

1 1.3 “Effective Date” means the date on which this Consent Judgment is entered by
2 the Court.

3 1.4 “Fashion Accessories” means: (i) wallets, handbags, purses, and clutches; (ii)
4 belts; and (iii) footwear.

5 1.5 “Lead Limits” means the maximum concentrations of lead and lead
6 compounds (“Lead”) by weight specified in Section 3.2.

7 1.6 “Manufactured” and “Manufactures” have the meaning defined in Section
8 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended
9 from time to time.

10 1.7 “Private Label Covered Product” means a Fashion Accessory that bears a
11 private label where (i) the product (or its container) is labeled with the brand or trademark of a
12 person other than a manufacturer of the product, (ii) the person with whose brand or trademark
13 the product (or container) is labeled has authorized or caused the product to be so labeled, and
14 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

15 1.8 “Private Labeler” means an owner or licensee of a brand or trademark on the
16 label of a consumer product which bears a private label; provided, however, that Settling
17 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is
18 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s
19 brand or trademark.

20 1.9 “Proposition 65” means California Health & Safety Code § 25249.5, *et seq.*

21 1.10 “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.
22 § 1303.2(b)², as amended from time to time.

23 1.11 “Vendor” means a person or entity that Manufactures, imports, distributes, or

24 ¹ As of May 1, 2011, the term “Manufactured” and “Manufactures” means to manufacture,
25 produce, or assemble.

26 ² As of May 1, 2011, “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 supplies a Fashion Accessory to Settling Defendant.

2 **2. INTRODUCTION**

3 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
4 Environmental Health (“CEH”) and defendant Bakers Footwear Group, Inc. (“Settling
5 Defendant”).

6 2.2 Settling Defendant Manufactures, distributes or sells Fashion Accessories that
7 are offered for retail sale in the State of California or has done so in the past.

8 2.3 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
9 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging
10 Proposition 65 violations as to wallets, handbags, purses and clutches. Since then, CEH has filed
11 several actions alleging Proposition 65 violations as to Lead in similar products that have been
12 consolidated for pre-trial purposes under Lead Case No. RG 09-459448. On February 8, 2012,
13 the following cases were also consolidated for pre-trial purposes with the *Lulu* consolidated cases:
14 (a) *CEH v. Bioworld Merchandising, Inc.*, Case No. RG 11-598596; (b) *CEH v. Yoki Shoes LLC*,
15 Case No. RG 11-598595; and (c) *CEH v. Armani Exchange, Inc.*, Case No. RG 11-603764.

16 2.4 More than 60 days prior to naming Settling Defendant as a defendant in the
17 applicable actions, CEH served 60-Day Notices of Violation under Proposition 65 (The Safe
18 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
19 §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by exposing persons
20 to Lead contained in Fashion Accessories without first providing a clear and reasonable
21 Proposition 65 warning. CEH named Settling Defendant as a defendant in the original Complaint
22 in *CEH v. Lulu* on June 24, 2009. On November 9, 2011, CEH filed the operative Complaint in
23 *CEH v. Armani Exchange*. On or about April 12, 2012, CEH filed the operative First Amended
24 Complaint in *CEH v. Yoki Shoes*. On or about September 4, 2012, CEH named Settling
25 Defendant as defendants in the operative *Yoki* and *Armani* Complaints via Doe Amendments.

26 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
27 Court has jurisdiction over the allegations of violations contained in the operative Complaint
28 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling

1 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
2 and that this Court has jurisdiction to enter this Consent Judgment.

3 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
4 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
5 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
6 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
7 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
8 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
9 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
10 this action.

11 **3. INJUNCTIVE RELIEF**

12 3.1 **Vendor Certification.** To the extent it has not already done so, no more than
13 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits in writing to its
14 Vendors of Fashion Accessories and shall require each Vendor that supplies Fashion Accessories
15 to Settling Defendant that are sold in California to certify in writing that they provide Fashion
16 Accessories that comply with the Lead Limits, effective no more than 30 days after the Effective
17 Date (“Vendor Certification”). For purposes of the Vendor Certification, the applicable Lead
18 Limits shall be the limits listed in Section 3.2. The Parties agree that the sample Vendor
19 Certification attached hereto as Exhibit A is sufficient in form to satisfy the requirements of this
20 Section 3.1. Settling Defendant shall retain in its records a copy of the Vendor Certification from
21 each certifying Vendor. Settling Defendant shall make a copy of the Vendor Certification
22 available to CEH upon its request.

23 3.2 **Lead Limits.**

24 As of the Effective Date, Settling Defendant shall not purchase, import,
25 Manufacture, supply to an unaffiliated third party, sell or offer for sale any Covered Product that
26 will be sold or offered for sale to California consumers that exceeds the following Lead Limits:

27 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per
28 million (“ppm”).

1 3.2.2 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

2 3.2.3 All other Accessible Components (including but not limited to leather and
3 non-PVC imitation leather) other than cubic zirconia (sometimes called cubic zirconium, CZ),
4 crystal, glass or rhinestones: 300 ppm.

5 **3.3 Warnings for Covered Products.**

6 3.3.1 **Warning Option.** A Covered Product purchased, imported or
7 Manufactured by Settling Defendant may, as an alternative to meeting the Lead Limits, be
8 sold or offered for retail sale in California with a Clear and Reasonable Warning that
9 complies with the provisions of Section 3.3.2. This warning option shall no longer be
10 available as a compliance option for Covered Products purchased, imported or
11 Manufactured by Settling Defendant on or after October 31, 2013, unless, on or before
12 that date, Settling Defendant: (i) provides a Notice of Election to preserve this warning
13 option; and (ii) makes the additional payments required by Section 5.3 below.

14 3.3.2 **Proposition 65 Product Warnings.** As required by California Health and
15 Safety Code section 25603.2, a Clear and Reasonable Warning under this Consent
16 Judgment shall state either:

17 WARNING: This product contains lead, a chemical known to the State of
18 California to cause birth defects or other reproductive harm. Do not allow children
19 to mouth or chew.

20 Or

21 WARNING: This product contains lead, a chemical known to the State of
22 California to cause birth defects or other reproductive harm. Do not mouth or
23 chew

24 This statement shall be prominently displayed on the Covered Product or the packaging of
25 the Covered Product with such conspicuousness, as compared with other words,
26 statements or designs as to render it likely to be read and understood by an ordinary
27 individual prior to sale. For internet, catalog or any other sale where the consumer is not
28 physically present and cannot see a warning displayed on the Covered Product or the

1 packaging of the Covered Product prior to purchase or payment, the warning statement
2 shall be displayed in such a manner that it is likely to be read and understood prior to the
3 authorization of or actual payment.

4 **3.4 Action Regarding Specific Products.**

5 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
6 following specific products in California: (i) Zen Handbag – Zebra Print, Item No.
7 2025005, (ii) Judy Handbag – Red, SKU No. 4-12079-87998-0, (iii) Bologna IV Handbag
8 – Yellow, SKU No. 4-12079-68998-5, and (iv) Tate II Handbag – Red, SKU No. 4-
9 1211007998-0, Item No. 2125726 (collectively, the “Recall Products”). On or before the
10 Effective Date, Settling Defendant shall also: (i) cease shipping the Recall Products to any
11 of its customers that resell the Recall Products in California, and (ii) send instructions to
12 its customers that resell the Recall Products in California instructing them to cease
13 offering such Recall Products for sale in California.

14 3.4.2 If Settling Defendant has not complied with Section 3.4.1 prior to
15 executing this Consent Judgment, it shall instruct its California stores and/or customers
16 that resell the Recall Products either to (i) return all the Recall Products to the Settling
17 Defendant for destruction; or (ii) directly destroy the Recall Products; or (iii) sell the
18 Recall Products with a Clear and Reasonable Warning that complies with the provisions
19 of Section 3.3.2.

20 3.4.3 Any destruction of Recall Products shall be in compliance with all
21 applicable laws.

22 3.4.4 Within sixty days of the Effective Date, Settling Defendant shall provide
23 CEH with written certification from Settling Defendant confirming compliance with the
24 requirements of this Section 3.4.

25 **4. ENFORCEMENT**

26 4.1 Any Party may, after meeting and conferring, by motion or application for an
27 order to show cause before this Court, enforce the terms and conditions contained in this Consent
28

1 Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment
2 shall be brought exclusively pursuant to Sections 4.3 through 4.4.

3 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH
4 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling
5 Defendant on or after that date, for example, a unique brand name or characteristic system of
6 product numbering or labeling. Upon written request by CEH, but no more than once in any
7 calendar year, Settling Defendants shall, within 30 days of receiving a request from CEH, update
8 the information provided to CEH pursuant to this Section 4.2 by notifying CEH of a means
9 sufficient to allow CEH to identify Covered Products currently supplied or offered by that
10 Settling Defendant. If CEH is unable to determine whether a particular product is a Covered
11 Product as to a Settling Defendant based on the information provided to CEH pursuant to this
12 Section 4.2, Settling Defendants shall cooperate in good faith with CEH in determining whether
13 the product at issue is a Covered Product and, if so, the identity of the Settling Defendant
14 responsible for selling the product. Information provided to CEH pursuant to this Section 4.2,
15 including but not limited to the identities of parties to contracts between Settling Defendant and
16 third parties, may be designated by Settling Defendant as competitively sensitive confidential
17 business information, and if so designated shall not be disclosed to any person without the written
18 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
19 reveal information designated as competitively sensitive confidential business information
20 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and
21 2.550, *et seq.*

22 4.3 **Notice of Violation.** If CEH alleges that Settling Defendant sold or offered
23 for retail sale to California consumers a Covered Product that (i) contains Lead in an amount that
24 exceeds any of the applicable Lead Limits, and (ii) for which Settling Defendant did not provide a
25 clear and reasonable warning that complies with Section 3.4 (to the extent that warning option is
26 still available to Settling Defendant), CEH may issue a Notice of Violation pursuant to this
27 Section 4.3.

28 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling

1 Defendant within 45 days of the date the alleged violation(s) was or were observed,
2 provided, however, that CEH may have up to an additional 45 days to provide Settling
3 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it
4 from its laboratory.

5 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
6 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
7 (b) the location at which the Covered Product was offered for sale, (c) a description of the
8 Covered Product giving rise to the alleged violation, and of each Accessible Component
9 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
10 is alleged to contain Lead in excess of 300 ppm, including a picture of the Covered
11 Product and all identifying information on tags and labels, (d) all test data obtained by
12 CEH regarding the Covered Product and related supporting documentation, including all
13 laboratory reports, quality assurance reports and quality control reports associated with
14 testing of the Covered Products and (e) documentary evidence that CEH reasonably
15 concludes would be admissible establishing that no Proposition 65 warning was provided
16 (to the extent that warning option is still available to Settling Defendant). Such Notice of
17 Violation shall be based at least in part upon total acid digest testing performed by an
18 independent accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are
19 not by themselves sufficient to support a Notice of Violation, although any such testing
20 may be used as additional support for a Notice. The Parties agree that the sample Notice
21 of Violation attached hereto as Exhibit B is sufficient in form to satisfy the requirements
22 of subsections (c) and (d) of this Section 4.3.2.

23 **4.3.3 Additional Documentation.** CEH shall promptly make available for
24 inspection and/or copying upon request by and at the expense of Settling Defendant, all
25 supporting documentation related to the testing of the Covered Products and associated
26 quality control samples, including chain of custody records, all laboratory logbook entries
27 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
28 from all analytical instruments relating to the testing of Covered Product samples and any

1 and all calibration, quality assurance, and quality control tests performed or relied upon in
2 conjunction with the testing of the Covered Products, obtained by or available to CEH that
3 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
4 any exemplars of Covered Products tested.

5 4.3.4 **Multiple Notices.** If Settling Defendant has received more than four
6 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
7 fines, costs, penalties, or remedies are provided by law for failure to comply with the
8 Consent Judgment. For purposes of determining the number of Notices of Violation
9 pursuant to this Section 4.3.4, the following shall be excluded:

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

12 (b) A Notice of Violation that meets one or more of the conditions of
13 Section 4.4.3(b).

14 4.4 **Notice of Election.** Within 30 days of receiving a Notice of Violation
15 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant
16 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
17 the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be
18 deemed an election to contest the Notice of Violation.

19 4.4.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
20 Election shall include all then-available documentary evidence regarding the alleged
21 violation, including any test data and any Vendor Certification, if available. Within 30
22 days the parties shall meet and confer to attempt to resolve their dispute. Should such
23 attempts at meeting and conferring fail, CEH may file an enforcement motion or
24 application pursuant to Section 4.1. If Settling Defendant withdraws its Notice of Election
25 to contest the Notice of Violation before any motion concerning the violations alleged in
26 the Notice of Violation is filed pursuant to Section 4.1, Settling Defendant shall make a
27 contribution to the Proposition 65 Fashion Accessory Testing Fund in the amount of
28 \$12,500 and shall comply with all of the non-monetary provisions of Section 4.4.2.

1 4.4.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
2 Settling Defendant shall include in its Notice of Election a detailed description of
3 corrective action that it has undertaken or proposes to undertake to address the alleged
4 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
5 Covered Product will no longer be offered by Settling Defendant or its customers for sale
6 in California. If there is a dispute over the sufficiency of the proposed corrective action or
7 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
8 meet and confer before seeking the intervention of the Court to resolve the dispute. In
9 addition to the corrective action, Settling Defendant shall make a contribution to the
10 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
11 Section 4.4.3 applies.

12 4.4.3 **Limitations in Non-Contested Matters.**

13 (a) If it elects not to contest a Notice of Violation before any motion
14 concerning the violation(s) at issue has been filed, the monetary liability of Settling
15 Defendant shall be limited to the contributions required by this Section 4.4.3, if any.

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

17 (i) One thousand seven hundred fifty dollars (\$1750) if Settling
18 Defendant obtained test results prior to the sales transaction on which the
19 Notice of Violation is based, demonstrating that all of the Accessible
20 Components in the Covered Product identified in the Notice of Violation
21 complied with the applicable Lead Limits, and further provided that such
22 test results meet the same quality criteria to support a Notice of Violation
23 as set forth in Section 4.3.2 and that the testing was performed within two
24 years prior to the date of the sales transaction on which the Notice of
25 Violation is based. Settling Defendant shall provide copies of such test
26 results and supporting documentation, if any, to CEH with its Notice of
27 Election; or

28 (ii) One thousand seven hundred fifty dollars (\$1750) if Settling

1 Defendant can demonstrate via documentation created prior to the sales
2 transaction on which the Notice of Violation is based that the supplier of
3 the Covered Product had acknowledged its obligation to provide a Clear
4 and Reasonable Warning that complies with the provisions of Section 3.3.2
5 but that the warning was either removed or otherwise not provided in
6 compliance with this Consent Judgment (to the extent that warning option
7 is still available to Settling Defendant); or

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

12 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If
13 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a
14 Fashion Accessory: (i) that is not a Covered Product, (ii) that contains Lead in an amount that
15 exceeds any of the applicable Lead Limits, and (iii) for which Settling Defendant did not provide
16 a Clear and Reasonable Warning that complies with the provisions of Section 3.3.2., then prior to
17 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide
18 notice to Settling Defendant pursuant to this Section 4.5.

19 4.5.1 The notice shall contain the information required for a Notice of Violation
20 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the
21 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any
22 further identifying information for the Noncompliant Non-Covered Product that is
23 reasonably available to it.

24 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any
25 requested further information sufficient to identify the Noncompliant Non-Covered
26 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.
27 The Notice of Election shall:

28 (a) Identify to CEH (by proper name, address of principal place of

1 business and telephone number) the person or entity that sold the Noncompliant Non-
2 Covered Product to Settling Defendant;

3 (b) Identify the manufacturer and other distributors in the chain of
4 distribution of the Noncompliant Non-Covered Product, provided that such information is
5 reasonably available; and

6 (c) Include either: (i) a statement that Settling Defendant elects not to
7 proceed under this Section 4.5, in which case CEH may take further action including
8 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant
9 elects to proceed under this Section 4.5, with a description of corrective action that meets
10 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund
11 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant
12 contends that the Noncompliant Non-Covered Product is released from liability by a
13 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

14 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)
15 confidential business information, or (iii) other information that may be subject to a claim
16 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege
17 or confidentiality, provided that the Party disclosing such information shall clearly
18 designate it as confidential. Any Party receiving information designated as confidential
19 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person
20 or entity, and shall use such information solely for purposes of resolving any disputes
21 under this Consent Judgment.

22 4.5.4 No further action is required of Settling Defendant under this Consent
23 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability
24 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-
25 Covered Product by the terms of a separate settlement agreement or consent judgment
26 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

27 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither
28 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may

1 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant
2 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall
3 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

4 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not
5 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to
6 the Fashion Accessory Testing Fund in the amounts that follow unless one of the
7 provisions of Section 4.4.3(b) applies, in which case the applicable amount specified in
8 Section 4.4.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one
9 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person
10 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)
11 has a principal place of business located within the United States, and \$10,000 for all
12 other notices.

13 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a
14 later date CEH resolves the alleged violation with the direct or indirect Vendor of the
15 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling
16 Defendant shall be entitled to a refund of the lesser amount of its contribution or the
17 settlement amount paid by such Vendor. If the settlement or consent judgment between
18 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does
19 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then
20 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's
21 settlement payment.

22 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be
23 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5
24 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other
25 than a Settling Defendant.

26 **5. PAYMENTS**

27 5.1 **Payments by Settling Defendant.** On or before June 29, 2012, Settling
28 Defendant shall pay the sum of \$50,000, and on or before December 28, 2012, Settling Defendant

1 shall pay the sum of \$50,000, for a total sum of \$100,000 as a settlement payment. To the extent
2 the Court does not approve this Consent Judgment before a payment is due, the funds paid by
3 Settling Defendant shall be held in trust pending the Court's approval of this Consent Judgment
4 or returned if the Court issues a final Order denying CEH's motion for entry of the Consent
5 Judgment. The payment due on June 29th shall be paid in two separate checks as follows: (a)
6 \$33,150 made payable to the Center For Environmental Health; and (b) \$16,850 made payable to
7 Lexington Law Group. The payment due on December 28th shall be made by check payable to
8 Lexington Law Group. All of these payments shall be delivered to the offices of the Lexington
9 Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California 94117-2212.

10 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
11 be allocated as follows:

12 5.2.1 Settling Defendant shall pay the sum of \$13,250 as a civil penalty pursuant
13 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
14 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
15 Environmental Health Hazard Assessment).

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

24 5.2.3 Settling Defendant shall also pay the sum of \$66,850 as reimbursement of a
25 portion of CEH's reasonable attorneys' fees and costs.

26 **5.3 Additional Settlement Payment.** On or before October 31, 2013, Settling
27 Defendant shall make an additional settlement payment of \$50,000. This additional settlement
28 amount for Settling Defendant shall be waived if Settling Defendant does not elect to extend the

1 warning option under Section 3.3 beyond October 31, 2013. If required, this additional
2 settlement amount shall be paid in three separate checks delivered to the offices of the Lexington
3 Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California 94117, and
4 made payable and allocated as follows:

5 5.3.1 Settling Defendant shall pay the sum of \$6,600 as a civil penalty pursuant
6 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
7 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
8 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the
9 Center For Environmental Health.

10 5.3.2 Settling Defendant shall also pay the sum of \$9,900 as a payment in lieu of
11 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
12 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and
13 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
14 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
15 funds to award grants to grassroots environmental justice groups working to educate and protect
16 people from exposures to toxic chemicals. The method of selection of such groups can be found
17 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
18 made payable to the Center For Environmental Health.

19 5.3.3 Settling Defendant shall also separately pay to the Lexington Law Group
20 the sum of \$33,500 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs.
21 The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law
22 Group.

23 5.4 **Late Fee.** Any failure by Settling Defendant to comply with the payment terms
24 herein shall be subject to a stipulated late fee in the amount of \$100 for each day after the delivery
25 date the payment is received. The late fees required under this Section shall be recoverable,
26 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to
27 Section 4.1 of this Consent Judgment.
28

1 **6. MODIFICATION**

2 6.1 **Written Consent.** This Consent Judgment may be modified from time to
3 time by express written agreement of the Parties with the approval of the Court, or by an order of
4 this Court upon motion and in accordance with law.

5 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
6 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **7. CLAIMS COVERED AND RELEASED**

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

19 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
20 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant’s Covered
21 Products.

22 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
23 action under Proposition 65 against any person other than a Settling Defendant, Defendant
24 Releasee, or Downstream Defendant Releasee.

25 7.4 Nothing in Section 7 affects CEH’s right to commence or prosecute an action
26 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer
27 of Settling Defendant under Section 3.3; and (b) sells or offers for sale a Covered Product to
28 California consumers that does not comply with the Lead Limits after the applicable Final Retail

1 Compliance Date set forth in Section 3.3.

2 **8. NOTICE**

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

5 Eric S. Somers
6 Lexington Law Group
7 503 Divisadero Street
8 San Francisco, CA 94117
9 esomers@lexlawgroup.com

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

12 William F. Tarantino
13 Morrison & Foerster LLP
14 425 Market Street, 35th Floor
15 San Francisco, CA 94105
16 WTarantino@mofo.com

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

19 **9. COURT APPROVAL**

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

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

26 **10. ATTORNEYS' FEES**

27 10.1 Should CEH prevail on any motion, application for an order to show cause or
28 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

1 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
2 or application lacked substantial justification. For purposes of this Consent Judgment, the term
3 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
4 Code of Civil Procedure §§ 2016, *et seq.*

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

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

9 **11. OTHER TERMS**

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

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

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

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

1 Defendant.

2 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 11.6 The stipulations to this Consent Judgment may be executed in counterparts
5 and by means of facsimile or portable document format (pdf), which taken together shall be
6 deemed to constitute one document.

7 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
8 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
9 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
10 Party.

11 11.8 The Parties, including their counsel, have participated in the preparation of
12 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
13 This Consent Judgment was subject to revision and modification by the Parties and has been
14 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
15 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
16 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
17 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
18 be resolved against the drafting Party should not be employed in the interpretation of this Consent
19 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
20

21 **IT IS SO ORDERED:**

22 23 Dated: _____, 2012	24 25 26 27 28 _____ The Honorable Steven A. Brick Judge of the Superior Court
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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZZANO

Printed Name

ASSOCIATE DIRECTOR

Title

BAKERS FOOTWEAR GROUP, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

BAKERS FOOTWEAR GROUP, INC.

Peter A. Edison

Signature

Peter A. EDISON

Printed Name

Chairman + CEO

Title

Exhibit A



LEAD REQUIREMENTS

October 1, 2011

Bakers Footwear Group, Inc. ('Bakers') is committed to providing our customers with goods that meet the highest standards of product health and safety requirements. We continue to seek partners who also embrace these high standards. We expect all of our vendors and the resources they utilize to produce product for Bakers adhere to these requirements effective immediately, as a condition of continuing our relationship.

The new lead requirements along with compliance dates for **fashion accessories and/or footwear** are listed in the following table. In accordance with the laws concerning restrictions on lead in **jewelry**, page 2 lists the types of materials required to be used in jewelry and their corresponding lead level restrictions. Please note that Bakers is requiring that all jewelry, fashion accessories and/or footwear regardless of brand, comply with these limits and dates of compliance.

Accessible Component	Lead Level	Compliance Date for <i>Handbags, Purses, Clutches, Wallets</i>	Compliance Date for <i>Belts/Footwear</i>
Paints and Surface Coatings	90 ppm	Immediate	12/1/11
Leather	600 ppm 300 ppm	Immediate 12/1/11	12/1/11 12/1/12
Polyvinyl Chloride (PVC)	300 ppm 200 ppm	Immediate 12/1/11	12/1/11 12/1/12
All Other Components	300 ppm	Immediate	12/1/11

You have been identified as a vendor of jewelry, fashion accessories and/or footwear for products supplied to Bakers and must comply with the lead content limits above in order to sell to Bakers. In order to ensure that only compliant products are sold by the compliance dates, we ask that you use best commercial efforts to provide compliant products as soon as possible.

Prior to shipment to Bakers, if the tests for jewelry, fashion accessories and/or footwear do not meet the lead content standards required, the order will be canceled for breach of the applicable terms and conditions of the purchase order under which the merchandise was purchased.

Post shipment to Bakers, failure to comply will result in you (the vendor) taking full financial responsibility of any and all charges incurred by Bakers, including freight charges in removing products from stores, legal fees and any fines resulting from non-compliance.

We ask you to sign and date one copy of this notification, scan it and email it back to the appropriate Sourcing Liaison. This confirms your understanding that all components in jewelry, fashion accessories and/or footwear must be in compliance by the reference dates or immediately where listed. Bakers' values our partnerships with our vendors and appreciates your prompt attention to this matter.

Lead Requirements

Page 2

Jewelry is defined as any of the following ornaments worn by a person:

- Anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring, necklace, pin, ring or
- Any bead, chain, link, pendant, or other component (part) of an ornament specified above or
- Any removable charm, bead, chain, link, pendant or other attachment to jewelry, fashion accessories and/or footwear or
- A watch in which the timepiece is part of any ornament specified above, excluding the timepiece itself if the timepiece can be removed from the ornament

Materials Required For Jewelry		
JEWELRY TYPE	EFFECTIVE DATE	TYPE OF MATERIAL REQUIRED <i>**Jewelry must be made entirely from one or more of the materials listed</i>
Jewelry	On and after March 1, 2008	<ul style="list-style-type: none">• Class 1 material• Class 2 material• Class 3 material

Class 1:

Stainless or surgical steel; karat gold; sterling silver; platinum, palladium, iridium, ruthenium, rhodium, or osmium; natural or cultured pearls; glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, cubic zirconium (CZ), rhinestones, and cloisonné; gemstones cut and polished for ornamental purposes (excluding aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite); elastic, fabric, ribbon, rope, or string (unless it contains intentionally added lead and is listed as a class 2 material); and all natural decorative material, including amber, bone, coral, feathers, fur, horn leather, shell, wood, that is in its natural state and is not treated in a way that adds lead.

Class 2:

- Electroplated metal:
 - On and before August 30, 2009, a metal alloy <10% lead by weight electroplated with suitable under and finish coats.
 - After August 30, 2009, a metal alloy <6% lead by weight electroplated with suitable under and finish coats;
- Unplated metal <1.5% lead not otherwise listed as a class 1 material;
- Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC):
 - On and before August 30, 2009, < 0.06% (600 ppm) lead by weight.
 - After August 30, 2009, <0.02% (200 ppm) lead by weight); and
- A dye or surface coating containing <0.06% (600 ppm) lead by weight.

Class 3:

Any portion of jewelry that meets both of the following criteria:

- Not a class 1 or class 2 material
- Contains <0.06% (600 ppm) lead by weight

CONFIRMATION OF VENDOR COMPLIANCE

Company Name _____

Company Address _____

I have read the enclosed letter and attachment and understand its requirements, and accept full responsibility on behalf of the above-mentioned company for compliance to the terms of this letter and attachment and the laws concerning restrictions of lead in jewelry, fashion accessories and/or footwear. I am authorized to sign this contract as an agent of the above-mentioned company.

Signature

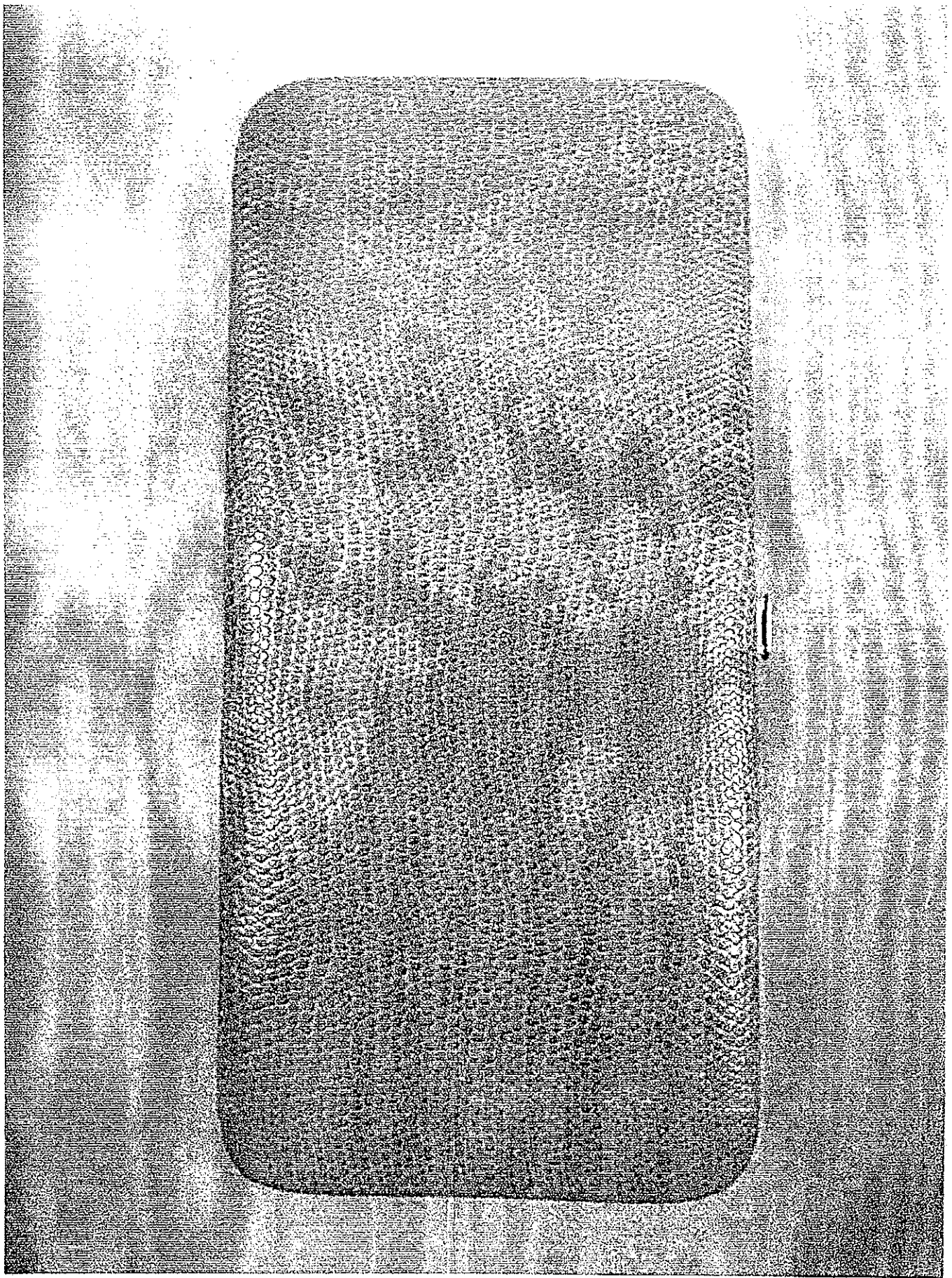
Title

Date

Please sign and return completed letter to the appropriate Sourcing Liaison:

- | | |
|-------------------|--|
| Colleen Nieman | cnieman@bfgstl.com |
| Barb Cordes | bcordes@bfgstl.com |
| Karen Fair | kfair@bfgstl.com |
| Debbie Bullington | debullington@bfgstl.com |
| Claudette Mangrum | camangrum@bfgstl.com |

Exhibit B



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ORANGE

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



925-828-1440
www.TheNFL.com

Analytical Report

August 03, 2011

Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117

Analytical Report No.: CL3573-33
Analysis Dates: 07/26/11 - 08/03/11

Listed below are the results of our analyses for sample(s) received on July 26, 2011.

CEH ID#AB789L, [REDACTED] Wallet (Orange Surface Material On Main Part Of W
NFL ID AF02363

Analyte	Result	Units	Method Ref.
Lead	67500	ppm	NIOSH 7082

A portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

Sample(s) were received in good condition unless and results are reported based on the sample(s) as received, unless otherwise noted. Please note that these results apply only to the sample(s) submitted for this report. Samples from a different portion of the same lot may produce different results.

The National Food Lab services are provided subject to our standard terms and conditions, which can be found on our website, www.TheNFL.com. Should you have any questions concerning these results, please do not hesitate to contact us. Thank you for using the services of the National Food Lab.

Sincerely,

Grace Bandong, Division Manager, Food Contaminants -Chemistry

cc: The NFL's Accounts Receivable