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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 15-765590
)
 Plaintiff,) **[PROPOSED] CONSENT**
) **JUDGMENT AS TO ESQUIRE**
 v.) **FOOTWEAR LLC**
)
 CHARMING CHARLIE LLC, *et al.*,)
)
 Defendants.)
)

1. DEFINITIONS

- 1.1 “Covered Products” means all footwear products Manufactured, distributed, sold or offered for sale by Settling Defendant.
- 1.2 “Effective Date” means the date on which this Consent Judgment is entered by the Court.
- 1.3 “Lead Limits” means the maximum concentrations of lead and lead compounds (“Lead”) by weight specified in Section 3.2.
- 1.4 “Manufactured” and “Manufactures” means to manufacture, produce, or assemble.

1 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,
2 with or without a suspension of finely divided coloring matter, which changes to a solid film
3 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.
4 This term does not include printing inks or those materials which actually become a part of the
5 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to
6 the substrate, such as by electroplating or ceramic glazing.

7 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or
8 supplies a Covered Product to Settling Defendant.

9 **2. INTRODUCTION**

10 2.1 The parties to this Consent Judgment (“Parties”) are the Center for
11 Environmental Health (“CEH”) and Defendant Esquire Footwear LLC (“Settling Defendant”).

12 2.2 On October 31, 2014, CEH served a 60-Day Notice of Violation under
13 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
14 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney
15 General, the District Attorneys of every County in the State of California, and the City Attorneys
16 for every City in the State of California with a population greater than 750,000. The Notice
17 alleges that Settling Defendant violated Proposition 65 by exposing persons to Lead contained in
18 footwear without first providing a clear and reasonable Proposition 65 warning.

19 2.3 On April 8, 2015, CEH filed the action *Center for Environmental Health v.*
20 *Charming Charlie LLC, et al.*, Case No. RG 15-765590, in the Superior Court of California for
21 Alameda County, naming Settling Defendant as a defendant.

22 2.4 Settling Defendant manufactures, distributes and/or offers for sale Covered
23 Products in the State of California or has done so in the past.

24 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
25 Court has jurisdiction over the allegations of violations contained in the operative Complaint
26 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
27 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,
28 and that this Court has jurisdiction to enter this Consent Judgment.

1 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
2 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
3 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
5 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
6 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
7 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
8 this action.

9 **3. INJUNCTIVE RELIEF**

10 3.1 **Specification Compliance Date.** To the extent it has not already done so, no
11 more than thirty (30) days after the Effective Date, Settling Defendant shall provide the Lead
12 Limits to its Vendors of Covered Products and shall instruct each Vendor to use reasonable
13 efforts to provide Covered Products that comply with the Lead Limits on a nationwide basis.

14 3.2 **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall
15 not sell any Covered Product that will be sold to California consumers that contains a material or
16 is made of a component that exceeds the following Lead Limits:

17 3.2.1 Paint or other Surface Coatings: 90 parts per million (“ppm”).

18 3.2.2 Polyvinyl chloride (“PVC”): 200 ppm.

19 3.2.3 All other materials or components other than cubic zirconia (sometimes
20 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

21 3.3 **Action Regarding Specific Products.**

22 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling in
23 California the following products: (i) the Maui Stunner Sandals in Coral, Item No.
24 176184; (ii) the Wet Seal Patricia Patent Braided Sandals in Coral, SKU No.
25 478322800002; (iii) the Wet Seal Solid T-Strap Braided Sandals in Yellow, SKU No.
26 478321600009; (iv) the Francesca’s Coachella Woven Multi Yarn Bootie in Cognac, SKU
27 No. 459403; (v) the Wet Seal Strappy Braided Faux Suede Sandals in Brown, SKU No.
28 482446600003, Item No. 49244595; and (vi) the Wet Seal Crochet & Buckle Short Boots

1 in Brown; SKU No. 495441500002, Item No. 49544091 (the “Section 3.3 Products”). On
2 or before the Effective Date, Settling Defendant shall also: (i) cease shipping the Section
3 3.3 Products to any of its stores and/or customers that resell the Section 3.3 Products in
4 California, and (ii) send instructions to its stores and/or customers that resell the Section
5 3.3 Products in California instructing them either to: (a) return all of the Section 3.3
6 Products to Settling Defendant for destruction; or (b) directly destroy the Section 3.3
7 Products.

8 3.3.2 Any destruction of the Section 3.3 Products shall be in compliance with all
9 applicable laws.

10 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
11 provide CEH with written certification from Settling Defendant confirming compliance
12 with the requirements of this Section 3.3.

13 3.4 Notwithstanding anything to the contrary, a Covered Product purchased,
14 imported or manufactured by Settling Defendant prior to the Effective Date may, as an alternative
15 to meeting the Lead Limits be sold or offered for sale to California consumers so long as such
16 Covered Product is accompanied by a Clear and Reasonable Warning that complies with the
17 provisions of Section 3.4.1. A Clear and Reasonable Warning may only be provided for a
18 Covered Products if Settling Defendant reasonably believes that the Covered Product does not
19 meet the Lead Limits. During the period for which any warnings are implemented, Settling
20 Defendant shall utilize good faith efforts to achieve reformulation as soon as possible.

21 3.4.1 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
22 Consent Judgment shall state:

23 **WARNING:** This product contains lead, a chemical known to the State of
24 California to cause cancer and birth defects or other reproductive harm.

25 This statement shall be prominently displayed on the Covered Product, on the packaging
26 of the Covered Product, or on a placard or sign provided that the statement is displayed
27 with such conspicuousness, as compared with other words, statements or designs as to
28 render it likely to be read and understood by an ordinary individual prior to sale. If the

1 statement is displayed on a placard or sign where the Covered Product is offered for sale,
2 the warning placard or sign must enable an ordinary individual to easily determine which
3 specific Covered Products the warning applies to, and to differentiate between that
4 Covered Product and other products to which the warning statement does not apply. For
5 internet, catalog or any other sale where the consumer is not physically present, the
6 warning statement shall be displayed in such a manner that it is likely to be read and
7 understood by an ordinary individual prior to the authorization of or actual payment. For
8 internet sales, the warning statement shall be displayed before a consumer commits to
9 purchasing the Covered Product and without the need for the consumer to follow any
10 additional hyperlinks beyond those required as part of the ordinary purchasing process.

11 **4. ENFORCEMENT**

12 4.1 Any Party may, after meeting and conferring, by motion or application for an
13 order to show cause before this Court, enforce the terms and conditions contained in this Consent
14 Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment
15 shall be brought exclusively pursuant to Sections 4.2 through 4.3.

16 4.2 **Notice of Violation.** CEH may seek to enforce the requirements of Section
17 3.2 by issuing a Notice of Violation pursuant to this Section 4.2.

18 4.2.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling
19 Defendant within 45 days of the date the alleged violation(s) was or were observed,
20 provided, however, that: (i) CEH may have up to an additional 45 days to provide Settling
21 Defendant with the test data required by Section 4.2.2(d) below if it has not yet obtained it
22 from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a
23 Covered Product so long as: (a) the identity of the supplier cannot be discerned from the
24 labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served
25 within 45 days of the date the supplier is identified by CEH.

26 4.2.2 **Supporting Documentation.** The Notice of Violation shall, at a
27 minimum, set forth for each Covered Product: (a) the date(s) the alleged violation(s) was
28 observed, (b) the location at which the Covered Product was offered for sale, (c) a

1 description of the Covered Product giving rise to the alleged violation, and of each
2 material or component that is alleged not to comply with the Lead Limits, including a
3 picture of the Covered Product and all identifying information on tags and labels, and (d)
4 all test data obtained by CEH regarding the Covered Product and related supporting
5 documentation, including all laboratory reports, quality assurance reports and quality
6 control reports associated with testing of the Covered Products. Such Notice of Violation
7 shall be based at least in part upon total acid digest testing performed by an independent
8 accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by
9 themselves sufficient to support a Notice of Violation, although any such testing may be
10 used as additional support for a Notice. The Parties agree that the sample Notice of
11 Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of
12 subsections (c) and (d) of this Section 4.2.2.

13 **4.2.3 Additional Documentation.** CEH shall promptly make available for
14 inspection and/or copying upon request by and at the expense of Settling Defendant, all
15 supporting documentation related to the testing of the Covered Products and associated
16 quality control samples, including chain of custody records, all laboratory logbook entries
17 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts
18 from all analytical instruments relating to the testing of Covered Product samples and any
19 and all calibration, quality assurance, and quality control tests performed or relied upon in
20 conjunction with the testing of the Covered Products, obtained by or available to CEH that
21 pertains to the Covered Product's alleged noncompliance with Section 3 and, if available,
22 any exemplars of Covered Products tested.

23 **4.2.4 Multiple Notices.** If Settling Defendant has received more than four
24 Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever
25 fines, costs, penalties, or remedies are provided by law for failure to comply with the
26 Consent Judgment. For purposes of determining the number of Notices of Violation
27 pursuant to this Section 4.2.4, the following shall be excluded:

- 28 (a) Multiple notices identifying Covered Products Manufactured for or

1 sold to Settling Defendant from the same Vendor; and

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

4 4.3 **Notice of Election.** Within thirty (30) days of receiving a Notice of Violation
5 pursuant to Section 4.2, including the test data required pursuant to 4.2.2(d), Settling Defendant
6 shall provide written notice to CEH stating whether it elects to contest the allegations contained in
7 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be
8 deemed an election to contest the Notice of Violation. Any contributions to the Fashion
9 Accessory Testing Fund required under this Section 4.3 shall be made payable to The Center for
10 Environmental Health and included with Settling Defendant’s Notice of Election.

11 4.3.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of
12 Election shall include all then-available documentary evidence regarding the alleged
13 violation, including any test data. Within thirty (30) days the parties shall meet and confer
14 to attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
15 CEH may file an enforcement motion or application pursuant to Section 4.1. If Settling
16 Defendant withdraws its Notice of Election to contest the Notice of Violation before any
17 motion concerning the violations alleged in the Notice of Violation is filed pursuant to
18 Section 4.1, Settling Defendant shall make a contribution to the Proposition 65 Fashion
19 Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-
20 monetary provisions of Section 4.3.2. If, at any time prior to reaching an agreement or
21 obtaining a decision from the Court, CEH or Settling Defendant acquires additional test or
22 other data regarding the alleged violation, it shall promptly provide all such data or
23 information to the other Party.

24 4.3.2 **Non-Contested Notices.** If the Notice of Violation is not contested,
25 Settling Defendant shall include in its Notice of Election a detailed description of
26 corrective action that it has undertaken or proposes to undertake to address the alleged
27 violation. Any such correction shall, at a minimum, provide reasonable assurance that the
28 Covered Product will no longer be offered by Settling Defendant or its customers for sale

1 in California. If there is a dispute over the sufficiency of the proposed corrective action or
2 its implementation, CEH shall promptly notify Settling Defendant and the Parties shall
3 meet and confer before seeking the intervention of the Court to resolve the dispute. In
4 addition to the corrective action, Settling Defendant shall make a contribution to the
5 Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of
6 Section 4.3.3 applies.

7 **4.3.3 Limitations in Non-Contested Matters.**

8 (a) If it elects not to contest a Notice of Violation before any motion
9 concerning the violation(s) at issue has been filed, the monetary liability of Settling
10 Defendant shall be limited to the contributions required by Section 4.3.2 and this Section
11 4.3.3, if any.

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

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

17 (i) One thousand seven hundred fifty dollars (\$1,750) if Settling
18 Defendant, prior to receiving and accepting for distribution or sale the
19 Covered Product identified in the Notice of Violation, obtained test results
20 demonstrating that the non-compliant materials or components in the
21 Covered Product identified in the Notice of Violation complied with the
22 applicable Lead Limits, and further provided that such test results meet the
23 same quality criteria to support a Notice of Violation as set forth in Section
24 4.2.2 and that the testing was performed within two years prior to the date
25 of the sales transaction on which the Notice of Violation is based. Settling
26 Defendant shall provide copies of such test results and supporting
27 documentation to CEH with its Notice of Election; or
28

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

5 **5. PAYMENTS**

6 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum of
7 \$30,000 as a settlement payment. This total payment shall be made in two installments according
8 to the following schedule: (a) on or before May 1, 2016, Settling Defendant shall pay \$15,000 as
9 a settlement payment; and (b) on or before August 1, 2016, Settling Defendant shall pay \$15,000
10 as a settlement payment. Each of these payments shall be paid in three separate checks delivered
11 to the address set forth in Section 8.1 and shall be made payable and allocated as set forth below.
12 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a
13 stipulated late payment fee of \$100 per day, which amount shall be recoverable by CEH, together
14 with its reasonable attorneys' fees and costs, in an enforcement proceeding brought pursuant to
15 Section 4. The total settlement amount for Settling Defendant shall be made payable and
16 allocated as follows:

17 5.1.1 Settling Defendant shall pay the total sum of \$3,900 as a civil penalty
18 pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in
19 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of
20 California's Office of Environmental Health Hazard Assessment). \$1,950 of this amount shall be
21 included with the first payment due on May 1, 2016 and \$1,950 of this amount shall be included
22 with the second payment due on August 1, 2016. Each penalty check shall be made payable to
23 the Center for Environmental Health.

24 5.1.2 Settling Defendant shall pay the total sum of \$5,900 as a payment in lieu of
25 civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
26 Regulations, Title 11, § 3203(b). CEH shall use such funds to continue its work educating and
27 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
28 of its Community Environmental Action and Justice Fund, CEH will use four percent of such

1 funds to award grants to grassroots environmental justice groups working to educate and protect
2 people from exposures to toxic chemicals. The method of selection of such groups can be found
3 at the CEH web site at www.ceh.org/justicefund. \$2,950 of this amount shall be included with
4 the first payment due on May 1, 2016 and \$2,950 of this amount shall be included with the
5 second payment due on August 1, 2016. Each payment in lieu of penalty check shall be made
6 payable to the Center for Environmental Health.

7 5.1.3 Settling Defendant shall also separately pay the total sum of \$20,200 to the
8 Lexington Law Group as reimbursement of a portion of CEH's reasonable attorneys' fees and
9 costs. \$10,100 of this amount shall be included with the first payment due on May 1, 2016 and
10 \$10,100 of this amount shall be included with the second payment due on August 1, 2016. Each
11 check issued 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 Covered Products that were sold by Settling

1 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 Covered Products sold by
4 Settling Defendant.

5 7.3 This Consent Judgment resolves all monetary claims CEH has asserted against
6 Settling Defendant and any of its retail customers under Fashion Accessory Testing Fund Notices
7 of Violation issued or to be issued by CEH that are related to the Section 3.3 Products.

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 Jack Margareten
19 Esquire Footwear LLC
20 385 5th Avenue, 2nd Floor
21 New York, NY 10016
22 jmargareten@esquirefootwear.com

23 with a copy to
24 Wachtel Missry LLP
25 885 Second Avenue, 47th Floor
26 New York, New York 10017
27 Attention: Mike Hassan, Esq.
28 hassan@wmlp.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

1 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
2 shall support entry of this Consent Judgment.

3 9.2 If this Consent Judgment is not entered by the Court within one (1) year after
4 it is fully executed, it shall be of no force or effect and shall never be introduced into evidence or
5 otherwise used in any proceeding for any purpose other than to allow the Court to determine if
6 there was a material breach of Section 9.1.

7 **10. ATTORNEYS' FEES**

8 10.1 Should CEH prevail on any motion, application for an order to show cause or
9 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
10 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
11 Settling Defendant prevail on any motion application for an order to show cause or other
12 proceeding, Settling Defendant shall be awarded its reasonable attorneys' fees and costs as a
13 result of such motion or application upon a finding by the Court that CEH's prosecution of the
14 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
15 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
16 1986, Code of Civil Procedure §§ 2016, *et seq.*

17 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
18 its own attorneys' fees and costs.

19 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
20 sanctions pursuant to law.

21 **11. TERMINATION**

22 11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
23 at any time after January 1, 2020, upon the provision of 30 days advanced written notice; such
24 termination shall be effective upon the subsequent filing of a notice of termination with Superior
25 Court of Alameda County.

26 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
27 be of no further force or effect as to the terminated parties; provided, however that if CEH is the
28 terminating Party, the provisions of Sections 5 and 7 shall survive any termination and provided

1 further that if Settling Defendant is the terminating Party, the provisions of Sections 5 and 7.1
2 shall survive any termination.

3 **12. OTHER TERMS**

4 12.1 The terms of this Consent Judgment shall be governed by the laws of the State
5 of California.

6 12.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
7 Defendant, and the successors or assigns of any of them.

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

20 12.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
21 that Settling Defendant might have against any other party, whether or not that party is a Settling
22 Defendant.

23 12.5 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 12.6 The stipulations to this Consent Judgment may be executed in counterparts
26 and by means of facsimile or portable document format (pdf), which taken together shall be
27 deemed to constitute one document.

28 12.7 Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
2 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
3 Party.

4 12.8 The Parties, including their counsel, have participated in the preparation of
5 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
6 This Consent Judgment was subject to revision and modification by the Parties and has been
7 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
8 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
9 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
10 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
11 be resolved against the drafting Party should not be employed in the interpretation of this Consent
12 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

13 **IT IS SO ORDERED:**

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Dated: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

ESQUIRE FOOTWEAR LLC

Signature

Printed Name

Title

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IT IS SO STIPULATED:


CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

ESQUIRE FOOTWEAR LLC



Signature

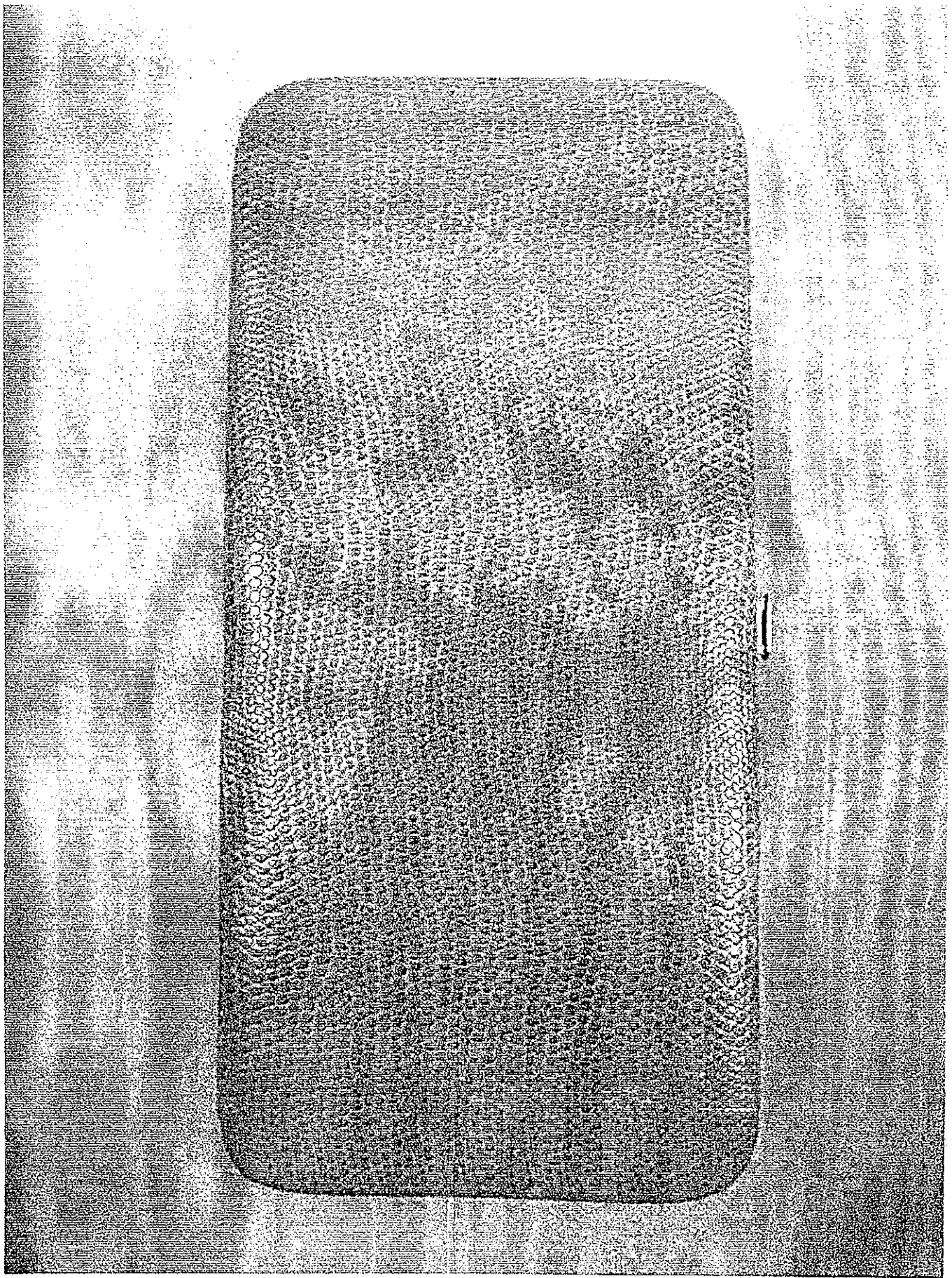


Printed Name



Title

Exhibit A



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THE

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