



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” means to manufacture, produce, or  
8 assemble.

9           1.7           “Non-Suspect Materials” means natural materials other than leather that have  
10 been determined not to exceed lead limits for children’s products by the final rule of the  
11 Consumer Product Safety Commission set forth at 16 CFR § 1500.91(d) and (e), as it exists on  
12 the Effective Date.

13           1.8           “Private Label Covered Product” means a Fashion Accessory that bears a  
14 private label where (i) the product (or its container) is labeled with the brand or trademark of a  
15 person other than a manufacturer of the product, (ii) the person with whose brand or trademark  
16 the product (or container) is labeled has authorized or caused the product to be so labeled, and  
17 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

18           1.9           “Private Labeler” means an owner or licensee of a brand or trademark on the  
19 label of a consumer product which bears a private label; provided, however, that Settling  
20 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
21 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s  
22 brand or trademark.

23           1.10          “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.  
24 § 1303.2(b)<sup>1</sup>, as amended from time to time.

25 \_\_\_\_\_  
26 <sup>1</sup> 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           1.11       “Vendor” means a person or entity that Manufactures, imports, distributes, or  
2 supplies a Fashion Accessory to Settling Defendant.

3       **2.     INTRODUCTION**

4           2.1       The parties to this Consent Judgment (each, a “Party” and collectively, the  
5 “Parties”) are the Center for Environmental Health (“CEH”) and defendant QVC, Inc. (“Settling  
6 Defendant”).

7           2.2       Commencing in April 2009, the CEH served multiple 60-Day Notices of  
8 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,  
9 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that the entities named in those  
10 notices violated Proposition 65 by exposing persons to Lead contained in wallets, handbags,  
11 purses, clutches, totes, belts and footwear, without first providing a clear and reasonable  
12 Proposition 65 warning.

13          2.3       Settling Defendant sells and distributes Fashion Accessories that are shipped  
14 to the State of California or has done so in the past.

15          2.4       On June 24, 2009, CEH filed the action entitled *CEH v. LuLu NYC LLC, et al.*,  
16 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging  
17 Proposition 65 violations as to wallets, handbags, purses and clutches. On or about January 15,  
18 2010, CEH filed its First Amended Complaint, and also filed the following new actions alleging  
19 Proposition 65 violations as to Lead in Fashion Accessories: *CEH v. Ashley Stewart Ltd., et al.*,  
20 Alameda County Superior Court Case No. RG 10-494289; *CEH v. Zappos.com, Inc., et al.*,  
21 Alameda County Superior Court Case No. RG 10-494513; and *CEH v. Bag Bazaar, Ltd., et al.*,  
22 Alameda County Superior Court Case No. RG 10-494517. On March 3, 2010, the Court  
23 consolidated the four actions for pre-trial purposes under Lead Case No. RG 09-459448. On  
24 May 27, 2010, CEH issued a 60-day notice to QVC alleging that exposed consumers in California  
25 to lead in wallets, handbags, purses, and clutches sold by QVC without first providing a  
26 Proposition 65 warning. On May 9, 2011, CEH issued a 60-day notice to QVC alleging that  
27 QVC exposed consumers in California to lead in belts sold by QVC without first providing a  
28 Proposition 65 warning. More than sixty days prior to entry of this Consent Judgment, CEH

1 issued a 60-day notice to QVC alleging that exposed consumers in California to lead in footwear  
2 sold by QVC without first providing a Proposition 65 warning.

3           2.5           For purposes of this Consent Judgment only, the Parties waive any right to  
4 contest: (i) jurisdiction over the allegations of violations contained in the operative Complaint  
5 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
6 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of  
7 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

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

16 **3.       INJUNCTIVE RELIEF**

17           3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
18 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
19 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to  
20 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis. This  
21 Section 3.1 is not applicable with respect to Non-Suspect Materials.

22           3.2           **Lead Limits.**

23                       Settling Defendant shall not purchase, import, or Manufacture any Covered  
24 Product that will be sold or offered for sale to California consumers that exceeds the following  
25 Lead Limits:

26                       3.2.1 Commencing on the Effective Date, Paint or other Surface Coatings on  
27 Accessible Components: 90 parts per million (“ppm”).

28                       3.2.2 Commencing on the Effective Date, leather (including composited leather)

1 Accessible Components: 300 ppm. In the alternative, Covered Products containing  
2 multiple patches of different scrap leathers may be sold with a clear and reasonable  
3 warning provided pursuant to the requirements of Section 3.4.

4 3.2.3 Commencing on the Effective Date, polyvinyl chloride (“PVC”)  
5 Accessible Components: 200 ppm.

6 3.2.4 Commencing on the Effective Date, for all other Accessible Components  
7 other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or  
8 rhinestones: 300 ppm.

9 **3.3 Final Retail Compliance Date.** Commencing on December 1, 2012, Settling  
10 Defendant shall not sell or offer for sale in California any Covered Product that exceeds the Lead  
11 Limits specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s  
12 direct customer sells or offers for sale to California consumers a Covered Product after the  
13 applicable Final Retail Compliance Date, Settling Defendant is deemed to “offer for sale in  
14 California” that Covered Product. For purposes of this Section 3.3, Settling Defendant shall not  
15 be deemed to “offer for sale in California” a Covered Product when its direct customer is not an  
16 entity in the business of marketing, promoting, selling or distributing consumer products (a “Non-  
17 Retail Entity”).

18 **3.4 Warnings for Covered Products.**

19 3.4.1 **Interim Warning Option.** A Covered Product purchased, imported<sup>2</sup> or  
20 Manufactured by Settling Defendant before the Effective Date, may, as an alternative to  
21 meeting the Lead Limits, be sold or offered for retail sale in California after December 1,  
22 2012, with a Clear and Reasonable Warning that complies with the provisions of Section  
23 3.4.2.

24 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
25 Consent Judgment shall state either:

26  
27 <sup>2</sup> A Covered Product shall be deemed purchased or imported prior to the Effective Date if the  
28 relevant purchase order, consignment order or drop ship order was issued by QVC prior to the  
Effective Date.

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

4           Or

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

8           This statement shall be prominently displayed on the Covered Product or the packaging of  
9           the Covered Product with such conspicuousness, as compared with other words,  
10          statements or designs as to render it likely to be read and understood by an ordinary  
11          individual prior to sale.<sup>3</sup> For internet, catalog or any other sale where the consumer is not  
12          physically present and cannot see a warning displayed on the Covered Product or the  
13          packaging of the Covered Product prior to purchase or payment, the warning statement  
14          shall be displayed in such a manner that it is likely to be read and understood prior to the  
15          authorization of or actual payment.

16          **3.5           Action Regarding Specific Products.**

17                3.5.1   On or before the Effective Date, Settling Defendant shall cease selling the  
18                following specific products in California for as long as such products do not comply with  
19                the Lead Limits: (i) Kathy Van Zealand Napa Top Zip Handbag – Mustard, SKU No.  
20                09265370871001, Item No. A85573-477000, (ii) Isaac Mizrahi Live Braided Metal Link  
21                Belt in Dijon, Item No. A203882, (iii) Kenneth Jay Lane Butterfly Handbag in Green,  
22                Item No. A82225-061000, (iv) Joan Rivers City Scene Python Pattern Tote in Green, Item  
23                No. A97805-061000, (v) Fiore by Isabella Fiore Leather Heart/Peace Messenger in  
24                Saffron, Item No. A92449-848000, (vi) Roccatella Glove Leather Haley Convertible  
25                Satchel in Mustard, Item No. A210555-477000 (collectively, the “Section 3.5 Products”).

26  
27                <sup>3</sup> For purposes of clarification, this warning statement set forth in Section 3.4.2 shall apply only  
28                with respect to Covered Products that do not meet the Lead Limits as set forth in this Consent  
                  Judgment.

1 On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the  
2 Section 3.5 Products to any of its customers that resell the Section 3.5 Products in  
3 California (excluding any Non-Retail Entity), and (ii) send instructions to its customers  
4 that resell the Section 3.5 Products in California (excluding any Non-Retail Entity)  
5 instructing them to cease offering such Section 3.5 Products for sale in California.

6 3.5.2 If Settling Defendant has not complied with Section 3.5.1 prior to  
7 executing this Consent Judgment, it shall instruct its California stores and/or customers  
8 that resell the Section 3.5 Products (excluding any Non-Retail Entity) either to (i) return  
9 all the Section 3.5 Products to the Settling Defendant for destruction; or (ii) directly  
10 destroy the Section 3.5 Products; or (iii) sell the Section 3.5 Products with a Clear and  
11 Reasonable Warning that complies with the provisions of Section 3.4.2.

12 3.5.3 Any destruction of Section 3.5 Products shall be in compliance with all  
13 applicable laws.

14 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide  
15 CEH with written certification from Settling Defendant confirming compliance with the  
16 requirements of this Section 3.5.

17 **4. ENFORCEMENT**

18 4.1 Any Party may, after meeting and conferring, by motion or application for an  
19 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
20 Judgment. Enforcement of the terms and conditions of Section 3.2 and 3.3 of this Consent  
21 Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

22 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH  
23 of a means sufficient to allow CEH to identify Covered Products supplied or offered by Settling  
24 Defendant on or after that date, for example, a unique brand name or characteristic system of  
25 product numbering or labeling. Information provided to CEH pursuant to this Section 4.2,  
26 including but not limited to the identities of parties to contracts between Settling Defendant and  
27 third parties, may be designated by Settling Defendant as competitively sensitive confidential  
28 business information, and if so designated shall not be disclosed to any person without the written

1 permission of Settling Defendant. Any motions or pleadings or any other court filings that may  
2 reveal information designated as competitively sensitive confidential business information  
3 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and  
4 2.550, *et seq.*

5 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
6 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

7 4.3.1 **Service of Notice.** CEH must serve the Notice of Violation on Settling  
8 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
9 provided, however, that CEH may have up to an additional 45 days to provide Settling  
10 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it  
11 from its laboratory. Failure to either (i) serve the Notice of Violation within 45 days of  
12 the date the alleged violation(s) was or were observed, or (ii) provide Settling Defendant  
13 with the test data required by Section 4.3.2(d) within such subsequent 45 day period, shall  
14 constitute a waiver of CEH's right to pursue Settling Defendant for the alleged  
15 violation(s). However, nothing herein shall preclude CEH from issuing subsequent Notice  
16 of Violation on a future observed violation involving the same Covered Product.

17 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
18 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
19 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
20 Covered Product giving rise to the alleged violation, and of each Accessible Component  
21 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
22 Product and all identifying information on tags and labels, and (d) all test data obtained by  
23 CEH regarding the Covered Product and related supporting documentation, including all  
24 laboratory reports, quality assurance reports and quality control reports associated with  
25 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
26 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
27 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
28 Notice of Violation, although any such testing may be used as additional support for a



1 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
2 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
3 4.3.2.

4 4.3.3 **Additional Documentation.** CEH shall promptly make available for  
5 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
6 supporting documentation related to the testing of the Covered Products and associated  
7 quality control samples, including chain of custody records, all laboratory logbook entries  
8 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
9 from all analytical instruments relating to the testing of Covered Product samples and any  
10 and all calibration, quality assurance, and quality control tests performed or relied upon in  
11 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
12 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
13 any exemplars of Covered Products tested.

14 4.3.4 **Multiple Notices.** If Settling Defendant has received more than four  
15 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
16 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
17 Consent Judgment. For purposes of determining the number of Notices of Violation  
18 pursuant to this Section 4.3.4, the following shall be excluded:

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

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

23 4.4 **Notice of Election.** Within 45 days of receiving a Notice of Violation  
24 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant  
25 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
26 the Notice of Violation ("Notice of Election"), provided, however, that, upon providing written  
27 notice to CEH, QVC may have up to an additional 45 days to provide the Notice of Election if it  
28 has not yet obtained testing data from its laboratory. Failure to provide a Notice of Election shall

1 be deemed an election to contest the Notice of Violation.

2           **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
3 Election shall include all then-available documentary evidence regarding the alleged  
4 violation, including any test data. Within 30 days the Parties shall meet and confer to  
5 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
6 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling  
7 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
8 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
9 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
10 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
11 monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement or  
12 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
13 other data regarding the alleged violation, it shall promptly provide all such data or  
14 information to the other Party.

15           **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested,  
16 Settling Defendant shall include in its Notice of Election a detailed description of  
17 corrective action that it has undertaken or proposes to undertake to address the alleged  
18 violation. Any such correction shall, at a minimum, provide reasonable assurance that the  
19 non-compliant Covered Product will no longer be offered by Settling Defendant or its  
20 customers (excluding any Non-Retail Entity)) for sale in California. If there is a dispute  
21 over the sufficiency of the proposed corrective action or its implementation, CEH shall  
22 promptly notify Settling Defendant and the Parties shall meet and confer before seeking  
23 the intervention of the Court to resolve the dispute. In addition to the corrective action,  
24 Settling Defendant shall make a contribution to the Fashion Accessory Testing Fund in the  
25 amount of \$10,000, unless one of the provisions of Section 4.4.3 applies.

26           **4.4.3 Limitations in Non-Contested Matters.**

27           (a) If it elects not to contest a Notice of Violation before any motion  
28 concerning the violation(s) at issue has been filed, the monetary liability of Settling

1 Defendant shall be limited to the contributions required by this Section 4.4.3, if any.

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

3 (i) One thousand seven hundred fifty dollars (\$1750) if Settling  
4 Defendant, prior to receiving and accepting for distribution or sale the  
5 Covered Product identified in the Notice of Violation, obtained test results  
6 demonstrating that all of the Accessible Components in the Covered  
7 Product identified in the Notice of Violation complied with the applicable  
8 Lead Limits, and further provided that such test results would be sufficient  
9 to support a Notice of Violation and that the testing was performed within  
10 two years prior to the date of the sales transaction on which the Notice of  
11 Violation is based. Settling Defendant shall provide copies of such test  
12 results and supporting documentation to CEH with its Notice of Election;

13 (ii) Not required or payable, if the Notice of Violation concerns a  
14 Non-Suspect Material; provided, however, that the foregoing exemption  
15 shall not apply if the Settling Defendant has received more than three  
16 Notices of Violation in an 18-month period for the same Non-Suspect  
17 Material that was supplied by more than one Vendor; or

18 (iii) One thousand five hundred dollars (\$1500) if Settling  
19 Defendant is in violation of Section 3.3 only insofar as that Section deems  
20 Settling Defendant to have “offered for sale” a product sold at retail by  
21 Settling Defendant’s customer, provided however, that no contribution is  
22 required or payable if Settling Defendant has already been required to pay  
23 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This  
24 subsection shall apply only to Covered Products that Settling Defendant  
25 demonstrates were purchased, imported or manufactured prior to the  
26 Effective Date specified in Section 3.2.

27 (iv) Not required or payable, if the Notice of Violation identifies  
28 the same Covered Product or Covered Products, differing only in size or

1 color, that have been the subject of another Notice of Violation within the  
2 preceding 12 months.

3 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If  
4 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a  
5 Fashion Accessory: (i) that is not a Covered Product, (ii) that contains Lead in an amount that  
6 exceeds any of the applicable Lead Limits, and (iii) for which Settling Defendant did not provide  
7 a clear and reasonable warning as required by Proposition 65 (“Noncompliant Non-Covered  
8 Product”), then prior to CEH serving a 60-Day Notice under Proposition 65 on Settling  
9 Defendant, CEH shall provide notice to Settling Defendant pursuant to this Section 4.5.

10 4.5.1 The notice shall contain the information required for a Notice of Violation  
11 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the  
12 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
13 further identifying information for the Noncompliant Non-Covered Product that is  
14 reasonably available to it.

15 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any  
16 requested further information sufficient to identify the Noncompliant Non-Covered  
17 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.  
18 The Notice of Election shall:

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

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

25 (c) Include either: (i) a statement that Settling Defendant elects not to  
26 proceed under this Section 4.5, in which case CEH may take further action including  
27 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant  
28 elects to proceed under this Section 4.5, with a description of corrective action that meets

1 the conditions of Section 4.4.2., and a contribution to the Fashion Accessory Testing Fund  
2 in the amount required under Section 4.5.6, or (iii) a statement that Settling Defendant  
3 contends that the Noncompliant Non-Covered Product is released from liability by a  
4 Qualified Settlement under Section 4.5.4 along with a copy of such Qualified Settlement.

5 4.5.3 A Party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)  
6 confidential business information, or (iii) other information that may be subject to a claim  
7 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
8 or confidentiality, provided that the Party disclosing such information shall clearly  
9 designate it as confidential. Any Party receiving information designated as confidential  
10 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person  
11 or entity, and shall use such information solely for purposes of resolving any disputes  
12 under this Consent Judgment.

13 4.5.4 No further action is required of Settling Defendant under this Consent  
14 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability  
15 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
16 Covered Product by the terms of a separate settlement agreement or consent judgment  
17 entered into by CEH under Health & Safety Code § 25249.7 ("Qualified Settlement").

18 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither  
19 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may  
20 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
21 elects to proceed under Section 4.5.2(c)(ii), then compliance with that Section shall  
22 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

23 4.5.6 If Settling Defendant elects to proceed under this Section 4.5 and is not  
24 relieved of liability under Section 4.5.4, Settling Defendant shall make a contribution to  
25 the Fashion Accessory Testing Fund in the amounts that follow unless one of the  
26 provisions of Section 4.4.3(b) applies, in which case the applicable amount specified in  
27 Section 4.4.3(b) if any, shall instead apply. The contribution shall be \$5,000 if at least one  
28 of the person(s) identified by Settling Defendant pursuant to Section 4.5.2 (i) is a person

1 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)  
2 has a principal place of business located within the United States, and \$10,000 for all  
3 other notices.

4 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a  
5 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
6 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
7 Defendant shall be entitled to a refund of the lesser amount of its contribution or the  
8 settlement amount paid by such Vendor. If the settlement or consent judgment between  
9 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
10 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
11 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's  
12 settlement payment.

13 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be  
14 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5  
15 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
16 than a Settling Defendant.

## 17 **5. PAYMENTS**

18 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent  
19 Judgment, Settling Defendant shall pay the total sum of \$75,000 as a settlement payment. The  
20 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to  
21 the offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San  
22 Francisco, California 94117, and made payable and allocated as follows:

23 5.1.1 Settling Defendant shall pay the sum of \$9,800 pursuant to Health & Safety  
24 Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety  
25 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental  
26 Health Hazard Assessment). The payment pursuant to this Section shall be made payable to the  
27 Center For Environmental Health.

28 5.1.2 Settling Defendant shall also pay the sum of \$15,100 as a payment in lieu

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

9           5.1.3 Settling Defendant shall also separately pay to the Lexington Law Group  
10 the sum of \$50,100 as reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs.  
11 The payment pursuant to this Section shall be made payable to the Lexington Law Group.

## 12 **6. MODIFICATION**

13           6.1 **Written Consent.** This Consent Judgment may be modified from time to  
14 time by express written agreement of the Parties with the approval of the Court, or by an order of  
15 this Court upon motion and in accordance with law.

16           6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
18 modify the Consent Judgment.

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

20           7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
21 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
22 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
23 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell  
24 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
25 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)  
26 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
27 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
28 to warn about alleged exposure to Lead contained in Fashion Accessories that were sold by

1 Settling Defendant prior to the Effective Date.

2 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
3 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered  
4 Products.

5 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an  
6 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
7 Releasee, or Downstream Defendant Releasee.

8 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action  
9 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
10 of Settling Defendant under Section 3.3; (b) sells or offers for sale a Covered Product to  
11 California consumers that does not comply with the Lead Limits after the applicable Final Retail  
12 Compliance Date set forth in Section 3.3; and (c) is not sold or offered for sale with compliant  
13 Proposition 65 warnings under this Consent Judgment.

14 **8. NOTICE**

15 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
16 notice shall be sent by certified mail or reputable overnight carrier and electronic mail to:

17 Howard Hirsch  
18 Lexington Law Group  
19 503 Divisadero Street  
20 San Francisco, CA 94117  
21 hhirsch@lexlawgroup.com

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
23 Judgment, the notice shall be sent by certified mail or reputable overnight carrier and electronic  
24 mail to:

25 William F. Tarantino  
26 Morrison & Foerster LLP  
27 425 Market Street  
28 San Francisco, CA 94105  
WTarantino@mofo.com



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With a copy to:  
  
QVC, Inc.  
Attn: General Counsel  
1200 Wilson Drive  
West Chester, PA 19380

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.*

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.

1 **11. TERMINATION**

2 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant  
3 at any time after September 1, 2017, upon the provision of 30 days advanced written notice; such  
4 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
5 Court of Alameda County.

6 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall  
7 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
8 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
9 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
10 7.1 and 12.1 shall survive any termination.

11 **12. OTHER TERMS**

12 12.1 The terms of this Consent Judgment shall be governed by the laws of the State  
13 of California.

14 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
15 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
16 assigns of any of them.

17 12.3 This Consent Judgment contains the sole and entire agreement and  
18 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
19 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
20 merged herein and therein. There are no warranties, representations, or other agreements between  
21 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
22 implied, other than those specifically referred to in this Consent Judgment have been made by any  
23 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
24 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
25 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
26 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
27 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
28 whether or not similar, nor shall such waiver constitute a continuing waiver.

1           12.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
2 that any Settling Defendant might have against any other party, whether or not that party is a  
3 Settling Defendant.

4           12.5       This Court shall retain jurisdiction of this matter to implement or modify the  
5 Consent Judgment.

6           12.6       The stipulations to this Consent Judgment may be executed in counterparts  
7 and by means of facsimile or portable document format (pdf), which taken together shall be  
8 deemed to constitute one document.

9           12.7       Each signatory to this Consent Judgment certifies that he or she is fully  
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
11 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
12 Party.

13          12.8       The Parties, including their counsel, have participated in the preparation of  
14 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
15 This Consent Judgment was subject to revision and modification by the Parties and has been  
16 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
17 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
18 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
19 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
20 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
21 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.


22  
23 **IT IS SO ORDERED:**

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

CENTER FOR ENVIRONMENTAL HEALTH



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Signature

CHARLIE PIZARRO

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Printed Name

ASSOCIATE DIRECTOR

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Title

QVC, INC.

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Signature

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Printed Name

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Title

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**CENTER FOR ENVIRONMENTAL HEALTH**

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Signature

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

\_\_\_\_\_  
Title

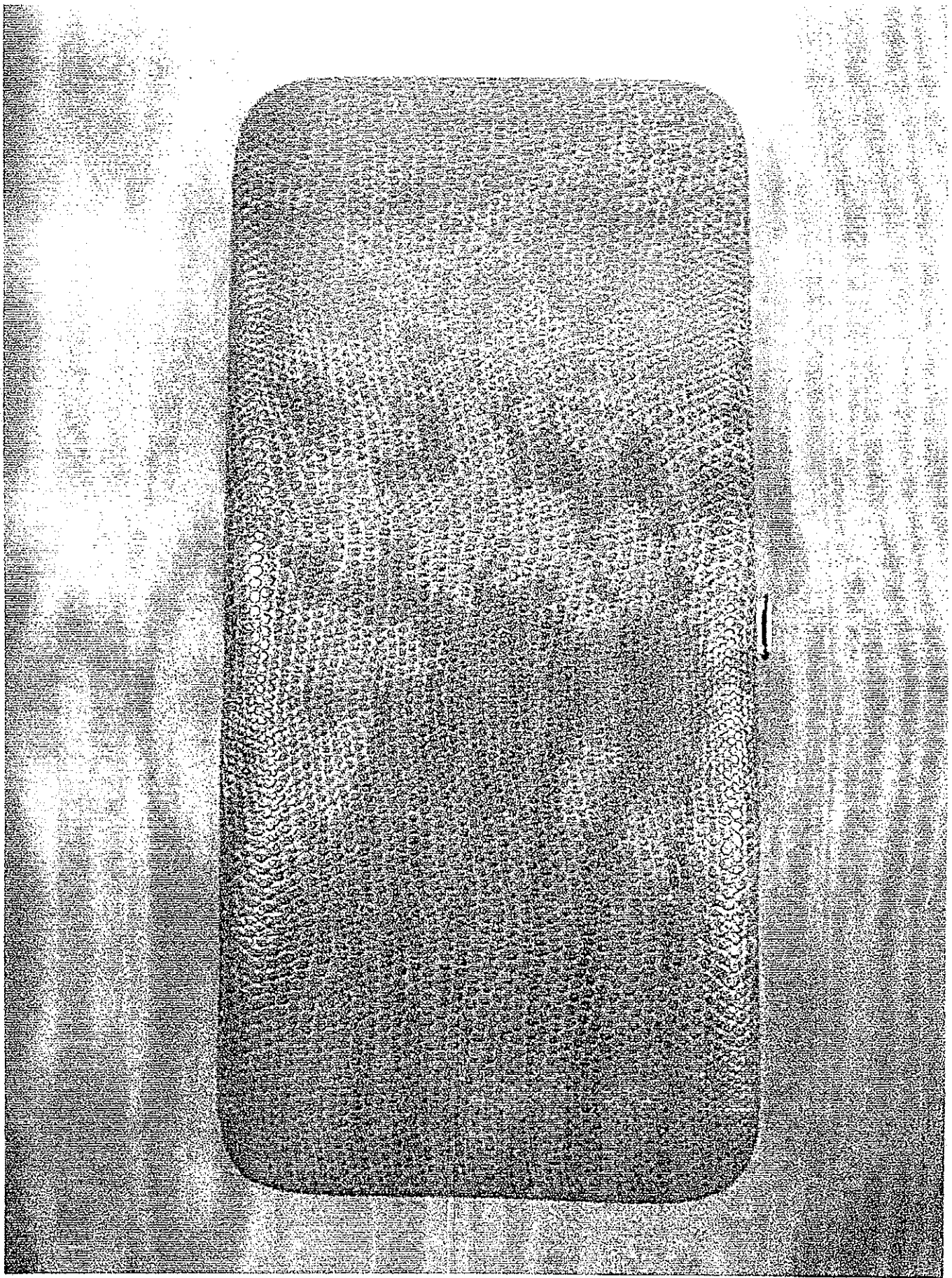
**QVC, INC.**

*By: Larry Hayes*  
\_\_\_\_\_  
Signature

*Laurenore R. Hayes*  
\_\_\_\_\_  
Printed Name

*S. Vice President*  
\_\_\_\_\_  
Title

# **Exhibit A**



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



925-828-1440  
www.TheNFL.com

## Analytical Report

August 03, 2011

Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117

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

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

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

Analyte	Result	Units	Method Ref.
Lead	67500	ppm	NIOSH 7082

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

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

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

Sincerely,

Grace Bandong, Division Manager, Food Contaminants -Chemistry

cc: The NFL's Accounts Receivable