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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 30 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, and RG-10-494517)

**[PROPOSED] CONSENT
JUDGMENT AS TO MARC FISHER
HOLDINGS LLC**

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 Fashion Accessories 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 "Fashion Accessories" means footwear.

1 1.5 “Lead Limits” means the maximum concentrations of lead and lead
2 compounds (“Lead”) by weight specified in Section 3.2.

3 1.6 “Manufactured” and “Manufactures” have the meaning defined in Section
4 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended
5 from time to time.

6 1.7 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.
7 § 1303.2(b)², as amended from time to time.

8 1.8 “Vendor” means a person or entity that Manufactures, imports, distributes, or
9 supplies a Fashion Accessory 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 Marc Fisher Holdings LLC (“Settling Defendant”).

13 2.2 On or about July 1, 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 Fashion Accessories, without first providing a clear and
17 reasonable Proposition 65 warning.

18 2.3 Settling Defendant manufactures, distributes or sells Fashion Accessories that
19 are offered for retail 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, in the Superior Court of California for Alameda County, alleging
22 Proposition 65 violations as to wallets, handbags, purses and clutches. On or about January 15,
23 2010, CEH filed its First Amended Complaint, and also filed the following new actions alleging

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

26 ² As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
27 material, with or without a suspension of finely divided coloring matter, which changes to a solid
28 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other
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 Proposition 65 violations as to Lead in Fashion Accessories: *CEH v. Ashley Stewart Ltd., et al.*,
2 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,
3 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,
4 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court
5 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448.

6 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
7 Court has jurisdiction over the allegations of violations contained in the operative Complaint
8 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling
9 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
10 and that this Court has jurisdiction to enter this Consent Judgment.

11 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
12 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
13 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
14 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
15 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
16 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
17 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
18 this action.

19 **3. INJUNCTIVE RELIEF**

20 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
21 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its
22 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to
23 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis.

24 3.2 **Lead Limits.**

25 On or after December 1, 2011, Settling Defendant shall not purchase, import,
26 Manufacture, supply to an unaffiliated third party, sell or offer for sale any Covered Product that
27 will be sold or offered for sale to California consumers that exceeds the following Lead Limits:
28

1 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
2 million (“ppm”).

3 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

4 3.2.3 All other Accessible Components (including but not limited to leather and
5 non-PVC imitation leather) other than cubic zirconia (sometimes called cubic zirconium, CZ),
6 crystal, glass or rhinestones: 300 ppm.

7 3.3 **Final Retail Compliance Date.** When one of Settling Defendant’s direct
8 customers sells or offers for sale to a California consumer a Covered Product after December 1,
9 2012 that does not meet the Lead Limits, Settling Defendant is deemed to “sell or offer for sale in
10 California” that Covered Product in violation of this Consent Judgment.

11 3.4 **Action Regarding Specific Products.**

12 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
13 Ivanka Trump Pumps in Pink, SKU No. 886113334269, Style Name: Itindico (the “Recall
14 Product”) in California. On or before the Effective Date, Settling Defendant shall also: (i)
15 cease shipping the Recall Product to any of its customers that resell the Recall Product in
16 California, and (ii) send instructions to its customers that resell the Recall Product in
17 California instructing them to cease offering such Recall Product for sale in California.

18 3.4.2 If Settling Defendant has not complied with Section 3.4.1 prior to
19 executing this Consent Judgment, it shall instruct its California stores and/or customers
20 that resell the Recall Product either to (i) return the Recall Product to the Settling
21 Defendant for destruction; or (ii) directly destroy the Recall Product;

22 3.4.3 Any destruction of Recall Product shall be in compliance with all
23 applicable laws.

24 3.4.4 Within sixty days of the Effective Date, Settling Defendant shall provide
25 CEH with written certification from Settling Defendant confirming compliance with the
26 requirements of this Section 3.4.
27
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1 **4. ENFORCEMENT**

2 4.1 Any Party may, after meeting and conferring, by motion or application for an
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent
4 Judgment. Enforcement of the terms and conditions of Sections 3.2 and 3.3 of this Consent
5 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

6 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
7 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
8 Defendant on or after that date, for example, a unique brand name or characteristic system of
9 product numbering or labeling. Upon written request by CEH, but no more than once in any
10 calendar year, Settling Defendants shall, within 30 days of receiving a request from CEH, update
11 the information provided to CEH pursuant to this Section 4.2 by notifying CEH of a means
12 sufficient to allow CEH to identify Covered Products currently supplied or offered by that
13 Settling Defendant. If CEH is unable to determine whether a particular product is a Covered
14 Product as to a Settling Defendant based on the information provided to CEH pursuant to this
15 Section 4.2, Settling Defendants shall cooperate in good faith with CEH in determining whether
16 the product at issue is a Covered Product and, if so, the identity of the Settling Defendant
17 responsible for selling the product. Information provided to CEH pursuant to this Section 4.2,
18 including but not limited to the identities of parties to contracts between Settling Defendant and
19 third parties, may be designated by Settling Defendant as competitively sensitive confidential
20 business information, and if so designated shall not be disclosed to any person without the written
21 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
22 reveal information designated as competitively sensitive confidential business information
23 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.160
24 and 2.550, *et seq.*

25 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
26 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

27 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
28 Defendant within 45 days of the date the alleged violation(s) was or were observed,

1 provided, however, that CEH may have up to an additional 45 days to provide Settling
2 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it
3 from its laboratory.

4 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
5 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
6 (b) the location at which the Covered Product was offered for sale, (c) a description of the
7 Covered Product giving rise to the alleged violation, and of each Accessible Component
8 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
9 is alleged to contain Lead in excess of 300 ppm, 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 documentary evidence regarding the alleged
19 violation, including any test data. Within 30 days the parties shall meet and confer to
20 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
21 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
22 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
23 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
24 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
25 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
26 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or
27 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
28 other data regarding the alleged violation, it shall promptly provide all such data or

1 information to the other Party.

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

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

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

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

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

1 (ii) One thousand five hundred dollars (\$1500) if Settling
2 Defendant is in violation of Section 3.3, provided however, that no
3 contribution is required or payable if Settling Defendant has already been
4 required to pay a total of ten thousand dollars (\$10,000) pursuant to this
5 subsection. This subsection shall apply only to Covered Products that
6 Settling Defendant demonstrates were shipped prior to the applicable
7 Shipping Compliance Date specified in Section 3.2; or

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 5. PAYMENTS

13 5.1 **Payments by Settling Defendant.** Within twenty (20) days of entry of this
14 Consent Judgment, Settling Defendant shall pay the total sum of \$50,000 as a settlement
15 payment. The total settlement amount for Settling Defendant shall be paid in four separate
16 checks delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero
17 Street, San Francisco, California 94117, and made payable and allocated as follows:

18 5.1.1 Settling Defendant shall pay the sum of \$6,500 as a civil penalty pursuant
19 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
20 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
21 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
22 Center For Environmental Health.

23 5.1.2 Settling Defendant shall also pay the sum of \$10,100 as a payment in lieu
24 of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
25 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and
26 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
27 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
28 funds to award grants to grassroots environmental justice groups working to educate and protect

1 people from exposures to toxic chemicals. The method of selection of such groups can be found
2 at the CEH web site at www.keh.org/justicefund. The payment pursuant to this Section shall be
3 made payable to the Center For Environmental Health.

4 5.1.3 Settling Defendant shall also separately pay to the Lexington Law Group
5 the sum of \$33,400 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.
6 The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law
7 Group.

8 6. MODIFICATION

9 6.1 **Written Consent.** This Consent Judgment may be modified from time to
10 time by express written agreement of the Parties with the approval of the Court, or by an order of
11 this Court upon motion and in accordance with law.

12 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
13 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
14 modify the Consent Judgment.

15 7. CLAIMS COVERED AND RELEASED

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

26 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
27 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered
28 Products.

1 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
2 action under Proposition 65 against any person other than a Settling Defendant, Defendant
3 Releasee, or Downstream Defendant Releasee.

4 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action
5 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
6 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to
7 California consumers that does not comply with the Lead Limits after the applicable Final Retail
8 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant
9 Proposition 65 warnings under this Consent Judgment.

10 **8. NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Eric S. Somers
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 esomers@lexlawgroup.com

18 8.2 When Settling Defendant is entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Ann G. Grimaldi
21 McKenna Long & Aldridge LLP
22 101 California Street
23 Floor 41
24 San Francisco, CA 94111
25 agrimaldi@mckennalong.com

26 8.3 Any Party may modify the person and address to whom the notice is to be sent
27 by sending each other Party notice by first class and electronic mail.

28 **9. COURT APPROVAL**

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

1 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4 **10. ATTORNEYS' FEES**

5 10.1 Should CEH prevail on any motion, application for an order to show cause or
6 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
7 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
8 Settling Defendant prevail on any motion application for an order to show cause or other
9 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
10 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
11 or application lacked substantial justification. For purposes of this Consent Judgment, the term
12 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
13 Code of Civil Procedure §§ 2016, *et seq.*

14 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
15 its own attorneys' fees and costs.

16 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **11. TERMINATION**

19 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
20 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
21 termination shall be effective upon the subsequent filing of a notice of termination with Superior
22 Court of Alameda County.

23 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
24 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
25 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and
26 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,
27 7.1 and 12.1 shall survive any termination.

28

1 **12. OTHER TERMS**

2 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
5 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
6 assigns of any of them.

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

19 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
20 that any Settling Defendant might have against any other party, whether or not that party is a
21 Settling Defendant.

22 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

24 12.6 The stipulations to this Consent Judgment may be executed in counterparts
25 and by means of facsimile or portable document format (pdf), which taken together shall be
26 deemed to constitute one document.

27 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into

1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
2 Party.

3 12.8 The Parties, including their counsel, have participated in the preparation of
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
5 This Consent Judgment was subject to revision and modification by the Parties and has been
6 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
10 be resolved against the drafting Party should not be employed in the interpretation of this Consent
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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IT IS SO ORDERED:

Dated: <u>JAN 30 2012</u> , 2011 <i>AM</i>	<u>STEVEN A. BRICK</u> The Honorable Steven A. Brick Judge of the Superior Court
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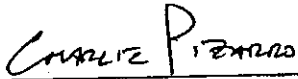
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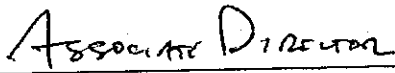
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Signature



Printed Name



Title

MARC FISHER HOLDINGS LLC

Signature

Printed Name

Title

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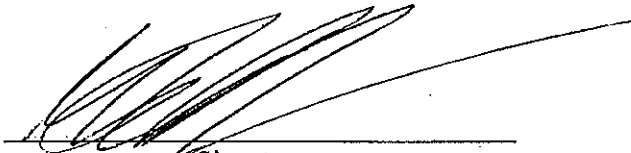
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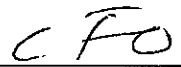
MARC FISHER HOLDINGS LLC



Signature

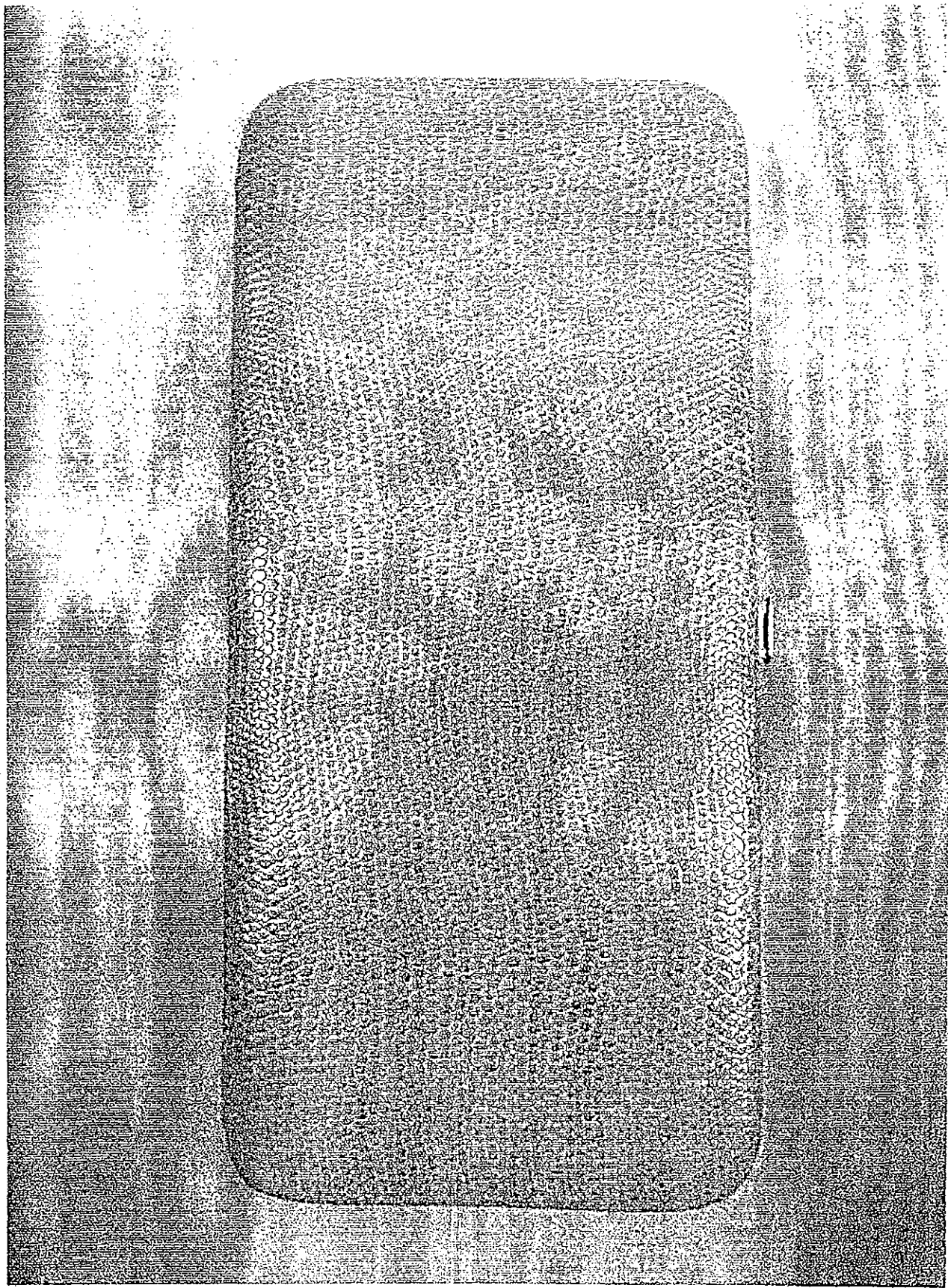


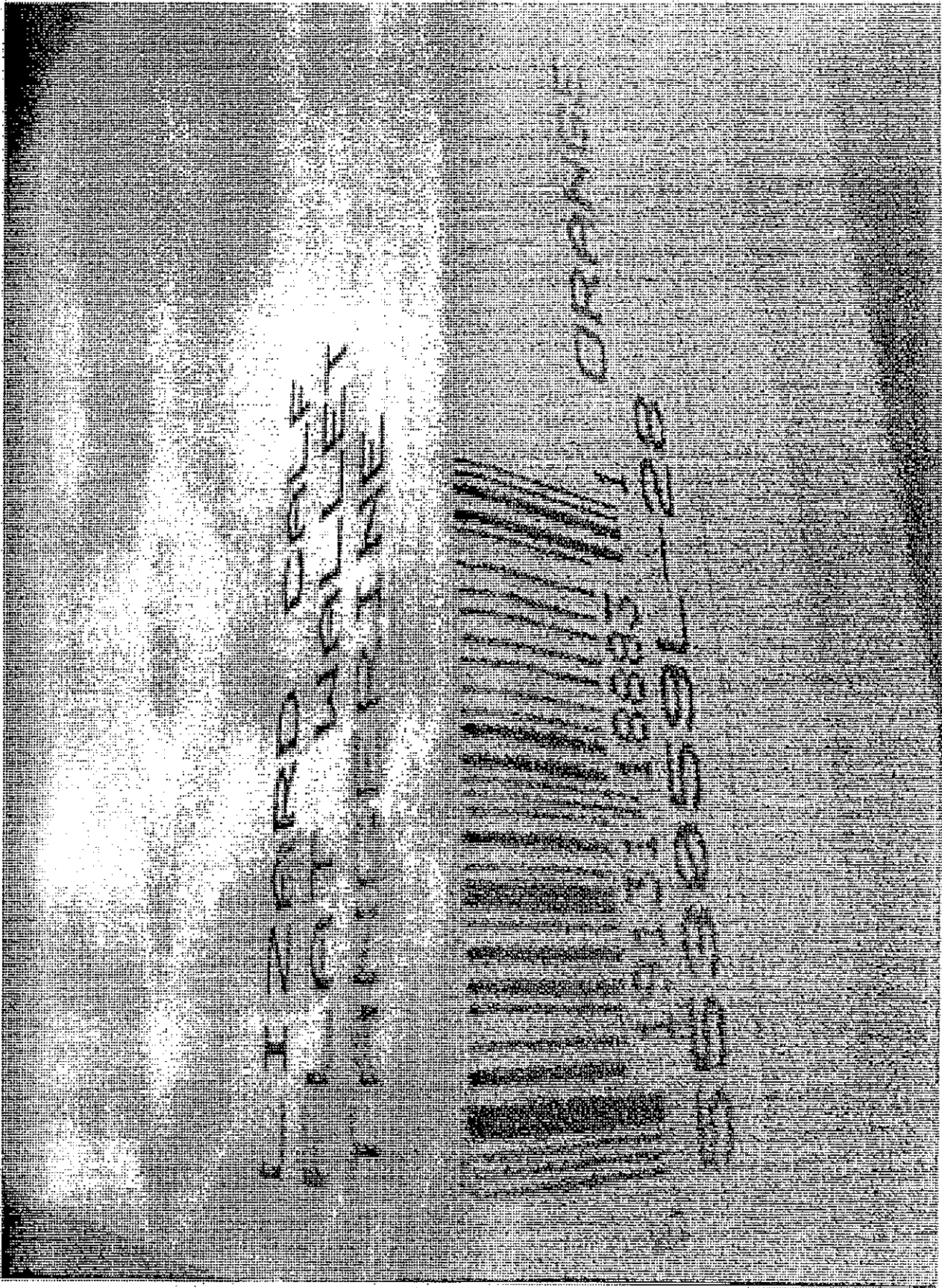
Printed Name



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