

1 1.3.2 Polyvinyl chloride (“PVC”): 200 ppm.

2 1.3.3 All other materials or components other than cubic zirconia (sometimes
3 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

4 1.4 “Manufactured” and “Manufactures” means to manufacture, produce, or
5 assemble.

6 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
7 with or without a suspension of finely divided coloring matter, which changes to a solid film
8 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
9 This term does not include printing inks or those materials which actually become a part of the
10 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
11 the substrate, such as by electroplating or ceramic glazing.

12 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or
13 supplies a Covered Product or a component used to Manufacture a Covered Product to Settling
14 Defendant.

15 **2. INTRODUCTION**

16 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
17 Environmental Health (“CEH”) and defendant Dooney & Bourke, Inc. (“Settling Defendant”).

18 2.2 On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,
19 Case No. RG 09-459448, alleging Proposition 65 violations as to wallets, handbags, purses and
20 clutches. The Court has consolidated the *Lulu* matter with a number of other related Proposition
21 65 cases.

22 2.3 On or about March 2, 2011, CEH served a 60-Day Notice of Violation under
23 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
24 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by
25 exposing persons to Lead contained in wallets, handbags, purses and clutches, without first
26 providing a clear and reasonable Proposition 65 warning. On July 26, 2011, CEH filed the Third
27 Amended Complaint in *CEH v. Bag Bazaar, Ltd.*, Case No. RG 10-494517, naming Settling
28 Defendant as a defendant in the action.

1 2.4 Settling Defendant manufactures, distributes and/or offers for sale Covered
2 Products in the State of California or has done so in the past.

3 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
4 Court has 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, that venue is proper in the County of Alameda,
7 and 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 and shall instruct each Vendor to use reasonable efforts to provide Covered Products and
20 components used to Manufacture Covered Products that comply with the Lead Limits.

21 3.2 **Reformulation Requirement.** Commencing on the Effective Date, Settling
22 Defendant shall not order, purchase, import or Manufacture: (a) any material or component that is
23 to be used in any Covered Product that exceeds the Lead Limits; or (b) any finished Covered
24 Product that contains a material or is made of a component that exceeds the Lead Limits.

25 3.3 **Final Retail Compliance Date.** Commencing on the Effective Date, Settling
26 Defendant shall not sell or offer for sale any Covered Product that contains a material or is made
27 of a component that exceeds the Lead Limits. For purposes of this Section 3.3, when Settling
28 Defendant’s direct customer sells or offers for sale to California consumers a Covered Product

1 after the Effective Date, Settling Defendant is deemed to have sold or offered for sale that
2 Covered Product.

3 3.3.1 Notwithstanding Section 3.3, during the period from the Effective Date
4 through December 31, 2015, Settling Defendant shall be allowed to sell Covered Products that
5 contain brass parts that Settling Defendant purchased prior to January 1, 2013, provided that such
6 parts: (i) contain no more than three percent Lead by weight; (ii) are commercially electroplated
7 with either gold or nickel covering all exposed brass surface areas.

8 3.4 **Action Regarding Specific Products.**

9 3.4.1 On or before the Effective Date, Settling Defendant shall cease selling the
10 Dooney & Bourke Mini Sac, SKU No. 7-38843-87332-0 (the "Section 3.4 Product") in
11 California. On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the
12 Section 3.4 Products to any of its stores and/or customers that resell the Section 3.4 Products in
13 California, and (ii) send instructions to its stores and/or customers that resell the Section 3.4
14 Products in California instructing them either to: (a) return all of the Section 3.4 Products to
15 Settling Defendant for destruction; or (b) directly destroy the Section 3.4 Products.

16 3.4.2 Any destruction of the Section 3.4 Products shall be in compliance with all
17 applicable laws.

18 3.4.3 Within sixty days of the Effective Date, Settling Defendant shall provide
19 CEH with written certification from Settling Defendant confirming compliance with the
20 requirements of this Section 3.4.

21 **4. ENFORCEMENT**

22 4.1 Any Party may, after meeting and conferring, by motion or application for an
23 order to show cause before this Court, enforce the terms and conditions contained in this Consent
24 Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment
25 shall be brought exclusively pursuant to Sections 4.2 through 4.3.

26 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section
27 3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

28 4.2.1 **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, provided,
2 however, that: (i) CEH may have up to an additional 45 days to provide Settling Defendant with
3 the test data required by Section 4.2.2(d) below if it has not yet obtained it from its laboratory;
4 and (ii) CEH may serve a Notice of Violation to a supplier of a Covered Product so long as: (a)
5 the identity of the supplier cannot be discerned from the labeling of the Covered Product; and (b)
6 the Notice of Violation to the supplier is served within 45 days of the date the supplier is
7 identified by CEH.

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

22 **4.2.3 Additional Documentation.** CEH shall promptly make available for
23 inspection and/or copying upon request by and at the expense of Settling Defendant, all
24 supporting documentation related to the testing of the Covered Products and associated quality
25 control samples, including chain of custody records, all laboratory logbook entries for laboratory
26 receiving, sample preparation, and instrumental analysis, and all printouts from all analytical
27 instruments relating to the testing of Covered Product samples and any and all calibration, quality
28 assurance, and quality control tests performed or relied upon in conjunction with the testing of the

1 Covered Products, obtained by or available to CEH that pertains to the Covered Product’s alleged
2 noncompliance with Section 3 and, if available, any exemplars of Covered Products tested.

3 **4.2.4 Multiple Notices.** If Settling Defendant has received more than four
4 Notices of Violation in any 12-month period, at CEH’s option, CEH may seek whatever fines,
5 costs, penalties, or remedies are provided by law for failure to comply with the Consent
6 Judgment. For purposes of determining the number of Notices of Violation pursuant to this
7 Section 4.2.4, the following shall be excluded:

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

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

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

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

1 acquires additional test or other data regarding the alleged violation, it shall promptly provide all
2 such data or information to the other Party.

3 **4.3.2 Non-Contested Notices.** If the Notice of Violation is not contested,
4 Settling Defendant shall include in its Notice of Election a detailed description of corrective
5 action that it has undertaken or proposes to undertake to address the alleged violation. Any such
6 correction shall, at a minimum, provide reasonable assurance that the Covered Product will no
7 longer be offered by Settling Defendant or its customers for sale in California. If there is a
8 dispute over the sufficiency of the proposed corrective action or its implementation, CEH shall
9 promptly notify Settling Defendant and the Parties shall meet and confer before seeking the
10 intervention of the Court to resolve the dispute. In addition to the corrective action, Settling
11 Defendant shall make a contribution to the Fashion Accessory Testing Fund in the amount of
12 \$10,000, unless one of the provisions of Section 4.3.3 applies.

13 **4.3.3 Limitations in Non-Contested Matters.**

14 (a) If it elects not to contest a Notice of Violation before any motion
15 concerning the violation(s) at issue has been filed, the monetary liability of Settling
16 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section
17 4.3.3, if any.

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

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

23 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
24 Defendant, prior to receiving and accepting for distribution or sale the
25 Covered Product identified in the Notice of Violation, obtained test results
26 demonstrating that all of the materials or components in the Covered
27 Product identified in the Notice of Violation complied with the applicable
28 Lead Limits, and further provided that such test results meet the same

1 quality criteria to support a Notice of Violation as set forth in Section 4.2.2
2 and that the testing was performed within two years prior to the date of the
3 sales transaction on which the Notice of Violation is based. Settling
4 Defendant shall provide copies of such test results and supporting
5 documentation to CEH with its Notice of Election; or

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

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

19 **5. PAYMENTS**

20 **5.1 Payments by Settling Defendant.** Within five (5) business days of the Effective
21 Date, Settling Defendant shall pay the total sum of \$145,000 as a settlement payment. The total
22 settlement amount for Settling Defendant shall be paid in three separate checks and delivered to
23 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San
24 Francisco, California 94117-2212, and made payable and allocated as follows:

25 5.1.1 Settling Defendant shall pay the sum of \$19,200 as a civil penalty pursuant
26 to Health & Safety Code § 25249.7(b). CEH shall apportion this payment in accordance with
27 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
28 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the

1 Center For Environmental Health.

2 5.1.2 Settling Defendant shall pay the sum of \$28,800 as a payment in lieu of
3 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
4 Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and
5 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
6 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
7 funds to award grants to grassroots environmental justice groups working to educate and protect
8 people from exposures to toxic chemicals. The method of selection of such groups can be found
9 at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be
10 made payable to the Center For Environmental Health.

11 5.1.3 Settling Defendant shall also separately pay the sum of \$97,000 to the
12 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and
13 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
14 Law Group.

15 **6. MODIFICATION**

16 6.1 **Written Consent.** This Consent Judgment may be modified from time to
17 time by express written agreement of the Parties with the approval of the Court, or by an order of
18 this Court upon motion and in accordance with law.

19 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
20 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
21 modify the Consent Judgment.

22 **7. CLAIMS COVERED AND RELEASED**

23 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
24 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
25 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
26 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
27 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
28 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")

1 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
2 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
3 to warn about alleged exposure to Lead contained in Covered Products that were sold by Settling
4 Defendant prior to the Effective Date.

5 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
6 constitutes compliance with Proposition 65 with respect to Lead in Covered Products sold by
7 Settling Defendant.

8 **8. NOTICE**

9 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
10 notice shall be sent by first class and electronic mail to:

11 Eric S. Somers
12 Lexington Law Group
13 503 Divisadero Street
14 San Francisco, CA 94117
15 esomers@lexlawgroup.com

16 8.2 When Settling Defendant is entitled to receive any notice under this Consent
17 Judgment, the notice shall be sent by first class and electronic mail to:

18 Edward B. Chansky
19 Greenberg Traurig, LLP
20 3773 Howard Hughes Parkway
21 Suite 400 North
22 Las Vegas, NV 89169
23 chanskye@gtlaw.com

24 8.3 Any Party may modify the person and address to whom the notice is to be sent
25 by sending each other Party notice by first class and electronic mail.

26 **9. COURT APPROVAL**

27 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
28 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

1 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

2 **10. ATTORNEYS' FEES**

3 10.1 Should CEH prevail on any motion, application for an order to show cause or
4 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
5 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
6 Settling Defendant prevail on any motion application for an order to show cause or other
7 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
8 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
9 or application lacked substantial justification. For purposes of this Consent Judgment, the term
10 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
11 Code of Civil Procedure §§ 2016, *et seq.*

12 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
13 its own attorneys' fees and costs.

14 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
15 sanctions pursuant to law.

16 **11. TERMINATION**

17 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
18 at any time after January 1, 2019, upon the provision of 30 days advanced written notice; such
19 termination shall be effective upon the subsequent filing of a notice of termination with Superior
20 Court of Alameda County.

21 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
22 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
23 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided
24 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and **Error!**
25 **Reference source not found.** shall survive any termination.

26 **12. OTHER TERMS**

27 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
28 of California.

1 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
2 Defendant, and the successors or assigns of any of them.

3 12.3 This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
5 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
6 merged herein and therein. There are no warranties, representations, or other agreements between
7 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
8 implied, other than those specifically referred to in this Consent Judgment have been made by any
9 Party hereto. No other agreements not specifically contained or referenced herein, oral or
10 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
11 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
12 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
13 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
14 whether or not similar, nor shall such waiver constitute a continuing waiver.

15 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
16 that Settling Defendant might have against any other party, whether or not that party is a Settling
17 Defendant.

18 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 12.6 The stipulations to this Consent Judgment may be executed in counterparts
21 and by means of facsimile or portable document format (pdf), which taken together shall be
22 deemed to constitute one document.

23 12.7 Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
25 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
26 Party.

27 12.8 The Parties, including their counsel, have participated in the preparation of
28 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

1 This Consent Judgment was subject to revision and modification by the Parties and has been
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
4 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
5 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
6 be resolved against the drafting Party should not be employed in the interpretation of this Consent
7 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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IT IS SO ORDERED:

Dated: _____

The Honorable Wynne S. Carvill
Judge of the Superior Court

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZARRO

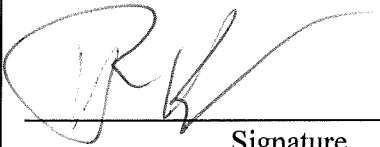
Printed Name

ASSOCIATE DIRECTOR

Title

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DOONEY & BOURKE, INC.



Signature

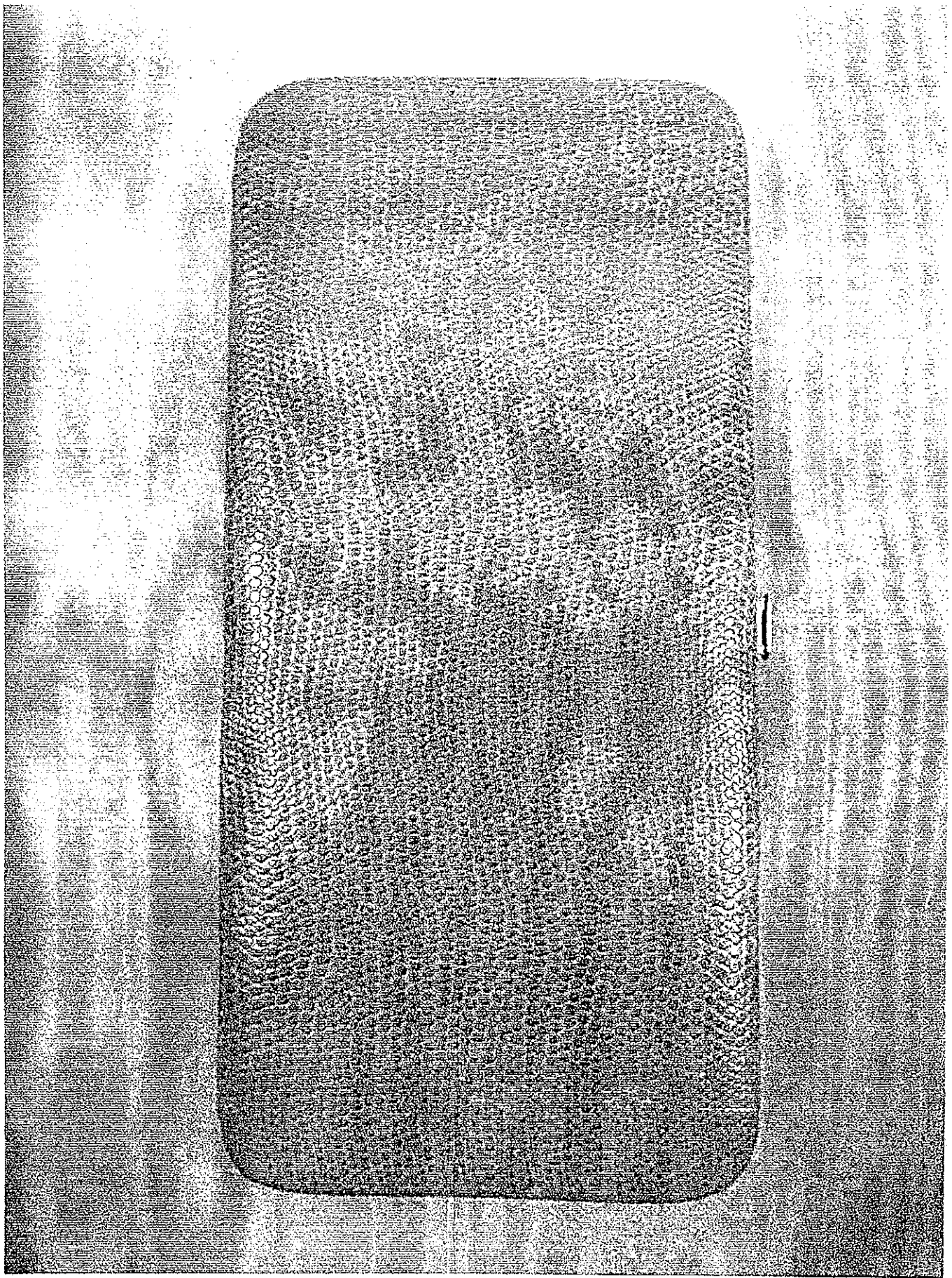
Philip Kinsley

Printed Name

V.P. FINANCE

Title

Exhibit A



Handwritten text, possibly a list or index, oriented vertically. The characters are difficult to decipher due to the image quality and orientation.

Handwritten text, possibly a list or index, oriented vertically. The characters are difficult to decipher due to the image quality and orientation.

Handwritten text, possibly a list or index, oriented vertically. The characters are difficult to decipher due to the image quality and orientation.

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