

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 14-722783  
 )  
 ) Plaintiff, ) **[PROPOSED] CONSENT**  
 ) ) **JUDGMENT AS TO SHOPKO**  
 ) v. ) **STORES OPERATING CO., LLC**  
 ) )  
 ) MIZ MOOZ, INC., et al., )  
 ) )  
 ) Defendants. )  
 )  
 )

---

**1. DEFINITIONS**

1.1 “Covered Products” means Fashion Accessories that are (a) Manufactured by a Settling Defendant, or (b) distributed for resale or sold for resale by a Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by a Settling Defendant that is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity that is under common ownership of the Private Labeler of such product.

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

1.3 “Fashion Accessories” means wallets, handbags, purses, and clutches.

1           1.4           “Lead Limits” means the maximum concentrations of lead and lead  
2 compounds (“Lead”) by weight specified in Section 3.2.

3           1.5           “Manufactured” and “Manufactures” means to manufacture, produce, or  
4 assemble.

5           1.6           “Private Label Covered Product” means a Fashion Accessory that bears a  
6 private label where (i) the product (or its container) is labeled with the brand or trademark of a  
7 person other than a manufacturer of the product, (ii) the person with whose brand or trademark  
8 the product (or container) is labeled has authorized or caused the product to be so labeled, and  
9 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

10          1.7           “Private Labeler” means an owner or licensee of a brand or trademark on the  
11 label of a consumer product which bears a private label; provided, however, that Settling  
12 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
13 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s  
14 brand or trademark.

15          1.8           “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,  
16 with or without a suspension of finely divided coloring matter, which changes to a solid film  
17 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.  
18 This term does not include printing inks or those materials which actually become a part of the  
19 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
20 the substrate, such as by electroplating or ceramic glazing.

21          1.9           “Vendor” means a person or entity that Manufactures, imports, distributes, or  
22 supplies a Fashion Accessory to Settling Defendant.

23       **2.       INTRODUCTION**

24          2.1           The parties to this Consent Judgment (“Parties”) are the Center for  
25 Environmental Health (“CEH”) and defendant Shopko Stores Operating Co., LLC (“Settling  
26 Defendant”).

27          2.2           On March 18, 2014, CEH served a 60-Day Notice of Violation under  
28 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health

1 & Safety Code §§ 25249.5, et seq.) (the “Notice”) to Settling Defendant, the California Attorney  
2 General, the District Attorneys of every County in the State of California, and the City Attorneys  
3 for every City in the State of California with a population greater than 750,000. The Notice  
4 alleges that Settling Defendant violated Proposition 65 by exposing persons to Lead contained in  
5 wallets, handbags, purses, and clutches, without first providing a clear and reasonable Proposition  
6 65 warning.

7 2.3 On April 24, 2014, CEH filed the action *CEH v. Miz Mooz, Inc., et al.*, Case  
8 No. RG 14-722783, in the Superior Court of California for Alameda County. On May 29, 2014,  
9 CEH amended the operative *Miz Mooz* complaint to name Settling Defendant as Doe 1.

10 2.4 Settling Defendant manufactures, distributes or offers Fashion Accessories for  
11 sale in the State of California or has done so in the past.

12 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this  
13 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
14 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
15 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
16 and that this Court has jurisdiction to enter this Consent Judgment.

17 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by  
18 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance  
19 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
20 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
21 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
22 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
23 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
24 this action.

25 **3. INJUNCTIVE RELIEF**

26 3.1 **Specification Compliance Date.** To the extent it has not already done so, no  
27 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
28 Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts to

1 provide Fashion Accessories that comply with the Lead Limits on a nationwide basis.

2           **3.2 Lead Limits.** Commencing on the Effective Date, Settling Defendant shall not  
3 purchase, import, Manufacture, or supply to an unaffiliated third party, or sell or offer for sale any  
4 Covered Product that will be sold or offered for sale to California consumers that contains a  
5 material or is made of a component that exceeds the following Lead Limits:

6                   3.2.1 Paint or other Surface Coatings: 90 parts per million (“ppm”).

7                   3.2.2 Polyvinyl chloride (“PVC”): 200 ppm.

8                   3.2.3 For all other materials or components other than cubic zirconia (sometimes  
9 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

10           **3.3 Action Regarding Specific Products.**

11                   3.3.1 On or before the Effective Date, Settling Defendant shall cease selling in  
12 California the Braciano Large Tote Handbag in Red, SKU No. 6-17776-06994-2, Item  
13 No. 73371, Style No. U8562S-RD (the “Section 3.3 Products”). On or before the  
14 Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Products  
15 to any of its customers that resell the Section 3.3 Products in California, and (ii) send  
16 instructions to its customers that resell the Section 3.3 Products in California instructing  
17 them to cease offering such Section 3.3 Products for sale in California.

18                   3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all  
19 applicable laws.

20                   3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide  
21 CEH with written certification from Settling Defendant confirming compliance with the  
22 requirements of this Section 3.3.

23 **4. ENFORCEMENT**

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

28

1           4.2           **Notice of Violation.** CEH may seek to enforce the requirements of Section  
2 3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

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

11           4.2.2   **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
12 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
13 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
14 Covered Product giving rise to the alleged violation, and of each material or component  
15 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
16 Product and all identifying information on tags and labels, and (d) all test data obtained by  
17 CEH regarding the Covered Product and related supporting documentation, including all  
18 laboratory reports, quality assurance reports and quality control reports associated with  
19 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
20 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
21 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
22 Notice of Violation, although any such testing may be used as additional support for a  
23 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
24 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
25 4.2.2.

26           4.2.3   **Additional Documentation.** CEH shall promptly make available for  
27 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
28 supporting documentation related to the testing of the Covered Products and associated

1 quality control samples, including chain of custody records, all laboratory logbook entries  
2 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
3 from all analytical instruments relating to the testing of Covered Product samples and any  
4 and all calibration, quality assurance, and quality control tests performed or relied upon in  
5 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
6 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,  
7 any exemplars of Covered Products tested.

8 **4.2.4 Multiple Notices.** If Settling Defendant has received more than four  
9 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever  
10 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
11 Consent Judgment. For purposes of determining the number of Notices of Violation  
12 pursuant to this Section 4.2.4, the following shall be excluded:

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

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

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

24 **4.3.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
25 Election shall include all then-available documentary evidence regarding the alleged  
26 violation, including any test data. Within 30 days the parties shall meet and confer to  
27 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
28 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling

1 Defendant withdraws its Notice of Election to contest the Notice of Violation before any  
2 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
3 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion  
4 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-  
5 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or  
6 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or  
7 other data regarding the alleged violation, it shall promptly provide all such data or  
8 information to the other Party.

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

20           **4.3.3 Limitations in Non-Contested Matters.**

21           (a) If it elects not to contest a Notice of Violation before any motion  
22 concerning the violation(s) at issue has been filed, the monetary liability of Settling  
23 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section  
24 4.3.3, if any.

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

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

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

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

17 **4.4 Additional Enforcement for Noncompliant Non-Covered Products.** If  
18 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a  
19 Fashion Accessory that is not a Covered Product, and that contains Lead in an amount that  
20 exceeds any of the applicable Lead Limits (“Noncompliant Non-Covered Product”), then prior to  
21 CEH serving a 60-Day Notice under Proposition 65 on Settling Defendant, CEH shall provide  
22 notice to Settling Defendant pursuant to this Section 4.4.

23 4.4.1 The notice shall contain the information required for a Notice of Violation  
24 in Section 4.2. If the information is insufficient to allow Settling Defendant to identify the  
25 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
26 further identifying information for the Noncompliant Non-Covered Product that is  
27 reasonably available to it.  
28



1           4.4.2 Within 30 days of receiving a notice pursuant to Section 4.4, or of any  
2 requested further information sufficient to identify the Noncompliant Non-Covered  
3 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.  
4 The Notice of Election shall:

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

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

11                   (c) Include either: (i) a statement that Settling Defendant elects not to  
12 proceed under this Section 4.4, in which case CEH may take further action including  
13 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that Settling Defendant  
14 elects to proceed under this Section 4.4, with a description of corrective action that meets  
15 the conditions of Section 4.3.2., and a contribution to the Fashion Accessory Testing Fund  
16 in the amount required under Section 4.4.6, or (iii) a statement that Settling Defendant  
17 contends that the Noncompliant Non-Covered Product is released from liability by a  
18 Qualified Settlement under Section 4.4.4 along with a copy of such Qualified Settlement.

19           4.4.3 A party's disclosure pursuant to this Section 4.4 of any (i) test reports, (ii)  
20 confidential business information, or (iii) other information that may be subject to a claim  
21 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
22 or confidentiality, provided that the Party disclosing such information shall clearly  
23 designate it as confidential. Any Party receiving information designated as confidential  
24 pursuant to this Section 4.4.3 shall not disclose such information to any unrelated person  
25 or entity, and shall use such information solely for purposes of resolving any disputes  
26 under this Consent Judgment.

27           4.4.4 No further action is required of Settling Defendant under this Consent  
28 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability

1 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
2 Covered Product by the terms of a separate settlement agreement or consent judgment  
3 entered into by CEH under Health & Safety Code § 25249.7 (“Qualified Settlement”).

4 4.4.5 If Settling Defendant elects not to proceed under Section 4.4, then neither  
5 Settling Defendant nor CEH has any further duty under this Section 4.4 and either may  
6 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
7 elects to proceed under Section 4.4.2(c)(ii), then compliance with that Section shall  
8 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

9 4.4.6 If Settling Defendant elects to proceed under this Section 4.4 and is not  
10 relieved of liability under Section 4.4.4, Settling Defendant shall make a contribution to  
11 the Fashion Accessory Testing Fund in the amounts that follow unless one of the  
12 provisions of Section 4.3.3(c) applies, in which case the applicable amount specified in  
13 Section 4.3.3(c) if any, shall instead apply. The contribution shall be \$5,000 if at least one  
14 of the person(s) identified by Settling Defendant pursuant to Section 4.4.2 (i) is a person  
15 in the course of doing business as defined in Health & Safety Code § 25249.11(b) and (ii)  
16 has a principal place of business located within the United States, and \$10,000 for all  
17 other notices.

18 4.4.7 If Settling Defendant makes a contribution pursuant to this Section and at a  
19 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
20 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
21 Defendant shall be entitled to a refund of the lesser amount of its contribution or the  
22 settlement amount paid by such Vendor. If the settlement or consent judgment between  
23 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
24 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
25 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor’s  
26 settlement payment.

27 4.4.8 Any notice served by CEH pursuant to this Section 4.4 shall not be  
28 considered a Notice of Violation for purposes of Section 4.2. Nothing in this Section 4.4

1 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
2 than Settling Defendant.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent  
5 Judgment, Settling Defendant shall pay the total sum of \$41,250 as a settlement payment. The  
6 total settlement amount for Settling Defendant shall be paid in three separate checks delivered to  
7 the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San  
8 Francisco, California 94117, and made payable and allocated as follows:

9 5.1.1 Settling Defendant shall pay the sum of \$5,430 as a civil penalty pursuant  
10 to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with  
11 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of  
12 Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the  
13 Center For Environmental Health.

14 5.1.2 Settling Defendant shall pay the sum of \$8,150 as a payment in lieu of civil  
15 penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of  
16 Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and  
17 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part  
18 of its Community Environmental Action and Justice Fund, CEH will use four percent of such  
19 funds to award grants to grassroots environmental justice groups working to educate and protect  
20 people from exposures to toxic chemicals. The method of selection of such groups can be found  
21 at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be  
22 made payable to the Center For Environmental Health.

23 5.1.3 Settling Defendant shall also separately pay the sum of \$27,670 to the  
24 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and  
25 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington  
26 Law Group.

27 **6. MODIFICATION**

28 6.1 **Written Consent.** This Consent Judgment may be modified from time to

1 time by express written agreement of the Parties with the approval of the Court, or by an order of  
2 this Court upon motion and in accordance with law.

3 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
4 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
5 modify the Consent Judgment.

6 **7. CLAIMS COVERED AND RELEASED**

7 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
8 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
9 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
10 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell  
11 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
12 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)  
13 of any violation of Proposition 65 that was or could have been asserted in the Complaint against  
14 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure  
15 to warn about alleged exposure to Lead contained in Covered Products that were sold by Settling  
16 Defendant prior to the Effective Date.

17 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
18 constitutes compliance with Proposition 65 with respect to Lead in Covered Products sold by  
19 Settling Defendant.

20 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
21 action under Proposition 65 against any person other than Settling Defendant, Defendant  
22 Releasees, or Downstream Defendant Releasees.

23 **8. NOTICE**

24 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
25 notice shall be sent by first class and electronic mail to:  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Eric Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
esomers@lexlawgroup.com

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

Susan Buckna  
Vice President, Associate General Counsel  
ShopKo Stores Operating Co., LLC  
700 Pilgrim Way  
P.O. Box 19060  
Green Bay, WI 54307-9060  
susan.buckna@shopko.com

With a copy to:

Jeffrey B. Margulies  
Norton Rose Fulbright  
555 South Flower Street, 41st Floor  
Los Angeles, CA 90071  
jeff.margulies@nortonrosefulbright.com

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

**9. COURT APPROVAL**

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

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

**10. ATTORNEYS' FEES**

10.1 Should CEH prevail on any motion, application for an order to show cause or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should

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

7 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
8 its own attorneys' fees and costs.

9 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
10 sanctions pursuant to law.

11 **11. TERMINATION**

12 11.1 This Consent Judgment shall be terminable by CEH or Settling Defendant at  
13 any time after January 1, 2019, upon the provision of 30 days advanced written notice; such  
14 termination shall be effective upon the subsequent filing of a notice of termination with Superior  
15 Court of Alameda County.

16 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall  
17 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
18 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
19 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
20 7.1 and 12.1 shall survive any termination.

21 **12. OTHER TERMS**

22 12.1 The terms of this Consent Judgment shall be governed by the laws of the State  
23 of California.

24 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
25 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
26 assigns of any of them.

27 12.3 This Consent Judgment contains the sole and entire agreement and  
28 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior

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

11           12.4           Nothing in this Consent Judgment shall release, or in any way affect any rights  
12 that Settling Defendant might have against any other party, whether or not that party is a Settling  
13 Defendant.

14           12.5           This Court shall retain jurisdiction of this matter to implement or modify the  
15 Consent Judgment.

16           12.6           The stipulations to this Consent Judgment may be executed in counterparts  
17 and by means of facsimile or portable document format (pdf), which taken together shall be  
18 deemed to constitute one document.

19           12.7           Each signatory to this Consent Judgment certifies that he or she is fully  
20 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
21 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
22 Party.

23           12.8           The Parties, including their counsel, have participated in the preparation of  
24 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
25 This Consent Judgment was subject to revision and modification by the Parties and has been  
26 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
27 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
28 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this

1 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
2 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
3 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.  
4

5 **IT IS SO STIPULATED:**

6 **CENTER FOR ENVIRONMENTAL HEALTH**

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23


24

25

26

27

28

  
\_\_\_\_\_  
Signature

*CONNIE PIZANO*  
\_\_\_\_\_  
Printed Name

*ASSOCIATE DIRECTOR*  
\_\_\_\_\_  
Title

**SHOPKO STORES OPERATING CO., LLC**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title



1 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
2 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
3 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.  
4

5 **IT IS SO STIPULATED:**

6 **CENTER FOR ENVIRONMENTAL HEALTH**

7  
8  
9 \_\_\_\_\_  
Signature

10  
11 \_\_\_\_\_  
Printed Name

12  
13 \_\_\_\_\_  
Title

14  
15  
16  
17 **SHOPKO STORES OPERATING CO., LLC**

18  
19  
20   
Signature

21  
22   
Printed Name

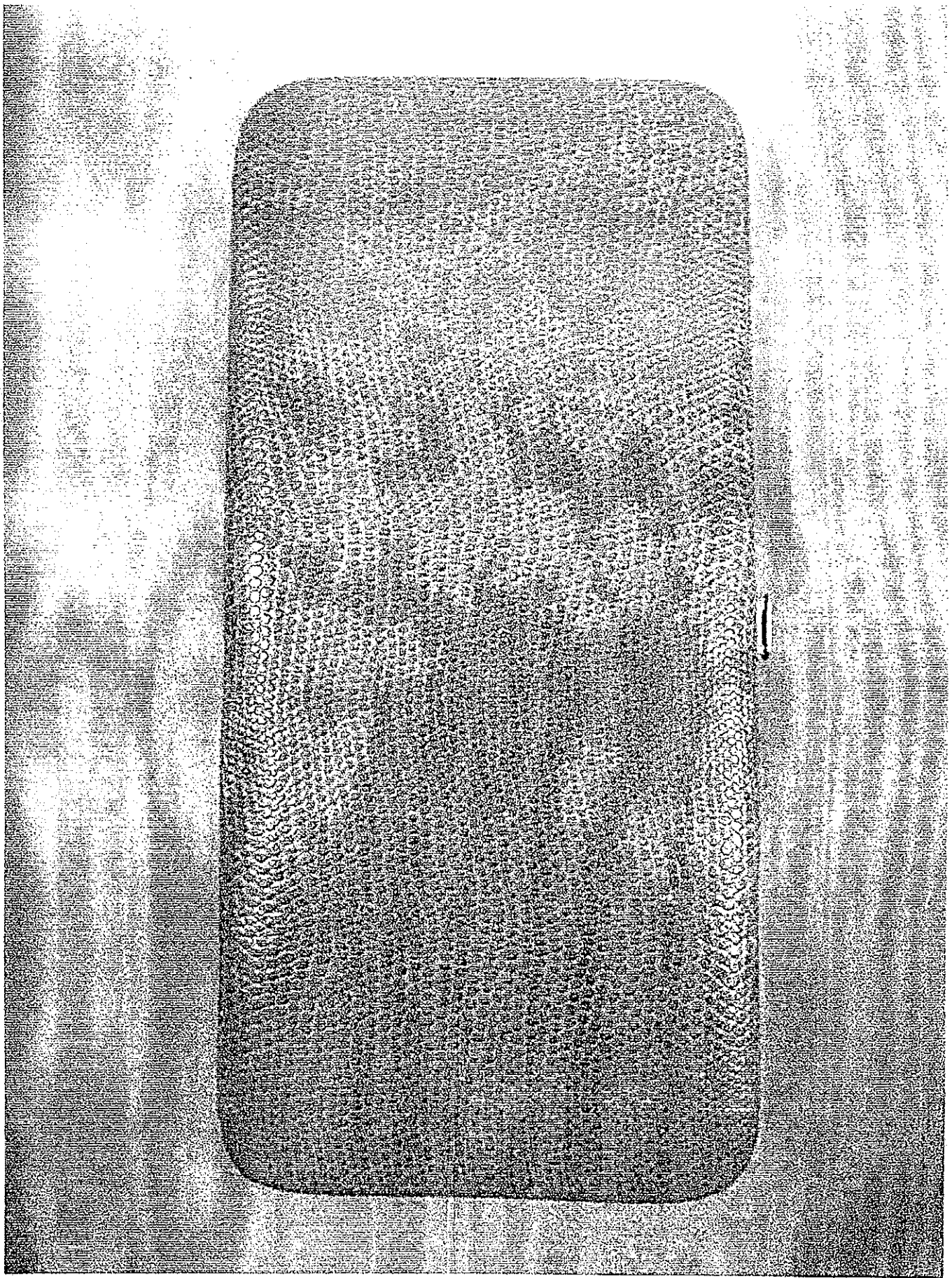
23  
24   
Title

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED:**

Dated: _____, 2014	<hr/> The Honorable Wynne Carvill Judge of the Superior Court
--------------------	--

# **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](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