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ENDORSED
FILED
ALAMEDA COUNTY

AUG 16 2016

CLERK OF THE SUPERIOR COURT
By Christina Momon, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
v.)
)
SKAI BLU, INC., *et al.*,)
)
Defendants.)

Case No. RG 15-792125

~~PROPOSED~~ CONSENT JUDGMENT
AS TO FOREVER 21 RETAIL, INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation (“CEH”) on the one hand, and Forever 21 Retail, Inc. (“Defendant”) on the other hand, to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Skai Blu, Inc., et al.*, Alameda County Superior Court Case No. RG 15-792125 (the “Action”).

1.2 On September 21, 2015, CEH provided a “Notice of Violation” relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Defendant

1 regarding the presence of lead and lead compounds (collectively referred to herein as “Lead”) in
2 clothing made with leather, vinyl, or imitation leather materials (“Covered Products”).

3 1.3 On November 4, 2015, CEH filed the Complaint in the Action. On December
4 9, 2015, CEH named Defendant as a defendant in the Action pursuant to California Code of Civil
5 Procedure § 474.

6 1.4 Defendant orders, distributes, and/or sells Covered Products in the State of
7 California.

8 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
9 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
10 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
11 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
12 Consent Judgment as a full and final resolution of all claims which were or could have been
13 raised in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed, and/or sold by Defendant.

15 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
16 settlement of all claims that were raised in the Complaint, or which could have been raised in the
17 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
18 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
19 facts or conclusions of law including, but not limited to, any facts or conclusions of law
20 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
21 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
22 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
23 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
24 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
25 factual and legal allegations in CEH’s Complaint and expressly denies any wrong doing
26 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
27 remedy, argument, or defense the Parties may have in this or any other pending or future legal
28 proceedings. This Consent Judgment is the product of negotiation and compromise and is

1 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
2 disputed in this action.

3 **2. INJUNCTIVE RELIEF**

4 2.1 **Reformulation of Covered Products.** Commencing May 1, 2016, Defendant
5 shall not purchase, import, manufacture, sell or offer for sale any Covered Product in California
6 or anywhere else unless such Covered Product complies with the following Lead Limits:

7 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
8 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) ("ppm").

9 2.1.2 Polyvinyl chloride ("PVC"): no more than 0.02 percent Lead by weight
10 (200 ppm).

11 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
12 zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by weight (300
13 ppm).

14 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
15 Defendant shall cease shipping the Forever 21 Iconic Faux Leather Mini Skirt in Seashell Pink,
16 SKU No. 00126788024, Item No. 2000126788 (the "Recall Covered Product"), to stores and/or
17 customers in California, and Defendant shall withdraw the Recall Covered Product from the
18 market in California, and, at a minimum, send instructions to any of its stores and/or customers
19 that offer the Recall Covered Product for sale in California to cease offering such Recall Covered
20 Product for sale and to either return any Recall Covered Product to Defendant for destruction, or
21 to directly destroy the Recall Covered Product. Any destruction of the Recall Covered Product
22 shall be in compliance with all applicable laws. Defendant shall keep and make available to CEH
23 for inspection and copying records and correspondence regarding the market withdrawal and
24 destruction of the Recall Covered Product. If there is a dispute over the corrective action, the
25 Parties shall meet and confer before seeking any remedy in court.

26 **3. ENFORCEMENT**

27 3.1 Any Party may, after meeting and conferring, by motion or application for an
28 order to show cause before this Court, enforce the terms and conditions contained in this Consent

1 Judgment. Enforcement of the terms and conditions of Section 2.1 of this Consent Judgment
2 shall be brought exclusively pursuant to Sections 3.2 through 3.2.1.

3 3.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section
4 2.1 by issuing a Notice of Violation pursuant to this Section 3.2.

5 3.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Defendant
6 within 45 days of the date the alleged violation(s) was or were observed, provided,
7 however, that: (i) CEH may have up to an additional 45 days to provide Defendant with
8 the test data required by Section 3.2.2(d) below if it has not yet obtained it from its
9 laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a Covered
10 Product so long as: (a) the identity of the supplier cannot be discerned from the labeling of
11 the Covered Product; and (b) the Notice of Violation to the supplier is served within 45
12 days of the date the supplier is identified by CEH.

13 3.2.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,
14 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
15 (b) the location at which the Covered Product was offered for sale, (c) a description of the
16 Covered Product giving rise to the alleged violation, and of each material or component
17 that is alleged not to comply with the Lead Limits, including a picture of the Covered
18 Product and all identifying information on tags and labels, and (d) all test data obtained by
19 CEH regarding the Covered Product and related supporting documentation, including all
20 laboratory reports, quality assurance reports and quality control reports associated with
21 testing of the Covered Product. Such Notice of Violation shall be based at least in part
22 upon total acid digest testing performed by an independent accredited laboratory. Wipe,
23 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a
24 Notice of Violation, although any such testing may be used as additional support for a
25 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A
26 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section
27 3.2.2.
28

1 **3.2.3 Additional Documentation.** CEH shall promptly make available for
2 inspection and/or copying upon request by and at the expense of Defendant, all supporting
3 documentation related to the testing of the Covered Products and associated quality
4 control samples, including chain of custody records, all laboratory logbook entries for
5 laboratory receiving, sample preparation, and instrumental analysis, and all printouts from
6 all analytical instruments relating to the testing of Covered Product samples and any and
7 all calibration, quality assurance, and quality control tests performed or relied upon in
8 conjunction with the testing of the Covered Product, obtained by or available to CEH that
9 pertains to the Covered Product's alleged noncompliance with Section 2.1 and, if
10 available, any exemplars of Covered Product tested.

11 **3.2.4 Multiple Notices.** If Defendant has received more than four Notices of
12 Violation in any 12-month period, at CEH's option, CEH may seek whatever fines, costs,
13 penalties, or remedies are provided by law for failure to comply with the Consent
14 Judgment. For purposes of determining the number of Notices of Violation pursuant to
15 this Section 3.2.4, the following shall be excluded:

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

18 (b) A Notice of Violation that meets one or more of the conditions of
19 Section 3.3.3(c).

20 **3.3 Notice of Election.** Within 30 days of receiving a Notice of Violation
21 pursuant to Section 3.2, including the test data required pursuant to 3.2.2(d), Defendant shall
22 provide written notice to CEH stating whether it elects to contest the allegations contained in the
23 Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
24 deemed an election to contest the Notice of Violation. Any monetary payments required under
25 this Section 3.3 shall be made payable to the Center for Environmental Health as reimbursement
26 for costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to
27 reimburse attorneys' fees and costs incurred in connection with these activities.

28

1 **3.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
2 Election shall include all then-available documentary evidence regarding the alleged
3 violation, including any test data. Within 30 days the parties shall meet and confer to
4 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
5 CEH may file an enforcement motion or application pursuant to Section 3.1. If Defendant
6 withdraws its Notice of Election to contest the Notice of Violation before any motion
7 concerning the violations alleged in the Notice of Violation is filed pursuant to Section
8 3.1, Defendant shall make a payment in the amount of \$12,500 and shall comply with all
9 of the non-monetary provisions of Section 3.3.2. If, at any time prior to reaching an
10 agreement or obtaining a decision from the Court, CEH or Defendant acquires additional
11 test or other data regarding the alleged violation, it shall promptly provide all such data or
12 information to the other Party.

13 **3.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
14 Defendant shall include in its Notice of Election a detailed description of corrective action
15 that it has undertaken or proposes to undertake to address the alleged violation. Any such
16 correction shall, at a minimum, provide reasonable assurance that the Covered Product
17 will no longer be offered by Defendant or its customers for sale in California. If there is a
18 dispute over the sufficiency of the proposed corrective action or its implementation, CEH
19 shall promptly notify Defendant and the Parties shall meet and confer before seeking the
20 intervention of the Court to resolve the dispute. In addition to the corrective action,
21 Defendant shall make a payment in the amount of \$10,000, unless one of the provisions of
22 Section 3.3.3 applies.

23 **3.3.3 Limitations in Non-Contested Matters.**

24 (a) If it elects not to contest a Notice of Violation before any motion
25 concerning the violation(s) at issue has been filed, the monetary liability of Defendant
26 shall be limited to the contributions required by Section 3.3.2 and this Section 3.3.3, if
27 any.

28

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

5 (c) Defendant's required payment shall be:

6 (i) One thousand seven hundred fifty dollars (\$1,750) if
7 Defendant, prior to receiving and accepting for distribution or sale the Covered
8 Product identified in the Notice of Violation, obtained test results demonstrating
9 that the materials or components in the Covered Product identified in the Notice of
10 Violation complied with the applicable Lead Limits, and further provided that such
11 test results would be sufficient to support a Notice of Violation and that the testing
12 was performed within two years prior to the date of the sales transaction on which
13 the Notice of Violation is based. Defendant shall provide copies of such test
14 results and supporting documentation to CEH with its Notice of Election; or

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

19 (iii) One thousand five hundred dollars (\$1,000), if the Notice of
20 Violation identifies a Covered Product that Defendant can demonstrate it had
21 purchased prior to the Effective Date, provided however, that no contribution is
22 required or payable if the Defendant has already been required to pay a total of ten
23 thousand dollars (\$10,000) pursuant to this subsection.

24 **4. PAYMENTS**

25 4.1 **Payments from Defendant.** Within five (5) days of the entry of this Consent
26 Judgment, Defendant shall pay the total sum of \$40,000.

27 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
28 paid in four (4) separate checks made payable and allocated as follows:

1 4.2.1 Defendant shall pay the sum of \$5,260 as a civil penalty pursuant to Health
2 & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with
3 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
4 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of
5 the civil penalty payment in the amount of \$3,945 shall be made payable to OEHHA and
6 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
7 follows:

8 For United States Postal Service Delivery:

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

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The CEH portion of the civil penalty payment in the amount of \$1,315 shall be made
21 payable to the Center for Environmental Health and associated with taxpayer identification
22 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
23 Street, San Francisco, CA 94117.

24 4.2.2 Defendant shall pay the sum of \$7,900 as payment to CEH in lieu of
25 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
26 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
27 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
28 funds to monitor compliance with the reformulation requirements of this and other similar
Consent Judgments and to purchase and test Covered Products to confirm compliance with such
reformulation requirements. In addition, as part of its *Community Environmental Action and
Justice Fund*, CEH will use four percent (4%) of such funds to award grants to grassroots
environmental justice groups working to educate and protect people from exposures to toxic

1 chemicals. The method of selection of such groups can be found at the CEH web site at
2 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
3 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
4 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
5 CA 94117.

6 4.2.3 Defendant shall pay the sum of \$26,840 as reimbursement of reasonable
7 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
8 payable to the Lexington Law Group and associated with taxpayer identification number 94-
9 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
10 Francisco, CA 94117.

11 **5. MODIFICATION AND DISPUTE RESOLUTION**

12 5.1 **Modification.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties, with the approval of the Court, or by an order of this
14 Court upon motion and in accordance with law.

15 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
16 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
17 motion to modify the Consent Judgment.

18 **6. CLAIMS COVERED AND RELEASE**

19 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
20 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
21 partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to
22 whom they distribute or sell Covered Products directly or indirectly including, but not limited to,
23 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
24 ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or
25 common law claims that have been or could have been asserted in the public interest against
26 Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to
27 warn about exposure to Lead arising in connection with Covered Products manufactured,
28 distributed, or sold by Defendant prior to the Effective Date.

1 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
2 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
3 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
4 violation of Proposition 65 or any other statutory or common law claims that have been or could
5 have been asserted in the public interest regarding the failure to warn about exposure to Lead
6 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
7 prior to the Effective Date.

8 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
9 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
10 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged
11 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
12 after the Effective Date.

13 **7. PROVISION OF NOTICE**

14 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
15 the notice shall be sent by first class and electronic mail as follows:

16 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
17 pursuant to this Consent Judgment shall be:

18 John J. Allen
19 Allen Matkins Leck Gamble Mallory & Natsis LLP
20 515 South Figueroa Street, 9th Floor
21 Los Angeles, CA 90071
22 jallen@allenmatkins.com

23 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
24 this Consent Judgment shall be:

25 Howard Hirsch
26 Lexington Law Group
27 503 Divisadero Street
28 San Francisco, CA 94117
 hhirsch@lexlawgroup.com

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

1 **8. COURT APPROVAL**

2 8.1 This Consent Judgment shall become effective on the Effective Date, provided
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
4 Defendant shall support approval of such Motion.

5 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
7 purpose.

8 **9. GOVERNING LAW AND CONSTRUCTION**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
10 of California.

11 **10. ENTIRE AGREEMENT**

12 10.1 This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
15 merged herein and therein. There are no warranties, representations, or other agreements between
16 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
17 implied, other than those specifically referred to in this Consent Judgment have been made by any
18 Party hereto. No other agreements not specifically contained or referenced herein, oral or
19 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
20 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
21 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
22 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
23 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
24 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
25 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

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1 **11. RETENTION OF JURISDICTION**

2 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

5 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
8 Party.

9 **13. NO EFFECT ON OTHER SETTLEMENTS**

10 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
11 claim against another entity on terms that are different than those contained in this Consent
12 Judgment.

13 **14. EXECUTION IN COUNTERPARTS**

14 14.1 The stipulations to this Consent Judgment may be executed in counterparts
15 and by means of facsimile, which taken together shall be deemed to constitute one document.

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17 **IT IS SO STIPULATED:**

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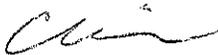
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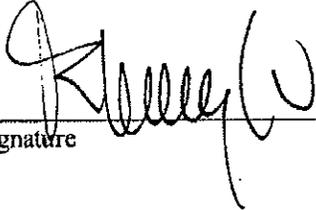
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Dated: <u>15 April</u> , 2016	CENTER FOR ENVIRONMENTAL HEALTH
	 Signature
	<u>Christine P. Parnas</u> Printed Name
	<u>Associate Director</u> Title

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Dated: April 15, 2016

FOREVER 21 RETAIL, INC.


Signature

Alex Changho Ok
Printed Name

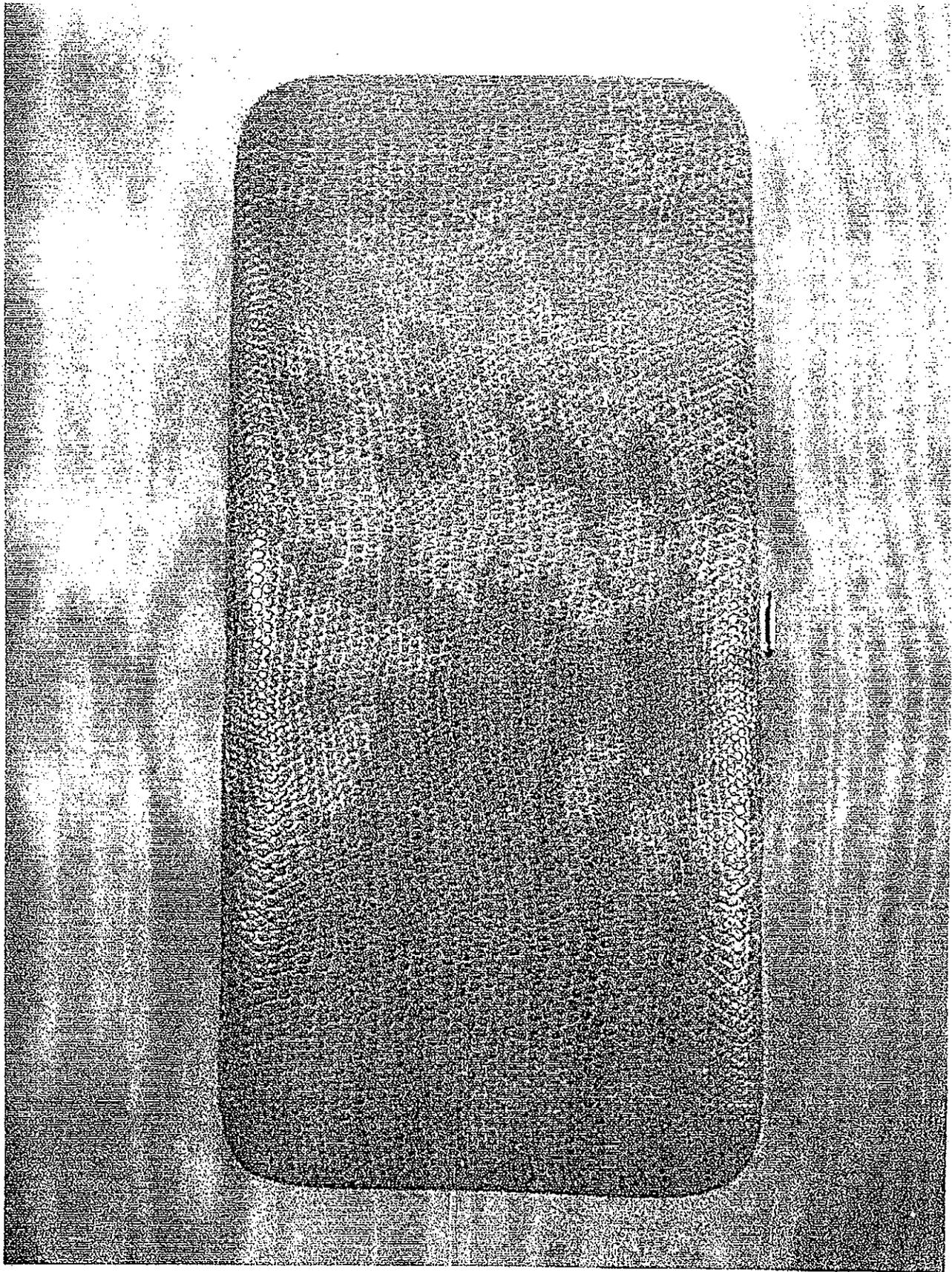
President
Title

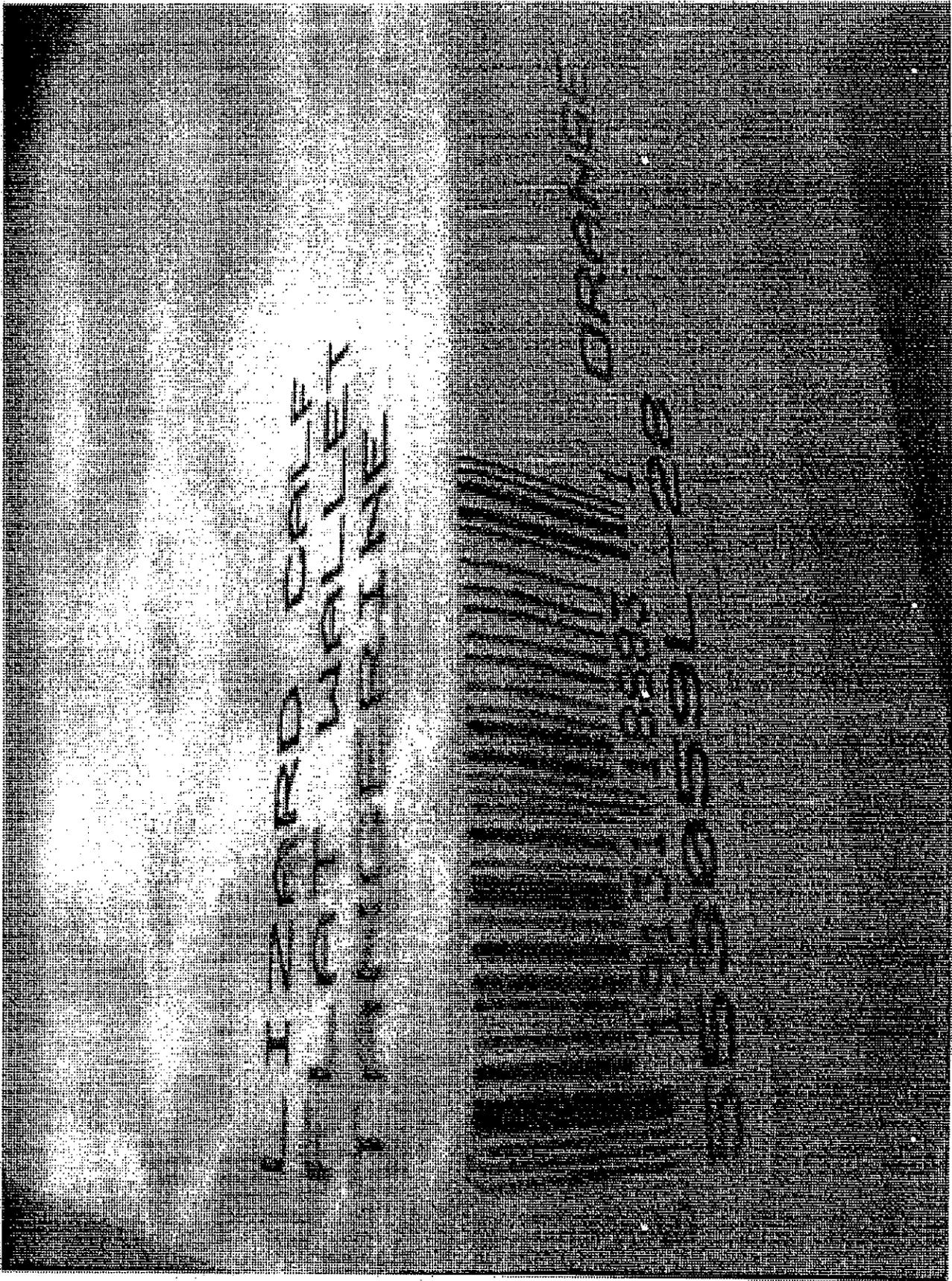
**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

Dated: **AUG 16 2016**

GEORGE C. HERNANDEZ, JR.
JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

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. 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