

DEC 19 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)

YIM ~~PROPOSED~~ CONSENT
JUDGMENT AS TO AMERIMARK
HOLDINGS, LLC; AMERIMARK
DIRECT, LLC AND DR.
LEONARD'S HEALTHCARE CORP.

AND CONSOLIDATED CASES.

1. DEFINITIONS

1.1 "Covered Products" means (i) wallets, handbags, purses, and clutches; (ii) belts; and (iii) footwear that are Manufactured, distributed, sold or offered for sale by Settling Defendants.

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

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

1 1.4 “Manufactured” and “Manufactures” means to manufacture, produce, or
2 assemble.

3 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
4 with or without a suspension of finely divided coloring matter, which changes to a solid film
5 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
6 This term does not include printing inks or those materials which actually become a part of the
7 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
8 the substrate, such as by electroplating or ceramic glazing.

9 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or
10 supplies a Covered Product to Settling Defendants.

11 **2. INTRODUCTION**

12 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
13 Environmental Health (“CEH”) and defendants AmeriMark Holdings, LLC; AmeriMark Direct
14 LLC and Dr. Leonard’s Healthcare Corp. (collectively, the “Settling Defendants”).

15 2.2 On or about May 22, 2012 and September 25, 2012, CEH served 60-Day
16 Notices of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act
17 of 1986, California Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendants
18 violated Proposition 65 by exposing persons to Lead contained in Covered Products, without first
19 providing a clear and reasonable Proposition 65 warning.

20 2.3 Settling Defendants manufacture, distribute and/or offer for sale Covered
21 Products in the State of California or have done so in the past.

22 2.4 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
23 Case No. RG 09-459448, alleging Proposition 65 violations as to wallets, handbags, purses and
24 clutches. The Court consolidated the *Lulu* matter with a number of other related Proposition 65
25 cases. On February 8, 2012, the following cases were also consolidated for pre-trial purposes
26 with the *Lulu* consolidated cases: (a) *CEH v. Bioworld Merchandising, Inc.*, Case No. RG 11-
27 598596; (b) *CEH v. Yoki Shoes LLC*, Case No. RG 11-598595; and (c) *CEH v. Armani Exchange,*
28 *Inc.*, Case No. RG 11-603764. On or about April 12, 2012, CEH filed the operative First

1 Amended Complaint in *CEH v. Yoki Shoes*. CEH named Settling Defendants as defendants in the
2 *Yoki* action via Doe Amendment on or about September 19, 2012, and CEH will name Settling
3 Defendants as defendants in the *Bioworld* and *Armani Exchange* actions via Doe Amendment on
4 or about December 4, 2012.

5 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
6 Court has jurisdiction over the allegations of violations contained in the operative Complaints
7 applicable to Settling Defendants (the “Complaints”) and personal jurisdiction over Settling
8 Defendants as to the acts alleged in the Complaints, that venue is proper in the County of
9 Alameda, and that this Court has jurisdiction to enter this Consent Judgment.

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

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Specification Compliance Date.** To the extent they have not already done so,
20 no more than 30 days after the Effective Date, Settling Defendants shall provide the Lead Limits
21 to their Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to
22 provide Covered Products that comply with the Lead Limits on a nationwide basis.

23 3.2 **Lead Limits.**

24 Commencing on the Effective Date, Settling Defendants shall not purchase,
25 import, Manufacture, or supply to an unaffiliated third party any Covered Product that will be
26 sold or offered for sale to California consumers that contains a material or is made of a
27 component that exceeds the following Lead Limits:

28 3.2.1 Paint or other Surface Coatings: 90 parts per million (“ppm”).

1 3.2.2 Polyvinyl chloride (“PVC”): 200 ppm.

2 3.2.3 All other materials or components other than cubic zirconia (sometimes
3 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

4 3.3 **Final Retail Compliance Date.** Commencing on May 1, 2013, Settling
5 Defendants shall not sell or offer for sale in California any Covered Product that exceeds the Lead
6 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendants’
7 direct customer sells or offers for sale to California consumers a Covered Product after May 1,
8 2013, Settling Defendants are deemed to “offer for sale in California” that Covered Product.

9 3.4 **Warnings for Covered Products.**

10 3.4.1 **Warning Option.** A Covered Product purchased, imported or
11 Manufactured by Settling Defendant may, as an alternative to meeting the Lead Limits, be
12 sold or offered for retail sale in California with a Clear and Reasonable Warning that
13 complies with the provisions of Section 3.4.2. A Clear and Reasonable Warning may only
14 be provided for Covered Products that Settling Defendants reasonably believe do not meet
15 the Lead Limits.

16 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
17 Consent Judgment shall state either:

18 WARNING: This product contains a chemical known to the State of California to
19 cause birth defects or other reproductive harm. Do not allow children to mouth or
20 chew.

21 Or

22 WARNING: This product contains a chemical known to the State of California to
23 cause birth defects or other reproductive harm. Do not mouth or chew.

24 For sales to consumers where the consumer is physically present and can see a warning on
25 the Covered Product or the packaging of the Covered Product prior to purchase or
26 payment, this statement shall be prominently displayed on the Covered Product or the
27 packaging of the Covered Product with such conspicuousness, as compared with other
28 words, statements or designs as to render it likely to be read and understood by an

1 ordinary individual prior to sale. For internet, catalog or any other sale where the
2 consumer is not physically present and cannot see a warning displayed on the Covered
3 Product or the packaging of the Covered Product prior to purchase or payment, the
4 warning statement shall be displayed in such a manner that it is likely to be read and
5 understood prior to the authorization of or actual payment.

6 **3.5 Action Regarding Specific Products.**

7 3.5.1 On or before the Effective Date, Settling Defendants shall cease selling the
8 Angel Steps Georgia Sandal in Green, Item No. 1600924495M (the “Section 3.5
9 Product”) in California. On or before the Effective Date, Settling Defendants shall also:
10 (i) cease shipping the Section 3.5 Product to any of their stores and/or customers that
11 resell the Section 3.5 Product in California, and (ii) send instructions to their stores and/or
12 customers that resell the Section 3.5 Product in California instructing them either to: (a)
13 return all the Section 3.5 Product to Settling Defendants for destruction; or (b) directly
14 destroy the Section 3.5 Product.

15 3.5.2 Any destruction of Section 3.5 Product shall be in compliance with all
16 applicable laws.

17 3.5.3 Within sixty days of the Effective Date, Settling Defendants shall provide
18 CEH with written certification from Settling Defendants confirming compliance with the
19 requirements of this Section 3.5.

20 **4. ENFORCEMENT**

21 4.1 Any Party may, after meeting and conferring, by motion or application for an
22 order to show cause before this Court, enforce the terms and conditions contained in this Consent
23 Judgment. Enforcement of the terms and conditions of Sections 3.2, 3.3 and 3.4 of this Consent
24 Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.3.

25 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Sections
26 3.2, 3.3 or 3.4 by issuing a Notice of Violation pursuant to this Section 4.2.

27 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
28 Defendants 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 Defendants with the test data required by Section 4.2.2(d) below if it has not yet obtained
3 it from its laboratory.

4 **4.2.2 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 material or component
8 that is alleged not to comply with the Lead Limits, including a picture of the Covered
9 Product and all identifying information on tags and labels, (d) all test data obtained by
10 CEH regarding the Covered Product and related supporting documentation, including all
11 laboratory reports, quality assurance reports and quality control reports associated with
12 testing of the Covered Products, and (e) documentary evidence that CEH reasonably
13 concludes would be admissible establishing that no Clear and Reasonable Warning was
14 provided. Such Notice of Violation shall be based at least in part upon total acid digest
15 testing performed by an independent accredited laboratory. Wipe, swipe, x-ray
16 fluorescence, and swab testing are not by themselves sufficient to support a Notice of
17 Violation, although any such testing may be used as additional support for a Notice. The
18 Parties agree that the sample Notice of Violation attached hereto as Exhibit A is sufficient
19 in form to satisfy the requirements of subsections (c) and (d) of this Section 4.2.2.

20 **4.2.3 Additional Documentation.** CEH shall promptly make available for
21 inspection and/or copying upon request by and at the expense of Settling Defendants, 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 4.2.4 **Multiple Notices.** If Settling Defendants have 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 Defendants 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 Defendants
14 shall provide written notice to CEH stating whether they elect to contest the allegations contained
15 in 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. Any payments required under this Section
17 4.3 shall be made payable to The Center for Environmental Health and included with Settling
18 Defendants’ Notice of Election.

19 4.3.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
20 Election shall include all then-available documentary evidence regarding the alleged
21 violation, including any test data. Within 30 days the parties shall meet and confer to
22 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
23 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
24 Defendants withdraw their Notice of Election to contest the Notice of Violation before
25 any motion concerning the violations alleged in the Notice of Violation is filed pursuant to
26 Section 4.1, Settling Defendants shall make a contribution to the Proposition 65 Fashion
27 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
28 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or

1 obtaining a decision from the Court, CEH or Settling Defendants acquire additional test or
2 other data regarding the alleged violation, they shall promptly provide all such data or
3 information to the other Party.

4 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
5 Settling Defendants shall include in their Notice of Election a detailed description of
6 corrective action that they have undertaken or propose to undertake to address the alleged
7 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
8 Covered Product will no longer be offered by Settling Defendants or their customers for
9 sale in California. If there is a dispute over the sufficiency of the proposed corrective
10 action or its implementation, CEH shall promptly notify Settling Defendants and the
11 Parties shall meet and confer before seeking the intervention of the Court to resolve the
12 dispute. In addition to the corrective action, Settling Defendants shall make a contribution
13 to the Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the
14 provisions of Section 4.3.3 applies.

15 **4.3.3 Limitations in Non-Contested Matters.**

16 (a) If Settling Defendants elect not to contest a Notice of Violation
17 before any motion concerning the violation(s) at issue has been filed, the monetary
18 liability of Settling Defendants shall be limited to the contributions required by this
19 Section 4.3.3, if any.

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

21 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
22 Defendants, prior to receiving and accepting for distribution or sale the
23 Covered Product identified in the Notice of Violation, obtained test results
24 demonstrating that all of the materials or components in the Covered
25 Product identified in the Notice of Violation complied with the applicable
26 Lead Limits, and further provided that such test results meet the same
27 quality criteria to support a Notice of Violation as set forth in Section 4.2.2
28 and that the testing was performed within two years prior to the date of the

1 sales transaction on which the Notice of Violation is based. Settling
2 Defendants shall provide copies of such test results and supporting
3 documentation to CEH with their Notice of Election; or

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

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

17 **5. PAYMENTS**

18 5.1 **Payments by Settling Defendants.** Within five (5) business days of the Effective
19 Date, Settling Defendants shall pay the total sum of \$160,000 as a settlement payment. The total
20 settlement amount for Settling Defendants shall be paid in three separate checks and delivered to
21 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
22 Francisco, California 94117-2212, and made payable and allocated as follows:

23 5.1.1 Settling Defendants shall pay the sum of \$21,250 as a civil penalty
24 pursuant to Health & Safety Code § 25249.7(b). CEH shall apportion this payment in accordance
25 with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office
26 of Environmental Health Hazard Assessment). The civil penalty check shall be made payable to
27 the Center For Environmental Health.

28 5.1.2 Settling Defendants shall pay the sum of \$31,900 as a payment in lieu of

1 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
2 Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and
3 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
4 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
5 funds to award grants to grassroots environmental justice groups working to educate and protect
6 people from exposures to toxic chemicals. The method of selection of such groups can be found
7 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
8 made payable to the Center For Environmental Health.

9 5.1.3 Settling Defendants shall also separately pay the sum of \$106,850 to the
10 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and
11 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
12 Law Group.

13 **6. MODIFICATION**

14 6.1 **Written Consent.** This Consent Judgment may be modified from time to
15 time by express written agreement of the Parties with the approval of the Court, or by an order of
16 this Court upon motion and in accordance with law.

17 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
18 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
19 modify the Consent Judgment.

20 **7. CLAIMS COVERED AND RELEASED**

21 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
22 behalf of itself and the public interest and Settling Defendants, and their parents, subsidiaries,
23 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
24 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
25 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
26 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")
27 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
28 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees, based on

1 failure to warn about alleged exposure to Lead contained in Covered Products that were sold by
2 Settling Defendants prior to the Effective Date.

3 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
4 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendants' Covered
5 Products.

6 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
7 action under Proposition 65 against any person other than a Settling Defendant, Defendant
8 Releasee, or Downstream Defendant Releasee.

9 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action
10 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
11 of Settling Defendants under Section 3.3; and (b) sells or offers for sale a Covered Product to
12 California consumers that does not comply with the Lead Limits after the applicable Final Retail
13 Compliance Date set forth in Section 3.3.

14 **8. NOTICE**

15 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
16 notice shall be sent by first class and electronic mail to:

17 Eric S. Somers
18 Lexington Law Group
19 503 Divisadero Street
20 San Francisco, CA 94117
21 esomers@lexlawgroup.com

22 8.2 When Settling Defendants are entitled to receive any notice under this Consent
23 Judgment, the notice shall be sent by first class and electronic mail to:

24 Sandra A. Edwards
25 Farella Braun + Martel LLP
26 Russ Building
27 235 Montgomery Street, 17th Floor
28 San Francisco, CA 94104
sedwards@fbm.com

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

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
3 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
4 shall support entry of this Consent Judgment.

5 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
7 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

8 **10. ATTORNEYS' FEES**

9 10.1 Should CEH prevail on any motion, application for an order to show cause or
10 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
11 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
12 Settling Defendants prevail on any motion application for an order to show cause or other
13 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
14 result of such motion or application upon a finding by the Court that CEH's prosecution of the
15 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
16 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
17 1986, Code of Civil Procedure §§ 2016, *et seq.*

18 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
19 its own attorneys' fees and costs.

20 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
21 sanctions pursuant to law.

22 **11. TERMINATION**

23 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendants
24 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such
25 termination shall be effective upon the subsequent filing of a notice of termination with Superior
26 Court of Alameda County.

27 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
28 be of no further force or effect as to the terminated parties; provided, however that if CEH is the

1 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided
2 further that if Settling Defendants are the terminating Parties, the provisions of Sections 5 and 7.1
3 shall survive any termination.

4 **12. OTHER TERMS**

5 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
6 of California.

7 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
8 Defendants, and the successors or assigns of any of them.

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

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

24 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.

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

1 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
3 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
4 Party.

5 12.8 The Parties, including their counsel, have participated in the preparation of
6 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
7 This Consent Judgment was subject to revision and modification by the Parties and has been
8 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
9 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
10 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
11 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
12 be resolved against the drafting Party should not be employed in the interpretation of this Consent
13 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
14

15 **IT IS SO ORDERED:**

16
17 Dated: DEC. 19 , 2012

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

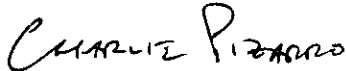
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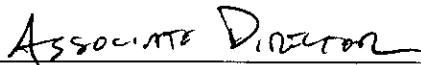
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Signature

Joseph Alberola

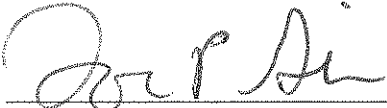
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AMERIMARK DIRECT, LLC



Signature

Louis Grester

Printed Name

President

Title

DR. LEONARD'S HEALTHCARE CORP.



Signature

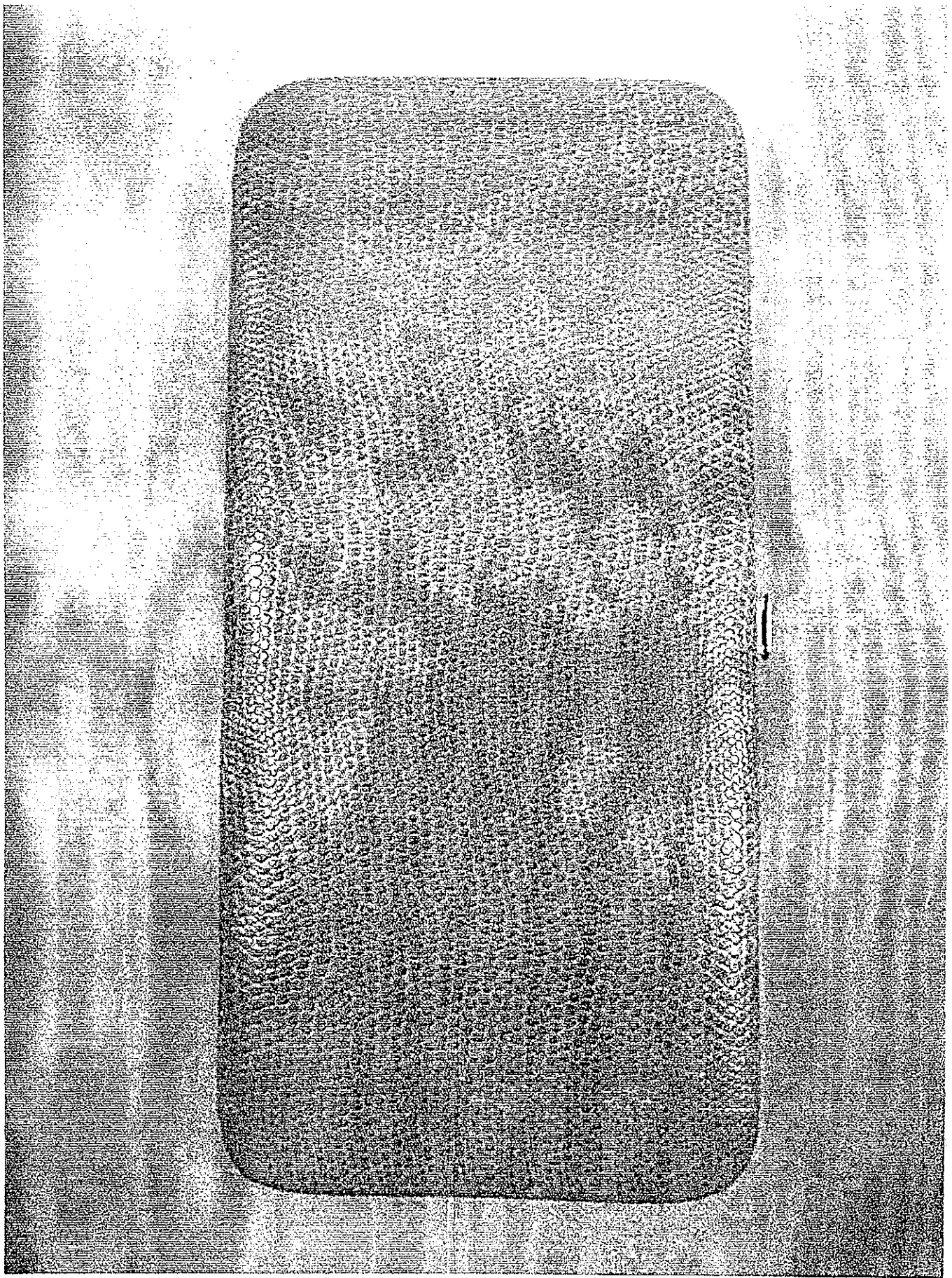
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Printed Name

VP - CFO

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Exhibit A



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ORANGE

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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