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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 09 2013

K. McCoy, Exec. Off./Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, )

Plaintiff, )

v. )

LULU NYC LLC, et al., )

Defendants. )

Lead Case No. RG 09-459448

(Consolidated with Case Nos. RG 10-494289, RG 10-494513, RG 10-494517, RG 11-598595, RG 11-598596, RG 11-603764 and RG 12-658652)

~~PROPOSED~~ CONSENT  
JUDGMENT AS TO M.J. CARLYLE  
& CO.

AND CONSOLIDATED CASES.

**1. DEFINITIONS**

1.1 "Covered Products" means belts that are Manufactured, distributed, sold or offered for sale by Settling Defendant.

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 Defendant.

## 11 **2. INTRODUCTION**

12           2.1           The parties to this Consent Judgment (“Parties”) are the Center for  
13 Environmental Health (“CEH”) and defendant M.J. Carlyle & Co. (“Settling Defendant”).

14           2.2           On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
15 Case No. RG 09-459448, alleging Proposition 65 violations as to wallets, handbags, purses and  
16 clutches. The Court has consolidated the *Lulu* matter with a number of other related Proposition  
17 65 cases.

18           2.3           On or about May 3, 2013, CEH served a 60-Day Notice of Violation under  
19 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
20 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by  
21 exposing persons to Lead contained in belts, without first providing a clear and reasonable  
22 Proposition 65 warning. On December 5, 2012, CEH filed the action entitled *CEH v. Fashion*  
23 *Eden*, Case No. RG 12-658652. On or about August 23, 2013, CEH named Settling Defendant as  
24 a “Belts Defendant” in the *Fashion Eden* action via Doe Amendment.

25           2.4           Settling Defendant manufactures, distributes and/or offers for sale Covered  
26 Products in the State of California or has done so in the past.

27           2.5           For purposes of this Consent Judgment only, the Parties stipulate that this  
28 Court has jurisdiction over the allegations of violations contained in the operative Complaint

1 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
2 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
3 and that this Court has jurisdiction to enter this Consent Judgment.

4           2.6           Nothing in this Consent Judgment is or shall be construed as an admission by  
5 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
6 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
7 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
8 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
9 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
10 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
11 this action.

12 **3.       INJUNCTIVE RELIEF**

13           3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
14 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
15 Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to provide  
16 Covered Products that comply with the Lead Limits on a nationwide basis.

17           3.2           **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall  
18 not purchase, import, Manufacture, supply to an unaffiliated third party, or sell or offer for sale  
19 any Covered Product that will be sold or offered for sale to California consumers that contains a  
20 material or is made of a component that exceeds the following Lead Limits:

21                   3.2.1   Paint or other Surface Coatings: 90 parts per million (“ppm”).

22                   3.2.2   Polyvinyl chloride (“PVC”): 200 ppm.

23                   3.2.3   All other materials or components other than cubic zirconia (sometimes  
24 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

25 For purposes of this Section 3.2, when Settling Defendant’s direct customer sells or offers for sale  
26 to California consumers a Covered Product after the Effective Date, Settling Defendant is deemed  
27 to have “offered for sale to California consumers” that Covered Product.

28

1           **3.3           Action Regarding Specific Products.**

2                   3.3.1   On or before the Effective Date, Settling Defendant shall cease selling the  
3           Charlotte Russe Skinny Reversible Belt in Green, SKU No. 301397736, Style No.  
4           MJ4962GNC (“Section 3.3 Product”) in California. On or before the Effective Date,  
5           Settling Defendant shall also: (i) cease shipping the Section 3.3 Product to any of its stores  
6           and/or customers that resell the Section 3.3 Product in California, and (ii) send  
7           instructions to its stores and/or customers that resell the Section 3.3 Product in California  
8           instructing them either to: (a) return all of the Section 3.3 Product to Settling Defendant  
9           for destruction; or (b) directly destroy the Section 3.3 Product.

10                   3.3.2   Any destruction of the Section 3.3 Product shall be in compliance with all  
11           applicable laws.

12                   3.3.3   Within sixty days of the Effective Date, Settling Defendant shall provide  
13           CEH with written certification from Settling Defendant confirming compliance with the  
14           requirements of this Section 3.3.

15   **4.           ENFORCEMENT**

16                   4.1           Any Party may, after meeting and conferring, by motion or application for an  
17           order to show cause before this Court, enforce the terms and conditions contained in this Consent  
18           Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment  
19           shall be brought exclusively pursuant to Sections 4.2 through 4.3.

20                   4.2           **Notice of Violation.** CEH may seek to enforce the requirements of Section  
21           3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

22                   4.2.1   **Service of Notice.** CEH shall serve the Notice of Violation on Settling  
23           Defendant within 45 days of the date the alleged violation(s) was or were observed,  
24           provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling  
25           Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it  
26           from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a  
27           Covered Product so long as: (a) the identity of the supplier cannot be discerned from the  
28           labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served

1 within 45 days of the date the supplier is identified by CEH.

2 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
3 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
4 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
5 Covered Product giving rise to the alleged violation, and of each material or component  
6 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
7 Product and all identifying information on tags and labels, and (d) all test data obtained by  
8 CEH regarding the Covered Product and related supporting documentation, including all  
9 laboratory reports, quality assurance reports and quality control reports associated with  
10 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
11 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
12 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
13 Notice of Violation, although any such testing may be used as additional support for a  
14 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
15 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
16 4.2.2.

17 4.2.3 **Additional Documentation.** CEH shall promptly make available for  
18 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
19 supporting documentation related to the testing of the Covered Products and associated  
20 quality control samples, including chain of custody records, all laboratory logbook entries  
21 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
22 from all analytical instruments relating to the testing of Covered Product samples and any  
23 and all calibration, quality assurance, and quality control tests performed or relied upon in  
24 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
25 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
26 any exemplars of Covered Products tested.

27 4.2.4 **Multiple Notices.** If Settling Defendant has received more than four  
28 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever

1 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
2 Consent Judgment. For purposes of determining the number of Notices of Violation  
3 pursuant to this Section 4.2.4, the following shall be excluded:

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

6 (b) A Notice of Violation that meets one or more of the conditions of  
7 Section 4.3.3(c).

8 **4.3 Notice of Election.** Within 30 days of receiving a Notice of Violation  
9 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant  
10 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
11 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be  
12 deemed an election to contest the Notice of Violation. Any contributions to the Fashion  
13 Accessory Testing Fund required under this Section 4.3 shall be made payable to The Center for  
14 Environmental Health and included with Settling Defendant’s Notice of Election.

15 **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
16 Election shall include all then-available documentary evidence regarding the alleged  
17 violation, including any test data. Within 30 days the parties shall meet and confer to  
18 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
19 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
20 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
21 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
22 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
23 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
24 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or  
25 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
26 other data regarding the alleged violation, it shall promptly provide all such data or  
27 information to the other Party.

28 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,

1 Settling Defendant shall include in its Notice of Election a detailed description of  
2 corrective action that it has undertaken or proposes to undertake to address the alleged  
3 violation. Any such correction shall, at a minimum, provide reasonable assurance that the  
4 Covered Product will no longer be offered by Settling Defendant or its customers for sale  
5 in California. If there is a dispute over the sufficiency of the proposed corrective action or  
6 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall  
7 meet and confer before seeking the intervention of the Court to resolve the dispute. In  
8 addition to the corrective action, Settling Defendant shall make a contribution to the  
9 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of  
10 Section 4.3.3 applies.

11 **4.3.3 Limitations in Non-Contested Matters.**

12 (a) If it elects not to contest a Notice of Violation before any motion  
13 concerning the violation(s) at issue has been filed, the monetary liability of Settling  
14 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section  
15 4.3.3, if any.

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

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

21 (i) One thousand seven hundred fifty dollars (\$1,750) if 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 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 Defendant shall provide copies of such test results and supporting  
3 documentation to CEH with its Notice of Election; or

4 (ii) One thousand five hundred dollars (\$1,500) if Settling  
5 Defendant is in violation of Section 3.2 only insofar as that Section deems  
6 Settling Defendant to have “offered for sale to California consumers” a  
7 product sold at retail by Settling Defendant’s customer, provided however,  
8 that no contribution is required or payable if Settling Defendant has 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 Defendant demonstrates 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 Defendant.** Within five (5) days of the Effective Date or  
19 on or before November 1, 2013 (whichever is later), Settling Defendant shall pay the sum of  
20 \$15,000 in three separate checks as follows: (a) \$1,965 made payable to the Center for  
21 Environmental Health as a civil penalty; (b) \$2,950 made payable to the Center for  
22 Environmental Health as a payment in lieu of additional civil penalty; and (c) \$10,085 made  
23 payable to the Lexington Law Group as partial reimbursement of attorneys’ fees and costs.  
24 Within forty-five days of the Effective Date or on or before December 15, 2013 (whichever is  
25 later), Settling Defendant shall pay the sum of \$15,000 in three separate checks as follows: (a)  
26 \$1,965 made payable to the Center for Environmental Health as a civil penalty; (b) \$2,950 made  
27 payable to the Center for Environmental Health as a payment in lieu of additional civil penalty;  
28 and (c) \$10,085 made payable to the Lexington Law Group as partial reimbursement of attorneys’



1 fees and costs. Each of these settlement payments shall be delivered to the offices of the  
2 Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California  
3 94117-2212. Any failure by Settling Defendant to comply with the payment terms herein shall be  
4 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$75 for each day  
5 the full payment is not received. The late fees required under this Section shall be recoverable,  
6 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to  
7 Section 4.1 of this Consent Judgment.

8           5.2     The total sum of \$30,000 in funds paid by Settling Defendant shall be allocated  
9 between the following categories:

10                 5.2.1   \$3,930 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
11 CEH shall apportion this payment in accordance with Health & Safety Code § 25249.12 (25% to  
12 CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment).

13                 5.2.2   \$5,900 as a payment in lieu of civil penalty to CEH pursuant to Health &  
14 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall  
15 use such funds to continue its work educating and protecting people from exposures to toxic  
16 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
17 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots  
18 environmental justice groups working to educate and protect people from exposures to toxic  
19 chemicals. The method of selection of such groups can be found at the CEH web site at  
20 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

21                 5.2.3   \$20,170 to the Lexington Law Group as reimbursement of a portion of  
22 CEH's reasonable attorneys' fees and costs.

23 **6.     MODIFICATION**

24                 6.1           **Written Consent.** This Consent Judgment may be modified from time to  
25 time by express written agreement of the Parties with the approval of the Court, or by an order of  
26 this Court upon motion and in accordance with law.

27                 6.2           **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
28 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to

1 modify the Consent Judgment.

2 **7. CLAIMS COVERED AND RELEASED**

3 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
4 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
5 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
6 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell  
7 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
8 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)  
9 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
10 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
11 to warn about alleged exposure to Lead contained in Covered Products that were sold by Settling  
12 Defendant prior to the Effective Date.

13 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
14 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered  
15 Products.

16 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
17 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
18 Releasee, or Downstream Defendant Releasee.

19 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action  
20 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
21 of Settling Defendant under Section 3.2; and (b) sells or offers for sale a Covered Product to  
22 California consumers that does not comply with the Lead Limits after the Effective Date.

23 **8. NOTICE**

24 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
25 notice shall be sent by first class and electronic mail to:  
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Eric S. Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
esomers@lexlawgroup.com

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

Gary A. Wexler  
Silver & Freedman, APLC  
2029 Century Park East, 19<sup>th</sup> Floor  
Los Angeles, CA 90067  
gwexler@silverfreedman.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.

**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.

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

**10. ATTORNEYS' FEES**

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

1           10.2       Except as otherwise provided in this Consent Judgment, each Party shall bear  
2 its own attorneys' fees and costs.

3           10.3       Nothing in this Section 10 shall preclude a Party from seeking an award of  
4 sanctions pursuant to law.

5       **11.    TERMINATION**

6           11.1       This Consent Judgment shall be terminable by CEH or by Settling Defendant  
7 at any time after January 1, 2019, upon the provision of 30 days advanced written notice; such  
8 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
9 Court of Alameda County.

10          11.2       Should this Consent Judgment be terminated pursuant to this Section, it shall  
11 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
12 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided  
13 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and 7.1  
14 shall survive any termination.

15       **12.    OTHER TERMS**

16          12.1       The terms of this Consent Judgment shall be governed by the laws of the State  
17 of California.

18          12.2       This Consent Judgment shall apply to and be binding upon CEH and Settling  
19 Defendant, and the successors or assigns of any of them.

20          12.3       This Consent Judgment contains the sole and entire agreement and  
21 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
22 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
23 merged herein and therein. There are no warranties, representations, or other agreements between  
24 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
25 implied, other than those specifically referred to in this Consent Judgment have been made by any  
26 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
27 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
28 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in



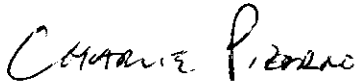
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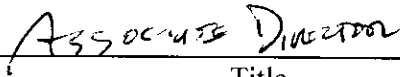
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Signature



Printed Name



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**M.J. CARLYLE & CO.**

Signature

Printed Name

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**M.J. CARLYLE & CO.**

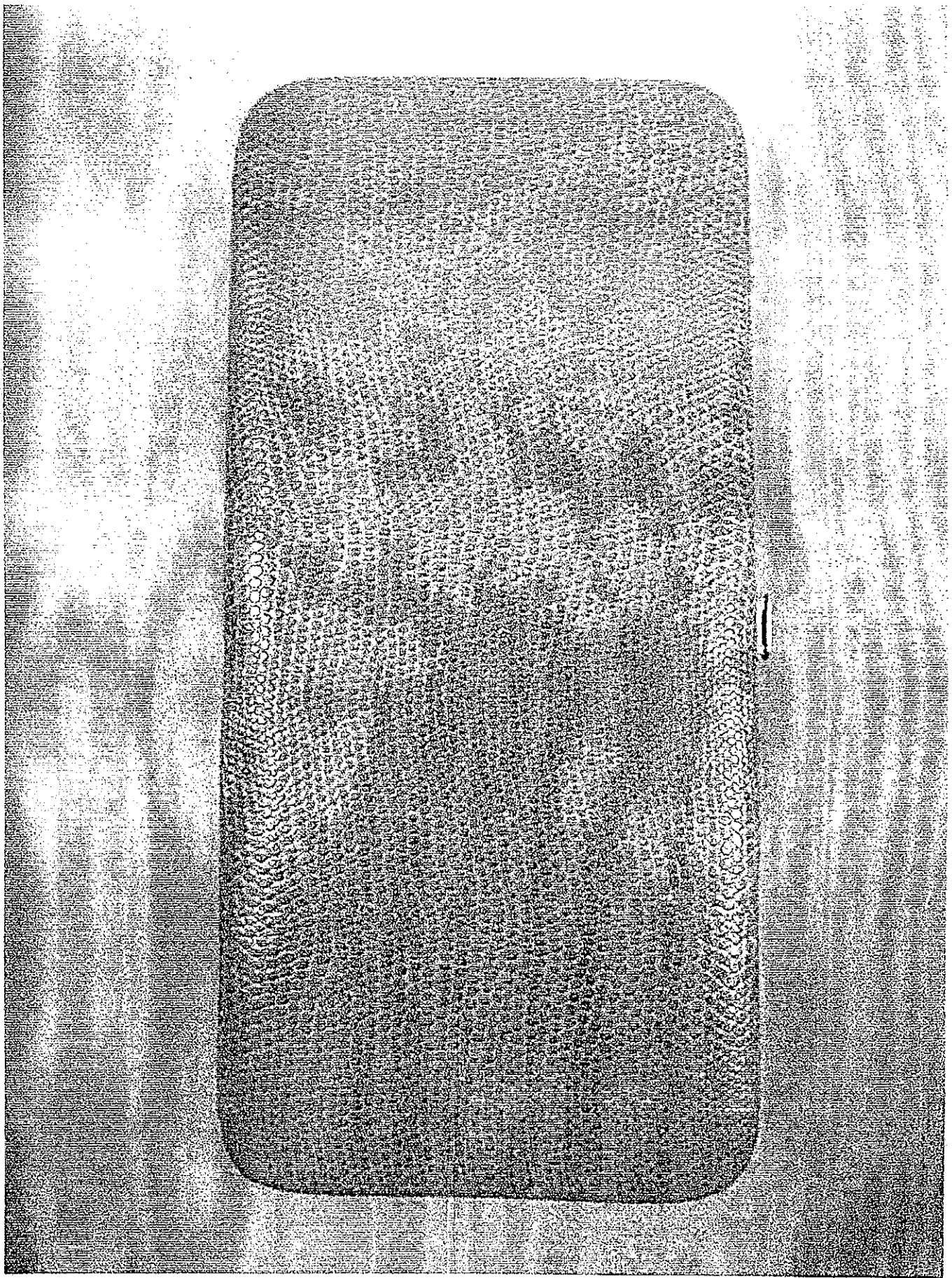
*Carl Watson*  
\_\_\_\_\_  
Signature

*CARL WATSON*  
\_\_\_\_\_  
Printed Name

*PRESIDENT*  
\_\_\_\_\_  
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](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