DEC 01 2015

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, Plaintiff, v. CHARMING CHARLIE LLC, *et al.*, Defendants.	Case No. RG 15-765590 ~~[PROPOSED]~~ **CONSENT JUDGMENT AS TO DND FASHION, INC.**

1. DEFINITIONS

1.1 "Covered Products" means footwear 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.

1.4 "Manufactured" and "Manufactures" means to manufacture, produce, or assemble.

1.5 "Paint or other Surface Coatings" means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid 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.

1.6 "Vendor" means a person or entity that Manufactures, imports, distributes, or supplies a Covered Product to Settling Defendant.

2. INTRODUCTION

2.1 The parties to this Consent Judgment ("Parties") are the Center for Environmental Health ("CEH") and Defendant DND Fashion, Inc. ("Settling Defendant").

2.2 On or about January 16, 2015, CEH served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) (the "Notice") to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notice alleges that Settling Defendant violated Proposition 65 by exposing persons to Lead contained in footwear without first providing a clear and reasonable Proposition 65 warning.

2.3 On April 8, 2015, CEH filed the action *Center for Environmental Health v. Charming Charlie LLC, et al.*, Case No. RG 15-765590, in the Superior Court of California for Alameda County, naming Settling Defendant as a defendant.

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

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

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

3. INJUNCTIVE RELIEF

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

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

3.2.1 Paint or other Surface Coatings: 90 parts per million ("ppm").

3.2.2 Polyvinyl chloride ("PVC"): 200 ppm.

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

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

3.3 **Action Regarding Specific Products.**

3.3.1 On or before the Effective Date, Settling Defendant shall cease selling in California the following: (1) Bella Marie Twenty One Basic Pumps in Patent Taupe, SKU No. 477616, Style No. TWENTYONE; and (2) Bella Marie Lace-up Combat Boots in

Brown, SKU No. 17295511708, Item No. TORI-17 (the "Section 3.3 Products"). On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Products to any of its stores and/or customers that resell the Section 3.3 Products in California, and (ii) send instructions to its stores and/or customers that resell the Section 3.3 Products in California instructing them either to: (a) return all of the Section 3.3 Products to Settling Defendant for destruction; or (b) directly destroy the Section 3.3 Products.

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

3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall provide CEH with written certification from Settling Defendant confirming compliance with the requirements of this Section 3.3.

4. ENFORCEMENT

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

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

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

4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a

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

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

4.2.4 **Multiple Notices.** If Settling Defendant has received more than four Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment. For purposes of determining the number of Notices of Violation

pursuant to this Section 4.2.4, the following shall be excluded:

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

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

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

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

4.3.2 **Non-Contested Notices.** If the Notice of Violation is not contested, Settling Defendant shall include in its Notice of Election a detailed description of corrective action that it has undertaken or proposes to undertake to address the alleged

violation. Any such correction shall, at a minimum, provide reasonable assurance that the Covered Product will no longer be offered by Settling Defendant or its customers for sale in California. If there is a dispute over the sufficiency of the proposed corrective action or its implementation, CEH shall promptly notify Settling Defendant and the Parties shall meet and confer before seeking the intervention of the Court to resolve the dispute. In addition to the corrective action, Settling Defendant shall make a contribution to the Fashion Accessory Testing Fund in the amount of $10,000, unless one of the provisions of Section 4.3.3 applies.

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

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

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

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

(i) One thousand seven hundred fifty dollars ($1,750) if Settling Defendant, prior to receiving and accepting for distribution or sale the Covered Product identified in the Notice of Violation, obtained test results demonstrating that all of the materials or components in the Covered Product identified in the Notice of Violation complied with the applicable Lead Limits, and further provided that such test results meet the same quality criteria to support a Notice of Violation as set forth in Section 4.2.2 and that the testing was performed within two years prior to the date of the sales transaction on which the Notice of Violation is based. Settling Defendant shall provide copies of such test results and supporting

documentation to CEH with its Notice of Election; or

(ii) One thousand five hundred dollars ($1,500) if Settling Defendant is in violation of Section 3.2 only insofar as that Section deems Settling Defendant to have "offered for sale to California consumers" a product sold at retail by Settling Defendant's customer, provided however, that no contribution is required or payable if Settling Defendant has already been required to pay a total of ten thousand dollars ($10,000) pursuant to this subsection. This subsection shall apply only to Covered Products that Settling Defendant demonstrates were shipped prior to the Effective Date; or

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

5. PAYMENTS

5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective Date, Settling Defendant shall pay the total sum of $48,000 as a settlement payment. Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendant in the amount of $100 for each day the full payment is not received after the applicable date set forth herein. The total settlement amount for Settling Defendant shall be paid in four separate checks made payable and allocated as follows:

5.1.1 Settling Defendant shall pay the sum of $6,300 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the amount of $4,725 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment in the amount of $1,575 shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.1.2 Settling Defendant shall pay the sum of $9,500 as a payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981.

5.1.3 Settling Defendant shall also separately pay the sum of $32,200 to the Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

6. MODIFICATION

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

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

7. CLAIMS COVERED AND RELEASED

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

7.2 Compliance with the terms of this Consent Judgment by Settling Defendant constitutes compliance with Proposition 65 with respect to Lead in Covered Products sold by Settling Defendant.

7.3 This Consent Judgment resolves all monetary claims CEH has asserted against Settling Defendant and any of its retail customers under Fashion Accessory Testing Fund Notices of Violation issued or to be issued by CEH that are related to the Section 3.3 Products.

8. NOTICE

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

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:

Audrey Khoo
Chang & Coté, LLP
19138 Walnut Drive, Suite 100
Rowland Heights, CA 91748
akhoo@changcote.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.*

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

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

11. TERMINATION

11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant at any time after January 1, 2020, upon the provision of 30 days advanced written notice; such termination shall be effective upon the subsequent filing of a notice of termination with Superior Court of Alameda County.

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

12. OTHER TERMS

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

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

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

writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

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

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

12.6 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.

12.7 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.

12.8 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.

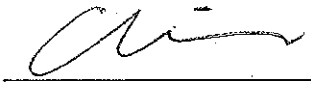
IT IS SO ORDERED:

Dated: DEC 02 2015

Judge Wynne Carvill
Judge of the Superior Court

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZZARO

Printed Name

ASSOCIATE DIRECTOR

Title

DND FASHION, INC.

Signature

Printed Name

Title

IT IS SO STIPULATED:

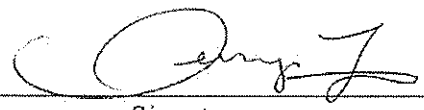
CENTER FOR ENVIRONMENTAL HEALTH

_____
Signature

_____
Printed Name

_____
Title

DND FASHION, INC.


Signature

George Yang
Printed Name

General Manager
Title

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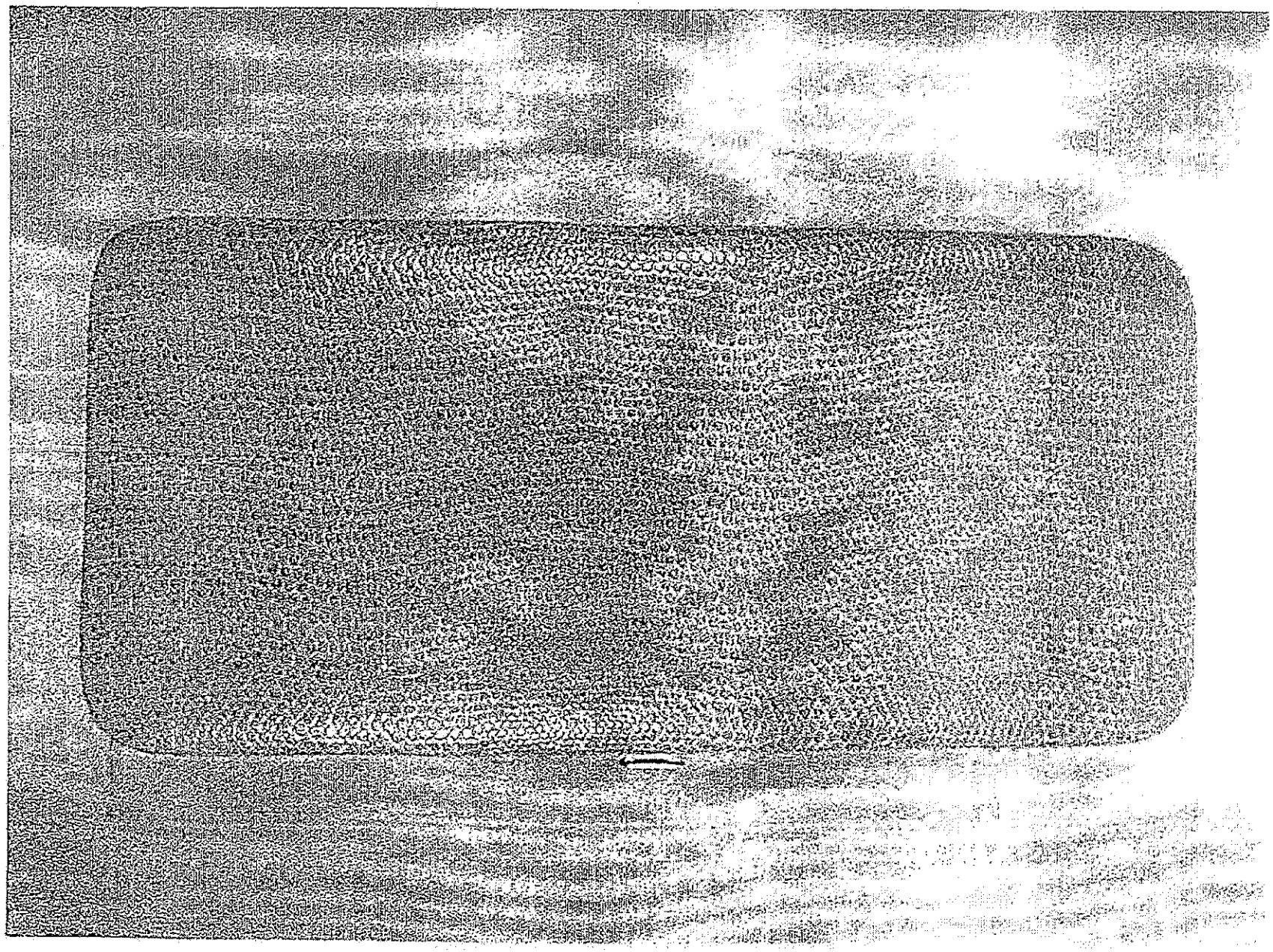
Exhibit A



365 North Canyons Parkway, Suite 201
Tech Center: 2441 Constitution Drive
Livermore CA 94551

THE NATIONAL FOOD LAB

925-828-1440
www.TheNFL.com

Analytical Report

August 03, 2011

Lexington Law Group
503 Divisidero 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