

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

ENDORSED
FILED
ALAMEDA COUNTY

OCT 09 2013

K. McCoy, Exec. Off./Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)
)
) Plaintiff,)
)
) v.)
)
) LULU NYC LLC, et al.,)
)
) Defendants.)
)
) _____)
)
) AND CONSOLIDATED CASES.)
)
) _____)

Lead Case No. RG 09-459448
(Consolidated with Case Nos. RG 10-494289, RG 10-494513, RG 10-494517, RG 11-598595, RG 11-598596, RG 11-603764 and RG 12-658652)
~~PROPOSED~~ CONSENT
JUDGMENT AS TO BURLINGTON
COAT FACTORY WAREHOUSE
CORPORATION

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

3 1.4 “Fashion Accessories” means wallets, handbags, purses, clutches, footwear
4 and belts.

5 1.5 “Lead Limits” means the maximum concentrations of lead and lead
6 compounds (“Lead”) by weight specified in Section 3.2.

7 1.6 “Manufactured” and “Manufactures” means to manufacture, produce, or
8 assemble.

9 1.7 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
10 with or without a suspension of finely divided coloring matter, which changes to a solid film
11 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
12 This term does not include printing inks or those materials which actually become a part of the
13 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
14 the substrate, such as by electroplating or ceramic glazing.

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

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

25 1.10 “Vendor” means a person or entity that Manufactures, imports, distributes, or
26 supplies a Covered Product to Settling Defendant.

27
28

1 **2. INTRODUCTION**

2 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and defendant Burlington Coat Factory Warehouse Corporation
4 (“Settling Defendant”).

5 2.2 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
6 Case No. RG 09-459448, alleging Proposition 65 violations as to wallets, handbags, purses and
7 clutches. The Court has consolidated the *Lulu* matter with a number of other related Proposition
8 65 cases.

9 2.3 More than sixty days prior to naming Settling Defendant in each applicable
10 action, CEH served pre-suit Notices of Violation under Proposition 65 (The Safe Drinking Water
11 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*),
12 alleging that Settling Defendant violated Proposition 65 by exposing persons to Lead contained in
13 wallets, handbags, purses, clutches, footwear and belts, without first providing clear and
14 reasonable Proposition 65 warnings. On November 9, 2011, CEH named Settling Defendant as a
15 defendant in the operative original Complaint in *CEH v. Armani Exchange*, Case No. RG 11-
16 603764. On December 5, 2012, CEH named Settling Defendant as a “Handbags Defendant” in
17 the operative original Complaint in *CEH v. Fashion Eden*, Case No. RG 12-658652.

18 2.4 Settling Defendant manufactures, distributes and/or offers for sale Covered
19 Products in the State of California or has done so in the past.

20 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
21 Court has jurisdiction over the allegations of violations contained in the operative Complaint
22 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
23 Defendant as to the acts alleged in the Complaint, that the *Fashion Eden* Complaint be deemed
24 amended to name Settling Defendant as a Footwear Defendant in addition to its original
25 designation as a Handbags Defendant, that venue is proper in the County of Alameda, and that
26 this Court has jurisdiction to enter this Consent Judgment.

27 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
28 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance

1 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
3 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
4 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
5 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
6 this action.

7 **3. INJUNCTIVE RELIEF**

8 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
9 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
10 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to
11 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis.

12 3.2 **Lead Limits.**

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

16 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
17 million (“ppm”).

18 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

19 3.2.3 All other Accessible Components (including but not limited to leather and
20 non-PVC imitation leather) other than cubic zirconia (sometimes called cubic zirconium, CZ),
21 crystal, glass or rhinestones: 300 ppm.

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

28

1 3.4 **Action Regarding Specific Products.**

2 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
3 following specific products in California: (i) Rocawear Quilted Belt in Yellow, SKU No.
4 8-41590-11088-1, Style No. RW3097, (ii) Rocawear Royal Blue and Yellow Belt, SKU
5 No. 09-409-33100207-9, Style No. RW3083, (iii) Big Buddha Color Block Clutch, Style
6 No. JSMOLLIE, SKU No. 7-62670-44159-9, and (iv) Steve Madden Flap Wallet in Red,
7 SKU No. 7-62670-03152-3 (collectively, the “Section 3.4 Products”). On or before the
8 Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.4 Products
9 to any of its stores and/or customers that resell the Section 3.4 Products in California, and
10 (ii) send instructions to its stores and/or customers that resell the Section 3.4 Products in
11 California instructing them either to: (a) return all the Section 3.4 Products to Settling
12 Defendant for destruction; or (b) directly destroy the Section 3.4 Products.

13 3.4.2 Any destruction of Section 3.4 Products shall be in compliance with all
14 applicable laws.

15 3.4.3 Within sixty days of the Effective Date, Settling Defendant shall provide
16 CEH with written certification from Settling Defendant confirming compliance with the
17 requirements of this Section 3.4.

18 **4. ENFORCEMENT**

19 4.1 Any Party may, after meeting and conferring, by motion or application for an
20 order to show cause before this Court, enforce the terms and conditions contained in this Consent
21 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent
22 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3.

23 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
24 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.2.

25 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
26 Defendant within 45 days of the date the alleged violation(s) was or were observed,
27 provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling
28 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it

1 from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a
2 Covered Product so long as: (a) the identity of the supplier cannot be discerned from the
3 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
4 within 45 days of the date the supplier is identified by CEH.

5 **4.2.2 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 and/or each Accessible Component that
10 is alleged to contain Lead in excess of 300 ppm, 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 4.2.2.

21 **4.2.3 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 4.2.4 **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 4.2.4, 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 4.3.3(b).

12 4.3 **Notice of Election.** Within 30 days of receiving a Notice of Violation
13 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(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 4.3.1 **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 4.3.2. 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 4.3.2 **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 4.3.3 applies.

13 4.3.3 **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 Section 4.3.2 and this Section
17 4.3.3, if any.

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

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

23 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
24 Defendant, prior to receiving and accepting for distribution or sale the
25 Covered Product identified in the Notice of Violation, obtained test results
26 demonstrating that the Accessible Component(s) in the Covered Product
27 identified in the Notice of Violation complied with the applicable Lead
28 Limits, and further provided that such test results meet the same quality

1 criteria to support a Notice of Violation as set forth in Section 4.2.2 and
2 that the testing was performed within two years prior to the date of the
3 sales transaction on which the Notice of Violation is based. Settling
4 Defendant shall provide copies of such test results and supporting
5 documentation to CEH with its Notice of Election; or

6 (ii) One thousand five hundred dollars (\$1,500) if Settling
7 Defendant is in violation of Section 3.3 only insofar as that Section deems
8 Settling Defendant to have “offered for sale” a product sold at retail by
9 Settling Defendant’s customer, provided however, that no contribution is
10 required or payable if Settling Defendant has already been required to pay
11 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This
12 subsection shall apply only to Covered Products that Settling Defendant
13 demonstrates were shipped prior to the Effective Date; or

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

18 4.4 Any contributions to the Fashion Accessory Test Fund pursuant to this Section
19 4 shall be made payable to the Center For Environmental Health and included with Settling
20 Defendant’s Notice of Election.

21 4.5 **Additional Enforcement for Noncompliant Non-Covered Products.** If
22 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
23 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that
24 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to
25 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
26 notice to Settling Defendant pursuant to this Section 4.5.

27 4.5.1 The notice shall contain the information required for a Notice of Violation
28 in Section 4.2. If the information is insufficient to allow Settling Defendant to identify the

1 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
2 further identifying information for the Noncompliant Non-Covered Product that is
3 reasonably available to it.

4 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
5 requested further information sufficient to identify the Noncompliant Non-Covered
6 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
7 The Notice of Election shall:

8 (a) Identify to CEH (by proper name, address of principal place of
9 business and telephone number) the person or entity that sold the Noncompliant Non-
10 Covered Product to Settling Defendant;

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

14 (c) Include either: (i) a statement that Settling Defendant elects not to
15 proceed under this Section 4.5, in which case CEH may take further action including
16 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant
17 elects to proceed under this Section 4.5, with a description of corrective action that meets
18 the conditions of Section 4.3.2., and a contribution to the Fashion Accessory Testing Fund
19 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant
20 contends that the Noncompliant Non-Covered Product is released from liability by a
21 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

22 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
23 confidential business information, or (iii) other information that may be subject to a claim
24 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
25 or confidentiality, provided that the Party disclosing such information shall clearly
26 designate it as confidential. Any Party receiving information designated as confidential
27 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
28 or entity, and shall use such information solely for purposes of resolving any disputes

1 under this Consent Judgment.

2 4.5.4 No further action is required of Settling Defendant under this Consent
3 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
4 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
5 Covered Product by the terms of a separate settlement agreement or consent judgment
6 entered into by CEH under Health & Safety Code § 25249.7 (“Qualified Settlement”).

7 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
8 Settling Defendant nor CEH have any further duty under this Section 4.5 and either may
9 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
10 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall
11 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

12 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
13 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
14 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
15 provisions of Section 4.3.3(b) applies, in which case the applicable amount specified in
16 Section 4.3.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one
17 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person
18 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
19 has a principal place of business located within the United States, and \$10,000 for all
20 other notices.

21 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a
22 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
23 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
24 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
25 settlement amount paid by such Vendor. If the settlement or consent judgment between
26 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
27 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
28

1 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
2 settlement payment.

3 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
4 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.5
5 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
6 than Settling Defendant.

7 **5. PAYMENTS**

8 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
9 Date, Settling Defendant shall pay the total sum of \$50,000 as a settlement payment. The total
10 settlement amount for Settling Defendant shall be paid in three separate checks and delivered to
11 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
12 Francisco, California 94117-2212, and made payable and allocated as follows:

13 5.1.1 Settling Defendant shall pay the sum of \$6,600 as a civil penalty pursuant
14 to Health & Safety Code § 25249.7(b). CEH shall apportion this payment in accordance with
15 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
16 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
17 Center For Environmental Health.

18 5.1.2 Settling Defendant shall pay the sum of \$9,900 as a payment in lieu of civil
19 penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
20 Regulations, Title 11, § 3203(b). CEH shall 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. The payment pursuant to this Section shall be
26 made payable to the Center For Environmental Health.

27 5.1.3 Settling Defendant shall also separately pay the sum of \$33,500 to the
28 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and

1 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
2 Law Group.

3 **6. MODIFICATION**

4 6.1 **Written Consent.** This Consent Judgment may be modified from time to
5 time by express written agreement of the Parties with the approval of the Court, or by an order of
6 this Court upon motion and in accordance with law.

7 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
8 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASED**

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

21 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
22 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered
23 Products.

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

27 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action
28 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer

1 of Settling Defendant under Section 3.2.3; and (b) sells or offers for sale a Covered Product to
2 California consumers that does not comply with the Lead Limits after the Effective Date.

3 **8. NOTICE**

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

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

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

13 Jeffrey B. Margulies
14 Fulbright & Jaworski L.L.P.
15 555 South Flower Street, 41st Floor
16 Los Angeles, CA 90071
17 jmargin@fulbright.com

18 8.3 Any Party may modify the person and address to whom the notice is to be sent
19 by sending each other Party notice by first class and electronic mail.

20 **9. COURT APPROVAL**

21 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
22 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
23 shall support entry of this Consent Judgment.

24 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
25 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
26 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

27 **10. ATTORNEYS' FEES**

28 10.1 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 January 1, 2019, 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 Settling Defendant might have against any other party, whether or not that party is a Settling
11 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.

2

3 **IT IS SO ORDERED:**

4

5 Dated: OCT 09 2013

Judge Wynne Carvill

The Honorable Steven A. Brick
Judge of the Superior Court

6


7

8 **IT IS SO STIPULATED:**

9

CENTER FOR ENVIRONMENTAL HEALTH

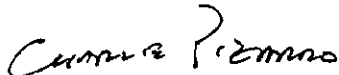
10



11

Signature

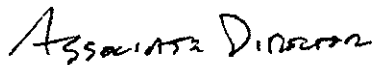
12



13

Printed Name

14



15

Title

16

17

18 **BURLINGTON COAT FACTORY**

19 **WAREHOUSE CORPORATION**

20

21

22

Signature

23

24

Printed Name

25

26

27

Title

28

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

2

3 **IT IS SO ORDERED:**

4

5 Dated: _____

The Honorable Steven A. Brick
Judge of the Superior Court

6

7

IT IS SO STIPULATED:

8

CENTER FOR ENVIRONMENTAL HEALTH

9

10

11

Signature

12

13

Printed Name

14

15

16

Title

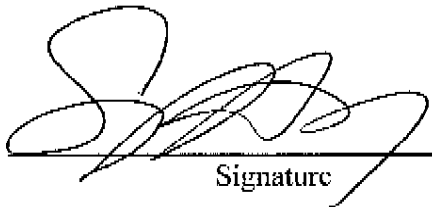
17

18

**BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION**

19

20



Signature

21

22

23

STACY J. HAIGNEY

Printed Name

24

25

26

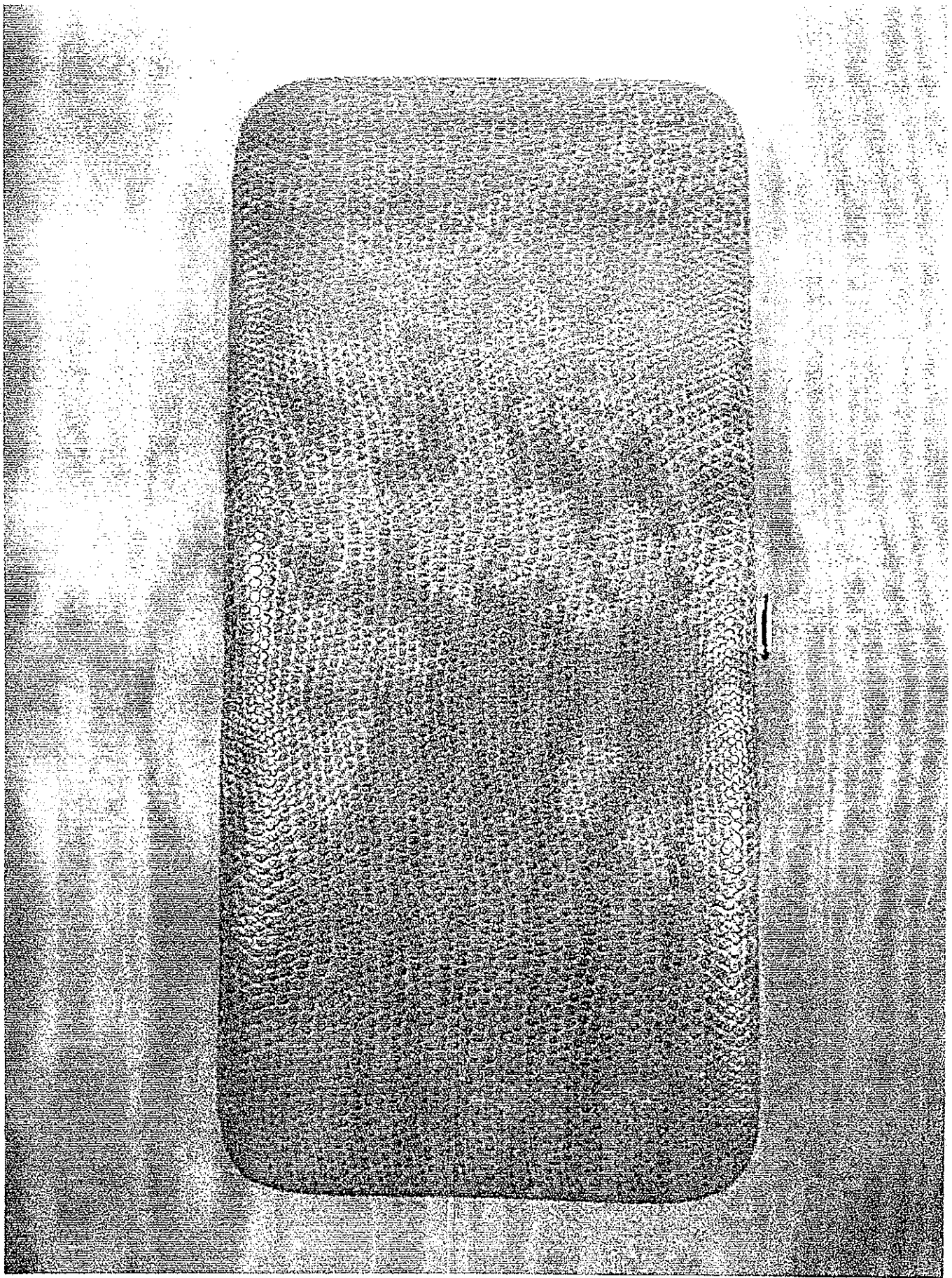
VICE - PRESIDENT

Title

27

28

Exhibit A



H
N
D
R
D
S
T
H
O
U
S
A
N
D
S
O
F
T
W
A
R
E
S
E
R
V
E
R
S

U
N
I
T
E
D
S
T
A
T
E
S
O
F
A
M
E
R
I
C
A
O
F
F
I
C
E
O
F
I
N
T
E
L
L
I
G
E
N
C
E

OFFICE

OF

INTELLIGENCE

UNITED STATES

DEPARTMENT OF JUSTICE

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