

FILED

SEP -6 2013

KIM TURNER, Court Exec. Officer
MARIN CO. SUPERIOR COURT
By: A. Garcia, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

vs.

JC PENNEY CORPORATION, INC., *et al.*,

Defendants.

Case No. CIV-1301373

~~PROPOSED~~ CONSENT
JUDGMENT AS TO V.F. OUTDOOR,
INC., THE TIMBERLAND
COMPANY AND TIMBERLAND
LLC

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 gloves.

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

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

1 1.5 “Manufactured” and “Manufactures” have the meaning defined in Section
2 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended
3 from time to time.

4 1.6 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.
5 § 1303.2(b)², as amended from time to time.

6 1.7 “Vendor” means a person or entity that Manufactures, imports, distributes, or
7 supplies gloves to a Settling Defendant.

8 **2. INTRODUCTION**

9 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
10 Environmental Health (“CEH”) and defendants V.F. Outdoor, Inc., The Timberland Company
11 and Timberland LLC (collectively, the “Settling Defendants”).

12 2.2 Settling Defendants manufacture, distribute or offer Covered Products for sale
13 in the State of California or have done so in the past.

14 2.3 On or about January 15, 2013 and May 24, 2013, CEH served a 60-Day
15 Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act
16 of 1986, California Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendants
17 violated Proposition 65 by exposing persons to Lead contained in Covered Products without first
18 providing a clear and reasonable Proposition 65 warning.

19 2.4 On March 29, 2013, CEH filed the action entitled *CEH v. JC Penney*
20 *Corporation, Inc., et al.*, Case No. CIV-1301373, in the Superior Court of California for Marin
21 County, naming Settling Defendants The Timberland Company and Timberland LLC as
22 defendants in that action. Since then, CEH has amended the Complaint to name Settling
23 Defendant V.F. Outdoor, Inc. as a defendant in that action.

24 ¹ As of June 19, 2013, the term “Manufactured” and “Manufactures” means to manufacture,
25 produce, or assemble.

26 ² As of June 19, 2013, “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 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
2 Court has jurisdiction over the allegations of violations contained in the operative Complaint
3 applicable to Settling Defendants (the “Complaint”) and personal jurisdiction over Settling
4 Defendants as to the acts alleged in the Complaint, that venue is proper in the County of Marin,
5 and that this Court has jurisdiction to enter this Consent Judgment.

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

14 **3. INJUNCTIVE RELIEF**

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

19 3.2 **Lead Limits.**

20 Commencing on August 1, 2013, Settling Defendants shall not purchase, import,
21 Manufacture, or supply to an unaffiliated third party any Covered Product that will be sold or
22 offered for sale to California consumers that exceeds the following Lead Limits:

23 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
24 million (“ppm”).

25 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

26 3.2.3 All other Accessible Components other than cubic zirconia (sometimes
27 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

28 3.3 **Final Retail Compliance Date.** Commencing on September 1, 2013, Settling

1 Defendants shall not sell or offer for sale in California any Covered Product that exceeds the Lead
2 Limits specified in Section 3.2.

3 **3.4 Action Regarding Specific Products.**

4 3.4.1 On or before the Effective Date, Settling Defendants shall cease selling the
5 Timberland Leather City Gloves in Brown, SKU No. 886543624589, Style No. J1046 (the
6 “Section 3.4 Product”) in California. On or before the Effective Date, Settling Defendants
7 shall also: (i) cease shipping the Section 3.4 Product to any of its customers that resell the
8 Section 3.4 Product in California, and (ii) send instructions to its customers that resell the
9 Section 3.4 Product in California instructing them to cease offering the Section 3.4
10 Product for sale in California.

11 3.4.2 If Settling Defendants have not complied with Section 3.4.1 prior to
12 executing this Consent Judgment, it shall instruct its California stores and/or customers
13 that resell the Section 3.4 Product either to (i) return all the Section 3.4 Product to Settling
14 Defendants for destruction; or (ii) directly destroy the Section 3.4 Product.

15 3.4.3 Any destruction of the Section 3.4 Product shall be in compliance with all
16 applicable laws.

17 3.4.4 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 3.4.

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 and 3.3 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 or 3.3 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 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 the Lead Limits, including a picture of the Covered
10 Product and all identifying information on tags and labels, and (d) all test data obtained by
11 CEH regarding the Covered Product and related supporting documentation, including all
12 laboratory reports, quality assurance reports and quality control reports associated with
13 testing of the Covered Products. Such Notice of Violation shall be based at least in part
14 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
15 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
16 Notice of Violation, although any such testing may be used as additional support for a
17 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A
18 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section
19 4.2.2.

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
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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. Unless otherwise indicated, any payments
17 under Section 4 shall be made by check payable to the Lexington Law Group and shall be paid
18 within 15 days of service of a Notice of Election triggering a payment. Such payments shall be
19 made as reimbursement for costs for investigating, preparing, sending and prosecuting Notices of
20 Violation, and to reimburse attorneys’ fees and costs incurred in connection with these activities,

21 4.3.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
22 Election shall include all then-available documentary evidence regarding the alleged
23 violation, including any test data. Within 30 days the parties shall meet and confer to
24 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
25 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
26 Defendants withdraw their Notice of Election to contest the Notice of Violation before
27 any motion concerning the violations alleged in the Notice of Violation is filed pursuant to
28 Section 4.1, Settling Defendants shall make a payment of \$12,500 within 15 days of

1 withdrawal of the Notice of Election and shall comply with all of the non-monetary
2 provisions of Section 4.3.2. If, at any time prior to reaching an agreement or obtaining a
3 decision from the Court, CEH or a Settling Defendant acquires additional test or other
4 data regarding the alleged violation, it shall promptly provide all such data or information
5 to the other Party.

6 4.3.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
7 Settling Defendants shall include in their Notice of Election a detailed description of
8 corrective action that they have undertaken or propose to undertake to address the alleged
9 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
10 Covered Product will no longer be offered by Settling Defendants or their customers for
11 sale in California. If there is a dispute over the sufficiency of the proposed corrective
12 action or its implementation, CEH shall promptly notify Settling Defendants and the
13 Parties shall meet and confer before seeking the intervention of the Court to resolve the
14 dispute. In addition to the corrective action, Settling Defendants shall make a payment of
15 \$10,000, unless one of the provisions of Section 4.3.3 applies.

16 4.3.3 **Limitations in Non-Contested Matters.**

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

20 (b) A Settling Defendant's payment shall be:

21 (i) One thousand seven hundred fifty dollars (\$1,750) if a Settling
22 Defendant, 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 the Accessible Component(s) in the Covered Product
25 identified in the Notice of Violation complied with the applicable Lead
26 Limits, and further provided that such test results would be sufficient to
27 support a Notice of Violation and that the testing was performed within
28 two years prior to the date of the sales transaction on which the Notice of

1 Violation is based. A Settling Defendant shall provide copies of such test
2 results and supporting documentation to CEH with its Notice of Election;
3 or

4 (ii) Not required or payable, if the Notice of Violation identifies
5 the same Covered Product or Covered Products, differing only in size or
6 color, that have been the subject of another Notice of Violation within the
7 preceding 12 months.

8 **5. PAYMENTS**

9 **5.1 Payments by Settling Defendants.** Within five (5) days of entry of this Consent
10 Judgment, Settling Defendants shall pay the total sum of \$50,000 as a settlement payment. The
11 total settlement amount for Settling Defendants shall be paid in three separate checks delivered to
12 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
13 Francisco, California 94117. The funds paid by Settling Defendants shall be allocated between
14 the following categories:

15 5.1.1 \$6,600 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
16 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
17 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
18 Assessment). The civil penalty check shall be made payable to the Center For Environmental
19 Health.

20 5.1.2 \$9,900 as a payment in lieu of civil penalty to CEH pursuant to Health &
21 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
22 such funds to continue its work educating and protecting people from exposures to toxic
23 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
24 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
25 environmental justice groups working to educate and protect people from exposures to toxic
26 chemicals. The method of selection of such groups can be found at the CEH web site at
27 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
28 Center For Environmental Health.

1 5.1.3 \$33,500 as reimbursement of a portion of CEH’s reasonable attorneys’ fees
2 and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the
3 Lexington Law Group.

4 **6. MODIFICATION**

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

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

11 **7. CLAIMS COVERED AND RELEASED**

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

22 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
23 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendants’ Covered
24 Products.

25 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
26 action under Proposition 65 against any person other than Settling Defendants, Defendant
27 Releasees, or Downstream Defendant Releasees.

28

1 **8. NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Howard Hirsch
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 hhirsch@lexlawgroup.com

9 8.2 When a Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 John Connolly
12 Connolly & Finkel LLP
13 601 S. Figueroa Street, Suite 2610
14 Los Angeles, CA 90017
15 jconnolly@cfgllp.com

16 8.3 Any Party may modify the person and address to whom the notice is to be sent
17 by sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
20 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
21 shall each support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
23 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
24 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

25 **10. ATTORNEYS' FEES**

26 10.1 Should CEH prevail on any motion, application for an order to show cause or
27 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
28 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
Settling Defendants prevail on any motion application for an order to show cause or other
proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
result of such motion or application upon a finding by the Court that CEH's prosecution of the

1 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
2 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
3 1986, Code of Civil Procedure §§ 2016, *et seq.*

4 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
5 its own attorneys' fees and costs.

6 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
7 sanctions pursuant to law.

8 **11. OTHER TERMS**

9 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
10 of California.

11 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
12 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
13 assigns of any of them.

14 11.3 This Consent Judgment contains the sole and entire agreement and
15 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
16 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
17 merged herein and therein. There are no warranties, representations, or other agreements between
18 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
19 implied, other than those specifically referred to in this Consent Judgment have been made by any
20 Party hereto. No other agreements not specifically contained or referenced herein, oral or
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
22 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
23 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
24 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
25 whether or not similar, nor shall such waiver constitute a continuing waiver.

26 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
27 that Settling Defendants might have against any other party, whether or not that party is a Settling
28 Defendant.

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

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

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

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

IT IS SO ORDERED:

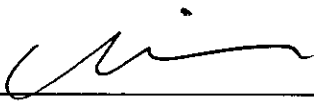
PAUL M. JAAKENSEN

Dated: SEP 06 2013, 2013

Judge of the Superior Court

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IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

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V.F. OUTDOOR, INC.



Signature

STEVEN E. RENDLE

Printed Name

VICE PRESIDENT, VF CORPORATION

GROUP PRESIDENT, VF OUTDOOR & ACTION SPORTS

Title

THE TIMBERLAND COMPANY AND
TIMBERLAND LLC

Signature

Printed Name

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V.F. OUTDOOR, INC.

Signature

Printed Name

Title

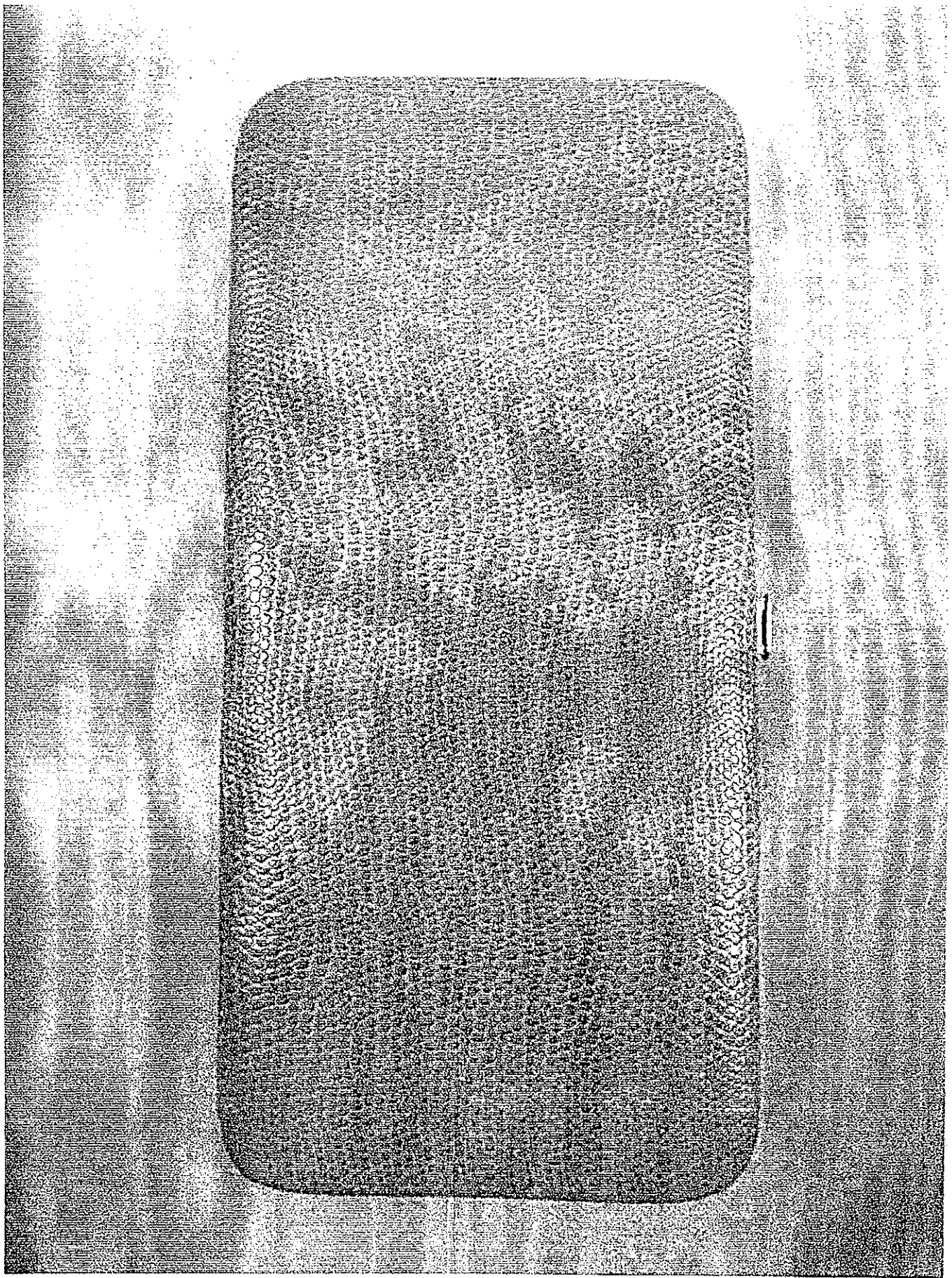
**THE TIMBERLAND COMPANY AND
TIMBERLAND LLC**

*K*_____
Signature

Kristine E. Marvin
Printed Name

Vice President and General Counsel
Title

Exhibit A



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ORANGE

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