
8 Center For Environmental Health.

9 5.1.2 Settling Defendant shall also pay the sum of \$11,900 as a payment in lieu
10 of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
11 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and
12 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
13 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
14 funds to award grants to grassroots environmental justice groups working to educate and protect
15 people from exposures to toxic chemicals. The method of selection of such groups can be found
16 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
17 made payable to the Center For Environmental Health.

18 5.1.3 Settling Defendant shall also separately pay to the Lexington Law Group
19 the sum of \$40,170 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.
20 The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law
21 Group.

22 **6. MODIFICATION**

23 6.1 **Written Consent.** This Consent Judgment may be modified from time to
24 time by express written agreement of the Parties with the approval of the Court, or by an order of
25 this Court upon motion and in accordance with law.

26 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
27 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
28 modify the Consent Judgment.

1 **7. CLAIMS COVERED AND RELEASED**

2 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
3 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
4 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
5 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
6 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
7 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)
8 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
9 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
10 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by
11 Settling Defendant prior to the Effective Date.

12 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
13 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered
14 Products.

15 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
16 action under Proposition 65 against any person other than a Settling Defendant, Defendant
17 Releasee, or Downstream Defendant Releasee.

18 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
19 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
20 of Settling Defendant under Section 3.3; and (b) sells or offers for sale a Covered Product to
21 California consumers that does not comply with the Lead Limits after the applicable Final Retail
22 Compliance Date set forth in Section 3.3.

23 7.5 CEH represents that as of the date this Consent Judgment is executed by CEH,
24 it does not know of any belts made with leather, vinyl or imitation leather materials
25 manufactured, distributed and/or sold by Settling Defendant in California that contain lead at
26 levels requiring a warning under Proposition 65. It is the understanding of the Parties that should
27 CEH identify in the future any belts made with leather, vinyl or imitation leather materials
28 manufactured, distributed and/or sold by Settling Defendant in California that contain lead or any

1 other Proposition 65 chemical and are being sold in violation of Proposition 65, that CEH may
2 enforce Proposition 65 against Defendant as to such products and that nothing in this Consent
3 Judgment shall act to bar or limit in any way such an enforcement action.

4 **8. NOTICE**

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

7 Howard Hirsch
8 Lexington Law Group
9 503 Divisadero Street
10 San Francisco, CA 94117
11 hhirsch@lexlawgroup.com

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

14 Kenneth E. Keller, Esq.
15 Krieg, Keller, Sloan, Reilly & Roman LLP
16 555 Montgomery Street
17 17th Floor
18 San Francisco, CA 94111
19 kkeller@kksrr.com

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

22 **9. COURT APPROVAL**

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

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

10. ATTORNEYS' FEES

10.1 A Party who unsuccessfully brings or contests an action arising out of this
Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and

1 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
2 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
3 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

4 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
5 action brought pursuant to Sections 4.1, 4.2, 4.3 or 4.4 may seek an award of attorneys' fees
6 pursuant to Code of Civil Procedure § 1021.5 against a Party that acted with substantial
7 justification. The Party seeking such an award shall bear the burden of meeting all of the
8 elements of § 1021.5, and this provision shall not be construed as altering any procedural or
9 substantive requirements for obtaining such an award.

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

12 10.4 Except as otherwise provided in this Consent Judgment, each Party shall bear
13 its own attorneys' fees and costs.

14 **11. TERMINATION**

15 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
16 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
17 termination shall be effective upon the subsequent filing of a notice of termination with Superior
18 Court of Alameda County.

19 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
20 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
21 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
22 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
23 7.1 and 12.1 shall survive any termination.

24 **12. OTHER TERMS**

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

27 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
28 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or

1 assigns of any of them.

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

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

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

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

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

26 12.8 The Parties, including their counsel, have participated in the preparation of
27 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
28 This Consent Judgment was subject to revision and modification by the Parties and has been

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

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IT IS SO ORDERED:

Dated: <u>July 18</u> , 2012	<p style="text-align: center;">STEVEN A. BRICK</p> <hr/> <p style="text-align: center;">The Honorable Steven A. Brick Judge of the Superior Court</p>
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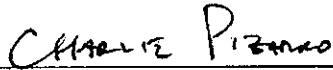
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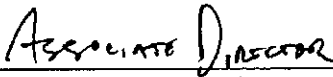
CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

FRANCESCA'S COLLECTIONS, INC.

Signature

Printed Name

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FRANCESCA'S COLLECTIONS, INC.

K M Malik 4-12-2012

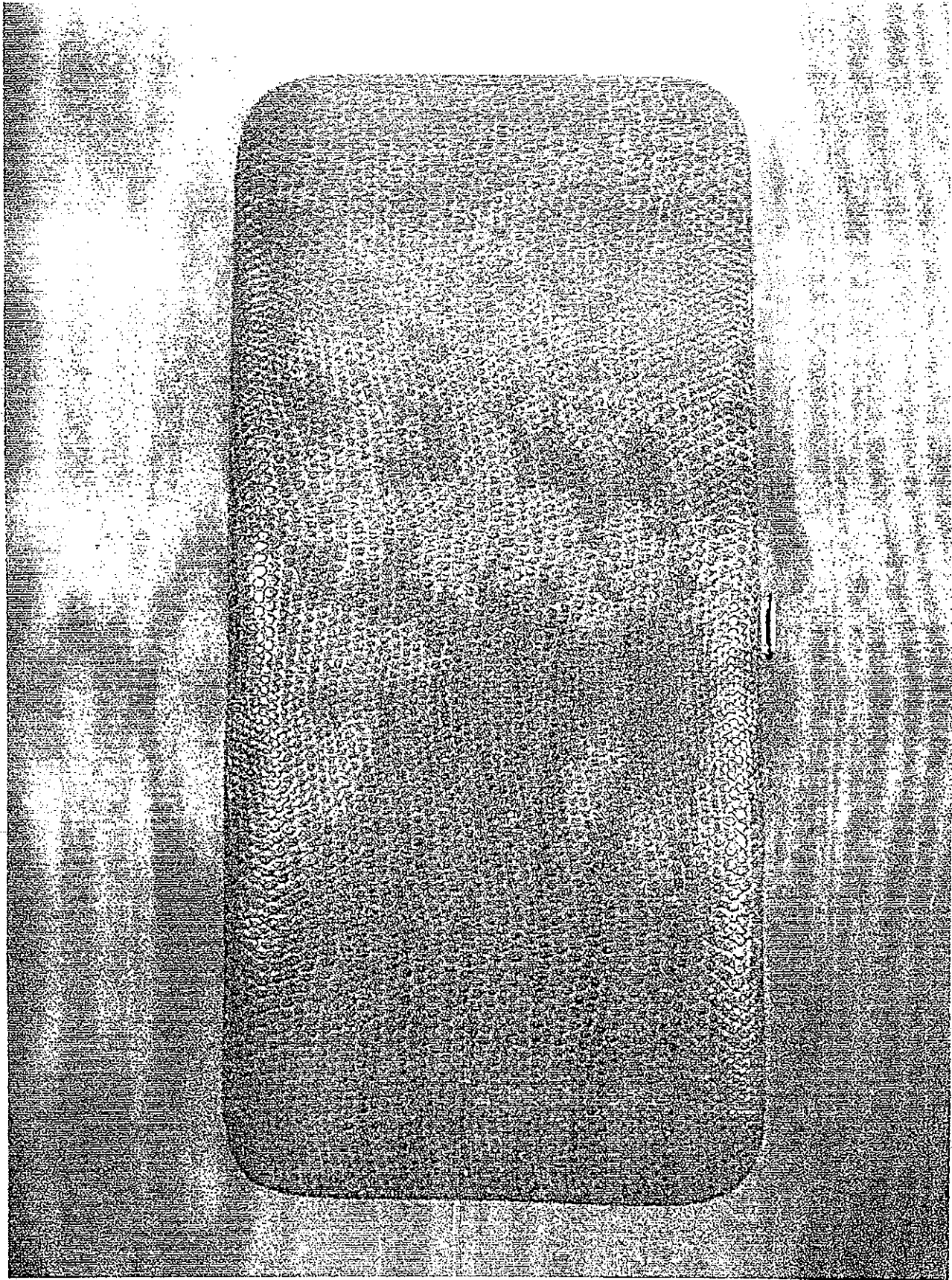
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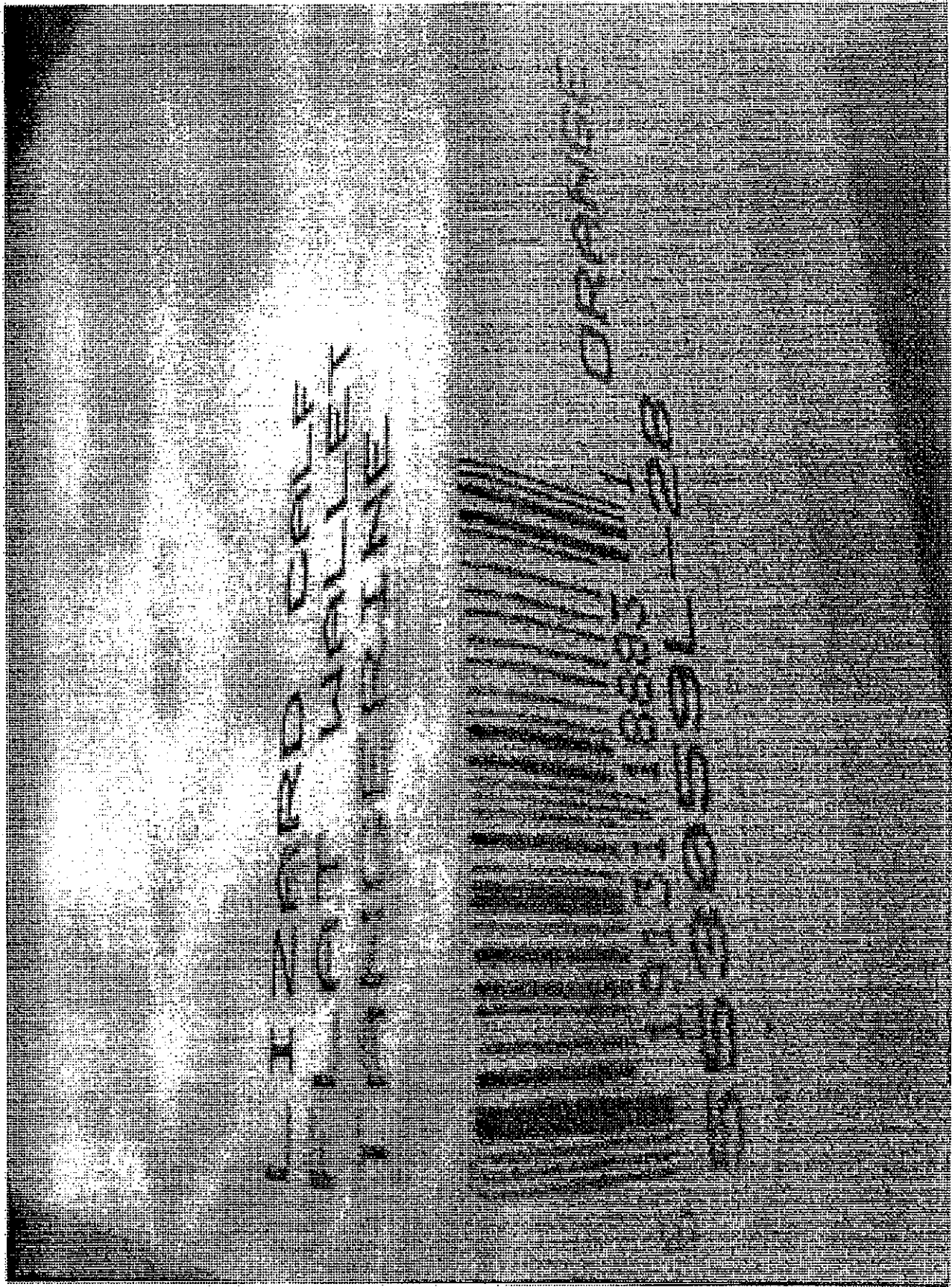
Kal Malik
EVP and General Counsel

Printed Name

Title

Exhibit A





365 North Canyons Parkway, Suite 201
Tech Center: 2441 Constitution Drive
Livermore CA 94551



925-828-1440
www.TheNFL.com

Analytical Report

August 03, 2011

Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117

Analytical Report No.: CL3573-33
Analysis Dates: 07/26/11 - 08/03/11

Listed below are the results of our analyses for sample(s) received on July 26, 2011.

CEH ID#AB789L, [REDACTED] Wallet (Orange Surface Material On Main Part Of W
NFL ID AF02363

Analyte	Result	Units	Method Ref.
Lead	67500	ppm	NIOSH 7082

A portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

Sample(s) were received in good condition unless and results are reported based on the sample(s) as received, unless otherwise noted. Please note that these results apply only to the sample(s) submitted for this report. Samples from a different portion of the same lot may produce different results.

The National Food Lab services are provided subject to our standard terms and conditions, which can be found on our website, www.TheNFL.com. 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