

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 JC PENNEY  
CORPORATION, INC.

**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 that are sold or offered for retail sale as a Private Label Covered Product by Settling Defendant where Settling Defendant is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity that is under common ownership of the Private Labeler of such product.

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

1           1.4           “Lead Limits” means the maximum concentrations of lead and lead  
2 compounds (“Lead”) by weight specified in Section 3.2.

3           1.5           “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)],<sup>1</sup> as amended  
5 from time to time.

6           1.6           “Private Label Covered Product” means gloves that bear a private label where  
7 (i) the product (or its container) is labeled with the brand or trademark of a person other than a  
8 manufacturer of the product, (ii) the person with whose brand or trademark the product (or  
9 container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or  
10 trademark of a manufacturer of such product does not appear on such label.

11          1.7           “Private Labeler” means an owner or licensee of a brand or trademark on the  
12 label of a consumer product which bears a private label; provided, however, that Settling  
13 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
14 visible on a sign or on the price tag of gloves that are not labeled with a third party’s brand or  
15 trademark.

16          1.8           “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.  
17 § 1303.2(b)<sup>2</sup>, as amended from time to time.

18          1.9           “Vendor” means a person or entity that Manufactures, imports, distributes, or  
19 supplies gloves to Settling Defendant.

20       **2.       INTRODUCTION**

21          2.1           The parties to this Consent Judgment (“Parties”) are the Center for  
22 Environmental Health (“CEH”) and defendant JC Penney Corporation, Inc. (“Settling  
23 Defendant”).

24       <sup>1</sup>       As of April 30, 2013, the term “Manufactured” and “Manufactures” means to  
25 manufacture, produce, or assemble.

26       <sup>2</sup>       As of April 30, 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           2.2           Settling Defendant manufactures, distributes or offers gloves for sale in the  
2 State of California or has done so in the past.

3           2.3           On or about January 15, 2013, CEH served a 60-Day Notice of Violation  
4 under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California  
5 Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition  
6 65 by exposing persons to Lead contained in gloves without first providing a clear and reasonable  
7 Proposition 65 warning.

8           2.4           On March 29, 2013, CEH filed the action entitled *CEH v. JC Penney*  
9 *Corporation, Inc., et al.*, Case No. CIV-1301373, in the Superior Court of California for Marin  
10 County, naming Settling Defendant as a defendant in that action.

11          2.5           For purposes of this Consent Judgment only, the Parties stipulate that this  
12 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
13 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
14 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Marin,  
15 and that this Court has jurisdiction to enter this Consent Judgment.

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

24       **3.       INJUNCTIVE RELIEF**

25          3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
26 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
27 Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to provide  
28 Covered Products that comply with the Lead Limits on a nationwide basis.

1           3.2           **Lead Limits.**

2                   Commencing on September 1, 2013, Settling Defendant shall not purchase or  
3 import any Covered Product that will be sold or offered for sale to California consumers that  
4 exceeds the following Lead Limits:

5                   3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per  
6 million (“ppm”).

7                   3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

8                   3.2.3 All other Accessible Components other than cubic zirconia (sometimes  
9 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

10           3.3           **Final Retail Compliance Date.** Commencing on March 31, 2014, Settling  
11 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
12 Limits specified in Section 3.2.

13           3.4           **Action Regarding Specific Products.**

14                   3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the  
15 JCP Faux Fur-Cuff Gloves in Yellow, SKU No. 105-1155-0609-08, Style No.  
16 ADHK116637 (the “Section 3.4 Product”) in California.

17                   3.4.2 Any destruction of the Section 3.4 Product shall be in compliance with all  
18 applicable laws.

19                   3.4.3 Within sixty days of the Effective Date, Settling Defendant shall provide  
20 CEH with written certification from Settling Defendant confirming compliance with the  
21 requirements of this Section 3.4.

22 **4. ENFORCEMENT**

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

27           4.2           **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
28 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.2.

1           4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling  
2 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
3 provided, however, that CEH may have up to an additional 45 days to provide Settling  
4 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it  
5 from its laboratory.

6           4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
7 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
8 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
9 Covered Product giving rise to the alleged violation, and of each Accessible Component  
10 that is alleged not to comply with the Lead Limits and/or each Accessible Component that  
11 is alleged to contain Lead in excess of the Lead Limits, including a picture of the Covered  
12 Product and all identifying information on tags and labels, and (d) all test data obtained by  
13 CEH regarding the Covered Product and related supporting documentation, including all  
14 laboratory reports, quality assurance reports and quality control reports associated with  
15 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
16 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
17 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
18 Notice of Violation, although any such testing may be used as additional support for a  
19 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
20 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
21 4.2.2.

22           4.2.3 **Additional Documentation.** CEH shall promptly make available for  
23 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
24 supporting documentation related to the testing of the Covered Products and associated  
25 quality control samples, including chain of custody records, all laboratory logbook entries  
26 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
27 from all analytical instruments relating to the testing of Covered Product samples and any  
28 and all calibration, quality assurance, and quality control tests performed or relied upon in

1 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
2 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
3 any exemplars of Covered Products tested.

4 **4.2.4 Multiple Notices.** If Settling Defendant has received more than four  
5 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
6 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
7 Consent Judgment. For purposes of determining the number of Notices of Violation  
8 pursuant to this Section 4.2.4, the following shall be excluded:

9 (a) Multiple notices identifying Covered Products Manufactured for or  
10 sold to Settling Defendant from the same Vendor; and

11 (b) A Notice of Violation that meets one or more of the conditions of  
12 Section 4.3.3(b).

13 **4.3 Notice of Election.** Within 30 days of receiving a Notice of Violation  
14 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant  
15 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
16 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be  
17 deemed an election to contest the Notice of Violation. Unless otherwise indicated, any payments  
18 under Section 4 shall be made by check payable to the Lexington Law Group and shall be paid  
19 within 15 days of service of a Notice of Election triggering a payment. Such payments shall be  
20 made as reimbursement for costs for investigating, preparing, sending and prosecuting Notices of  
21 Violation, and to reimburse attorneys' fees and costs incurred in connection with these activities,

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

1 Section 4.1, Settling Defendant shall make a payment of \$12,500 within 15 days of  
2 withdrawal of the Notice of Election and shall comply with all of the non-monetary  
3 provisions of Section 4.3.2. If, at any time prior to reaching an agreement or obtaining a  
4 decision from the Court, CEH or Settling Defendant acquires additional test or other data  
5 regarding the alleged violation, it shall promptly provide all such data or information to  
6 the other Party.

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

17 4.3.3 **Limitations in Non-Contested Matters.**

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

21 (b) Settling Defendant's payment shall be:

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

1 two years prior to the date of the sales transaction on which the Notice of  
2 Violation is based. Settling Defendant shall provide copies of such test  
3 results and supporting documentation to CEH with its Notice of Election;  
4 or

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

9 **4.4 Additional Enforcement for Noncompliant Non-Covered Products.** If  
10 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers gloves  
11 that are not Covered Products, and that contain Lead in an amount that exceeds any of the  
12 applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to CEH serving a 60-  
13 Day Notice under Proposition 65 on Settling Defendant, CEH shall provide notice to Settling  
14 Defendant pursuant to this Section 4.4.

15 4.4.1 The notice shall contain the information required for a Notice of Violation  
16 in Section 4.2. If the information is insufficient to allow Settling Defendant to identify the  
17 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
18 further identifying information for the Noncompliant Non-Covered Product that is  
19 reasonably available to it.

20 4.4.2 Within 30 days of receiving a notice pursuant to Section 4.4, or of any  
21 requested further information sufficient to identify the Noncompliant Non-Covered  
22 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.  
23 The Notice of Election shall:

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

27 (b) Identify the manufacturer and other distributors in the chain of  
28 distribution of the Noncompliant Non-Covered Product, provided that such information is



1 reasonably available; and

2 (c) Include either: (i) a statement that Settling Defendant elects not to  
3 proceed under this Section 4.4, in which case CEH may take further action including  
4 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant  
5 elects to proceed under this Section 4.4, with a description of corrective action that meets  
6 the conditions of Section 4.3.2., and a payment in the amount required under Section  
7 4.4.6, or (iii) a statement that Settling Defendant contends that the Noncompliant Non-  
8 Covered Product is released from liability by a Qualified Settlement under Section 4.4.4  
9 along with a copy of such Qualified Settlement.

10 4.4.3 A party's disclosure pursuant to this Section 4.4 of any (i) test reports, (ii)  
11 confidential business information, or (iii) other information that may be subject to a claim  
12 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
13 or confidentiality, provided that the Party disclosing such information shall clearly  
14 designate it as confidential. Any Party receiving information designated as confidential  
15 pursuant to this Section 4.4.3 shall not disclose such information to any unrelated person  
16 or entity, and shall use such information solely for purposes of resolving any disputes  
17 under this Consent Judgment.

18 4.4.4 No further action is required of Settling Defendant under this Consent  
19 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability  
20 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
21 Covered Product by the terms of a separate settlement agreement or consent judgment  
22 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

23 4.4.5 If Settling Defendant elects not to proceed under Section 4.4, then neither  
24 Settling Defendant nor CEH has any further duty under this Section 4.4 and either may  
25 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
26 elects to proceed under Section 4.4.2(c)(ii), then compliance with that Section shall  
27 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

28 4.4.6 If Settling Defendant elects to proceed under this Section 4.4 and is not

1 relieved of liability under Section 4.4.4, Settling Defendant shall make a payment in the  
2 amounts that follow unless one of the provisions of Section 4.3.3(b) applies, in which case  
3 the applicable amount specified in Section 4.3.3(b) if any, shall instead apply. The  
4 payment shall be \$5,000 if at least one of the person(s) identified by Settling Defendant  
5 pursuant to Section 4.4.2 (i) is a person in the course of doing business as defined in  
6 Health & Safety Code § 25249.11(b) and (ii) has a principal place of business located  
7 within the United States, and \$10,000 for all other notices.

8 4.4.7 If Settling Defendant makes a payment pursuant to this Section and at a  
9 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
10 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
11 Defendant shall be entitled to a refund of the lesser amount of its payment or the  
12 settlement amount paid by such Vendor. If the settlement or consent judgment between  
13 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
14 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
15 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's  
16 settlement payment.

17 4.4.8 Any notice served by CEH pursuant to this Section 4.4 shall not be  
18 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.4  
19 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
20 than Settling Defendant.

## 21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent  
23 Judgment, Settling Defendant shall pay the total sum of \$35,000 as a settlement payment. The  
24 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to  
25 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San  
26 Francisco, California 94117. The funds paid by Settling Defendant shall be allocated between the  
27 following categories:

28 5.1.1 \$4,600 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),

1 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12  
2 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard  
3 Assessment). The civil penalty check shall be made payable to the Center For Environmental  
4 Health.

5 5.1.2 \$6,900 as a payment in lieu of civil penalty to CEH pursuant to Health &  
6 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use  
7 such funds to continue its work educating and protecting people from exposures to toxic  
8 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
9 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots  
10 environmental justice groups working to educate and protect people from exposures to toxic  
11 chemicals. The method of selection of such groups can be found at the CEH web site at  
12 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the  
13 Center For Environmental Health.

14 5.1.3 \$23,500 as reimbursement of a portion of CEH’s reasonable attorneys’ fees  
15 and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the  
16 Lexington Law Group.

## 17 **6. MODIFICATION**

18 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
19 time by express written agreement of the Parties with the approval of the Court, or by an order of  
20 this Court upon motion and in accordance with law.

21 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
22 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
23 modify the Consent Judgment.

## 24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
26 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
27 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
28 (“Defendant Releasees”) of any violation of Proposition 65 that was or could have been asserted

1 in the Complaint against Settling Defendant and Defendant Releasees based on failure to warn  
2 about alleged exposure to Lead contained in Covered Products that were sold by Settling  
3 Defendant prior to the Effective Date.

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

7 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an  
8 action under Proposition 65 against any person other than Settling Defendant and Defendant  
9 Releasees.

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 Howard Hirsch  
14 Lexington Law Group  
15 503 Divisadero Street  
16 San Francisco, CA 94117  
17 hhirsch@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 Melinda Y. Balli  
21 Senior Counsel  
22 Legal Department  
23 J.C. Penney  
24 Mail Stop 1122  
25 6501 Legacy Drive  
26 Plano, TX 75024

27 With a copy to:

28 Robert Falk  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
rfalk@mofo.com

8.3 Any Party may modify the person and address to whom the notice is to be sent

1 by sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

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

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

9 **10. ATTORNEYS' FEES**

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

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

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

23 **11. OTHER TERMS**

24 11.1 The terms of this Consent Judgment shall be governed by the laws of the State  
25 of California.

26 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
27 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
28 assigns of any of them.

1           11.3       This Consent Judgment contains the sole and entire agreement and  
2 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
3 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
4 merged herein and therein. There are no warranties, representations, or other agreements between  
5 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
6 implied, other than those specifically referred to in this Consent Judgment have been made by any  
7 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
8 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13           11.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
14 that Settling Defendant might have against any other party, whether or not that party is a Settling  
15 Defendant.

16           11.5       This Court shall retain jurisdiction of this matter to implement or modify the  
17 Consent Judgment.

18           11.6       The stipulations to this Consent Judgment may be executed in counterparts  
19 and by means of facsimile or portable document format (pdf), which taken together shall be  
20 deemed to constitute one document.

21           11.7       Each signatory to this Consent Judgment certifies that he or she is fully  
22 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
23 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
24 Party.

25           11.8       The Parties, including their counsel, have participated in the preparation of  
26 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
27 This Consent Judgment was subject to revision and modification by the Parties and has been  
28 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any



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

6 **IT IS SO ORDERED:**

7

8 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Judge of the Superior Court

9

10 **IT IS SO STIPULATED:**

11

**CENTER FOR ENVIRONMENTAL HEALTH**

12

13

\_\_\_\_\_  
Signature

14

15

\_\_\_\_\_  
Printed Name

16

17

18

\_\_\_\_\_  
Title

19

**JC PENNEY CORPORATION, INC.**

20

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*A.C. Lemard*  
\_\_\_\_\_  
Signature

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*Amy C. Lemard*  
\_\_\_\_\_  
Printed Name

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*SVP Sourang*  
\_\_\_\_\_  
Title

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# **Exhibit A**



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OFFICE

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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](http://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