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ALAMEDA COUNTY

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K. McCoy, Exec. Off./Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, )

Plaintiff, )

v. )

LULU NYC LLC, et al., )

Defendants. )

Lead Case No. RG 09-459448

(Consolidated with Case Nos. RG 10-494289, RG 10-494513, RG 10-494517, RG 11-598595, RG 11-598596, and RG 11-603764)

**[PROPOSED] CONSENT  
JUDGMENT AS TO IRON FIST  
INTERNATIONAL, INC.**

AND CONSOLIDATED CASES.

**1. DEFINITIONS**

1.1 "Accessible Component" means a component of a Covered Product that could be touched by a person during normal or reasonably foreseeable use.

1.2 "Covered Products" means Fashion Accessories that are (a) Manufactured by Settling Defendant, or (b) distributed for resale or sold for resale by Settling Defendant, or (c) sold or offered for retail sale as a Private Label Covered Product by Settling Defendant where Settling Defendant 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           1.3           “Effective Date” means the date on which this Consent Judgment is entered by  
2 the Court.

3           1.4           “Fashion Accessories” means wallets, handbags, purses, and clutches.

4           1.5           “Lead Limits” means the maximum concentrations of lead and lead  
5 compounds (“Lead”) by weight specified in Section 3.2.

6           1.6           “Manufactured” and “Manufactures” have the meaning defined in Section  
7 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],<sup>1</sup> as amended  
8 from time to time.

9           1.7           “Private Label Covered Product” means a Fashion Accessory that bears a  
10 private label where (i) the product (or its container) is labeled with the brand or trademark of a  
11 person other than a manufacturer of the product, (ii) the person with whose brand or trademark  
12 the product (or container) is labeled has authorized or caused the product to be so labeled, and  
13 (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

14           1.8           “Private Labeler” means an owner or licensee of a brand or trademark on the  
15 label of a consumer product which bears a private label; provided, however, that Settling  
16 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
17 visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third party’s  
18 brand or trademark.

19           1.9           “Paint or other Surface Coatings” has the meaning defined in 16 C.F.R.  
20 § 1303.2(b)<sup>2</sup>, as amended from time to time.

21           1.10          “Vendor” means a person or entity that Manufactures, distributes, or supplies  
22 a Fashion Accessory to Settling Defendant.

23 \_\_\_\_\_  
24 <sup>1</sup> As of May 1, 2011, the term “Manufactured” and “Manufactures” means to manufacture,  
produce, or assemble.

25 <sup>2</sup> As of May 1, 2011, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other  
26 material, with or without a suspension of finely divided coloring matter, which changes to a solid  
27 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other  
28 surface. This term does not include printing inks or those materials which actually become a part  
of the substrate, such as the pigment in a plastic article, or those materials which are actually  
bonded to the substrate, such as by electroplating or ceramic glazing.

1     **2.     INTRODUCTION**

2             2.1           The parties to this Consent Judgment (“Parties”) are the Center for  
3 Environmental Health (“CEH”) and defendant Iron Fist International, Inc. (“Settling Defendant”).

4             2.2           On August 24, 2011, CEH served a 60-Day Notice of Violation on Settling  
5 Defendant under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,  
6 California Health & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated  
7 Proposition 65 by exposing persons to Lead contained in wallets, handbags, purses, and clutches,  
8 without first providing a clear and reasonable Proposition 65 warning.

9             2.3           Settling Defendant offers Fashion Accessories for sale in the State of  
10 California or has done so in the past.

11            2.4           On June 24, 2009, CEH filed the action entitled *CEH v. Lulu NYC LLC, et al.*,  
12 Case No. RG 09-459448, in the Superior Court of California for Alameda County, alleging  
13 Proposition 65 violations as to wallets, handbags, purses and clutches.

14            2.5           On October 5, 2011, CEH filed an action entitled *CEH v. Bioworld*  
15 *Merchandising, Inc., et al.*, Case No. RG11598596, in the Superior Court of California for  
16 Alameda County, alleging violation of Proposition 65 with regard to the “manufacture,  
17 distribution, sale and/or use” of “wallets, handbags, purses and clutches made with leather, vinyl  
18 or imitation leather materials” (the “*Bioworld* Action”). On November 2, 2011, CEH filed a Doe  
19 amendment adding Settling Defendant as a defendant in the *Bioworld* action.

20            2.6           On or about February 8, the *Bioworld* Action (among other cases) was  
21 consolidated with the *Lulu* Action for pre-trial purposes under Lead Case No. RG 09-459448.

22            2.7           For purposes of this Consent Judgment only, the Parties stipulate that this  
23 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
24 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
25 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
26 and that this Court has jurisdiction to enter this Consent Judgment.

27            2.8           Nothing in this Consent Judgment is or shall be construed as an admission by  
28 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance

1 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
2 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
3 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
4 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
5 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
6 this action.

7 **3. INJUNCTIVE RELIEF**

8 3.1 **Specification Compliance Date.** To the extent it has not already done so, no  
9 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
10 current Vendors of Fashion Accessories and shall instruct each Vendor to use reasonable efforts  
11 to provide Fashion Accessories that comply with the Lead Limits on a nationwide basis.

12 3.2 **Lead Limits.**

13 Subject to Section 3.4 below, commencing on January 1, 2013, Settling Defendant  
14 shall not purchase or Manufacture any Covered Product that will be sold or offered for sale to  
15 California consumers that exceeds the following Lead Limits:

16 3.2.1 Paint or other Surface Coatings on Accessible Components: 90 parts per  
17 million (“ppm”).

18 3.2.2 Leather (including composited leather) Accessible Components: 300 ppm.

19 3.2.3 Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

20 3.2.4 All other Accessible Components other than cubic zirconia (sometimes  
21 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

22 3.3 **Retail Compliance.** Subject to Section 3.4 below, commencing on May 1,  
23 2013 (the “Final Retail Compliance Date”), Settling Defendant shall not sell or offer for sale in  
24 California any Covered Product, as specifically defined herein, that exceeds the Lead Limits  
25 specified in Section 3.2. For purposes of this Section 3.3, when Settling Defendant’s direct  
26 customer, if any, sells or offers for sale to California consumers a Covered Product after the  
27 applicable Final Retail Compliance Date, Settling Defendant is deemed to “offer for sale in  
28 California” that Covered Product. For purposes of this Section 3.3, Settling Defendant shall not

1 be deemed to “offer for sale in California” a Covered Product when its direct customer is not an  
2 entity in the business of marketing, promoting, selling or distributing consumer products

3           **3.4 Warnings.**

4           **3.4.1 Interim Warning Option.** A Covered Product purchased or manufactured  
5 by Settling Defendant before January 1, 2013, may, as an alternative to meeting the Lead  
6 Limits, be sold or offered for retail sale in California after the Final Retail Compliance  
7 Date, with a Clear and Reasonable Warning that complies with the provisions of Section  
8 3.4.2.

9           **3.4.2 Proposition 65 Warning.** A Clear and Reasonable Warning under this  
10 Consent Judgment shall state either:

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

14           Or

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

18           Or

19           PROPOSITION 65 WARNING: This product contains lead and other chemicals  
20 that are known to the State of California to cause cancer and birth defects and  
21 other reproductive harm.

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

1 shall be displayed in such a manner that it is likely to be read and understood prior to the  
2 authorization of or actual payment.

3 **3.5 Action Regarding Specific Products.**

4 3.5.1 On or before the Effective Date, Settling Defendant shall cease selling the  
5 Iron Fist Yellow Polka Dot Party Wallet with Black Bow, Style No. IFL0746WEB, as  
6 identified in CEH's 60-day pre-suit notice (the "Section 3.4 Product"). On or before the  
7 Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.4 Product to  
8 any of its customers that resell the Section 3.4 Product in California, and (ii) send  
9 instructions to its direct customers that resell the Section 3.4 Product in California  
10 instructing them to cease offering the Section 3.4 Product for sale in California.

11 3.5.2 If Settling Defendant has not complied with Section 3.4.1 prior to  
12 executing this Consent Judgment, it shall instruct its California stores and/or customers  
13 that resell the Section 3.4 Product either to (i) return all the Section 3.4 Products to the  
14 Settling Defendant for destruction; or (ii) directly destroy the Section 3.4 Products.

15 3.5.3 Any destruction of Section 3.4 Products shall be in compliance with all  
16 applicable laws.

17 3.5.4 Within sixty days of the Effective Date, Settling Defendant shall provide  
18 CEH with written certification from Settling Defendant confirming compliance with the  
19 requirements of this Section 3.4.

20 **4. ENFORCEMENT**

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

25 4.2 Within 30 days after the Effective Date, Settling Defendant shall notify CEH  
26 of a means sufficient to allow CEH to identify any Covered Products currently supplied or offered  
27 by Settling Defendant as of that date, for example, a unique brand name or characteristic system  
28 of product numbering or labeling. Information provided to CEH pursuant to this Section 4.2 may

1 be designated by Settling Defendant as competitively sensitive confidential business information,  
2 and if so designated shall not be disclosed to any person without the written permission of  
3 Settling Defendant. Any motions or pleadings or any other court filings that may reveal  
4 information designated as competitively sensitive confidential business information pursuant to  
5 this Section shall be submitted in accordance with California Rules of Court 8.46 and 2.550, *et*  
6 *seq.*

7 4.3 **Notice of Violation.** CEH may seek to enforce the requirements of Sections  
8 3.2 or 3.3 by issuing a Notice of Violation pursuant to this Section 4.3.

9 4.3.1 **Service of Notice.** CEH shall serve the Notice of Violation on Settling  
10 Defendant within 45 days of the date the alleged violation(s) was or were observed,  
11 provided, however, that CEH may have up to an additional 45 days to provide Settling  
12 Defendant with the test data required by Section 4.3.2(d) below if it has not yet obtained it  
13 from its laboratory.

14 4.3.2 **Supporting Documentation.** The Notice of Violation shall, at a minimum,  
15 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
16 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
17 Covered Product giving rise to the alleged violation, and of each Accessible Component  
18 that is alleged not to comply with the Lead Limits, including a picture of the Covered  
19 Product and all identifying information on tags and labels, and (d) all test data obtained by  
20 CEH regarding the Covered Product and related supporting documentation, including all  
21 laboratory reports, quality assurance reports and quality control reports associated with  
22 testing of the Covered Products. Such Notice of Violation shall be based at least in part  
23 upon total acid digest testing performed by an independent accredited laboratory. Wipe,  
24 swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a  
25 Notice of Violation, although any such testing may be used as additional support for a  
26 Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A  
27 is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section  
28 4.3.2.

1           4.3.3 **Additional Documentation.** CEH shall promptly make available for  
2 inspection and/or copying upon request by and at the expense of Settling Defendant, all  
3 supporting documentation related to the testing of the Covered Products and associated  
4 quality control samples, including chain of custody records, all laboratory logbook entries  
5 for laboratory receiving, sample preparation, and instrumental analysis, and all printouts  
6 from all analytical instruments relating to the testing of Covered Product samples and any  
7 and all calibration, quality assurance, and quality control tests performed or relied upon in  
8 conjunction with the testing of the Covered Products, obtained by or available to CEH that  
9 pertains to the Covered Product’s alleged noncompliance with Section 3 and, if available,  
10 any exemplars of Covered Products tested.

11           4.3.4 **Multiple Notices.** If Settling Defendant has received more than four  
12 Notices of Violation in any 12-month period, at CEH’s option, CEH may seek whatever  
13 fines, costs, penalties, or remedies are provided by law for failure to comply with the  
14 Consent Judgment. For purposes of determining the number of Notices of Violation  
15 pursuant to this Section 4.3.4, the following shall be excluded:

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

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

20           4.4 **Notice of Election.** Within 30 days of receiving a Notice of Violation  
21 pursuant to Section 4.3, including the test data required pursuant to 4.3.2(d), Settling Defendant  
22 shall provide written notice to CEH stating whether it elects to contest the allegations contained in  
23 the Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election shall be  
24 deemed an election to contest the Notice of Violation.

25           4.4.1 **Contested Notices.** If the Notice of Violation is contested, the Notice of  
26 Election shall include all then-available test data regarding the alleged violation. Within  
27 30 days the parties shall meet and confer to attempt to resolve their dispute. Should such  
28 attempts at meeting and conferring fail, CEH may file an enforcement motion or



1 application pursuant to Section 4.1. If Settling Defendant withdraws its Notice of Election  
2 to contest the Notice of Violation before any motion concerning the violations alleged in  
3 the Notice of Violation is filed pursuant to Section 4.1, Settling Defendant shall make a  
4 contribution to the Proposition 65 Fashion Accessory Testing Fund in the amount of  
5 \$12,000 and shall comply with all of the non-monetary provisions of Section 4.4.2. If, at  
6 any time prior to reaching an agreement or obtaining a decision from the Court, CEH or  
7 Settling Defendant acquires additional test data regarding the alleged violation, it shall  
8 promptly provide all such test data to the other Party.

9 4.4.2 **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 specifically identified Covered Product will no longer be offered by Settling Defendant or  
14 its customers for sale in California. If there is a dispute over the sufficiency of the  
15 proposed corrective action or its implementation, CEH shall promptly notify Settling  
16 Defendant and the Parties shall meet and confer before seeking the intervention of the  
17 Court to resolve the dispute. In addition to the corrective action, Settling Defendant shall  
18 make a contribution to the Fashion Accessory Testing Fund in the amount of \$10,000,  
19 unless one of the provisions of Section 4.4.3 applies.

20 4.4.3 **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 this Section 4.4.3, if any.

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

25 (i) One thousand seven hundred fifty dollars (\$1750) if Settling  
26 Defendant, prior to receiving and accepting for distribution or sale the  
27 Covered Product identified in the Notice of Violation, obtained test results  
28 demonstrating that all of the Accessible Components in the Covered

1 Product identified in the Notice of Violation complied with the applicable  
2 Lead Limits, and further provided that such test results would be sufficient  
3 to support a Notice of Violation and that the testing was performed within  
4 two years prior to the date of the sales transaction on which the Notice of  
5 Violation is based. Settling Defendant shall provide copies of such test  
6 results and supporting documentation to CEH with its Notice of Election;

7 (ii) One thousand five hundred dollars (\$1500) if Settling  
8 Defendant is in violation of Section 3.3 only insofar as that Section deems  
9 Settling Defendant to have “offered for sale” a product sold at retail by  
10 Settling Defendant’s customer, provided however, that no contribution is  
11 required or payable if Settling Defendant has already been required to pay  
12 a total of ten thousand dollars (\$10,000) pursuant to this subsection. This  
13 subsection shall apply only to Covered Products that Settling Defendant  
14 demonstrates were purchased or Manufactured by Settling Defendant prior  
15 to January 1, 2013.

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

20 **4.5 Additional Enforcement for Noncompliant Non-Covered Products.** If  
21 CEH alleges that Settling Defendant sold or offered for retail sale to California consumers a  
22 Fashion Accessory: (i) that is not a Covered Product, (ii) that contains Lead in an amount that  
23 exceeds any of the applicable lead limits, and (iii) for which Settling Defendant did not provide a  
24 clear and reasonable warning as required by Proposition 65 (“Noncompliant Non-Covered  
25 Product”), then prior to CEH serving a 60-Day Notice under Proposition 65 on Settling  
26 Defendant, CEH shall provide notice to Settling Defendant pursuant to this Section 4.5.

27 4.5.1 The notice shall contain the information required for a Notice of Violation  
28 in Section 4.3. If the information is insufficient to allow Settling Defendant to identify the

1 Noncompliant Non-Covered Product and/or Vendor, it may request that CEH provide any  
2 further identifying information for the Noncompliant Non-Covered Product that is  
3 reasonably available to it.

4 4.5.2 Within 30 days of receiving a notice pursuant to Section 4.5, or of any  
5 requested further information sufficient to identify the Noncompliant Non-Covered  
6 Product, whichever is later, Settling Defendant shall serve a Notice of Election on CEH.  
7 The Notice of Election shall:

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

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

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

22 4.5.3 A party's disclosure pursuant to this Section 4.5 of any (i) test reports, (ii)  
23 confidential business information, or (iii) other information that may be subject to a claim  
24 of privilege or confidentiality, shall not constitute a waiver of any such claim of privilege  
25 or confidentiality, provided that the Party disclosing such information shall clearly  
26 designate it as confidential. Any Party receiving information designated as confidential  
27 pursuant to this Section 4.5.3 shall not disclose such information to any unrelated person  
28 or entity, and shall use such information solely for purposes of resolving any disputes

1 under this Consent Judgment.

2 4.5.4 No further action is required of Settling Defendant under this Consent  
3 Judgment if the Noncompliant Non-Covered Product is otherwise released from liability  
4 for alleged violations of Proposition 65 with respect to Lead in the Noncompliant Non-  
5 Covered Product by the terms of a separate settlement agreement or consent judgment  
6 entered into by CEH under Health & Safety Code § 25249.7 (“Qualified Settlement”).

7 4.5.5 If Settling Defendant elects not to proceed under Section 4.5, then neither  
8 Settling Defendant nor CEH has any further duty under this Section 4.5 and either may  
9 pursue any available remedies under Proposition 65 or otherwise. If Settling Defendant  
10 elects to proceed under Section 4.5.2(b)(ii), then compliance with that Section shall  
11 constitute compliance with Proposition 65 as to that Noncompliant Non-Covered Product.

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

21 4.5.7 If Settling Defendant makes a contribution pursuant to this Section and at a  
22 later date CEH resolves the alleged violation with the direct or indirect Vendor of the  
23 Noncompliant Non-Covered Product, CEH shall notify Settling Defendant and Settling  
24 Defendant shall be entitled to a refund of the lesser amount of its contribution or the  
25 settlement amount paid by such Vendor. If the settlement or consent judgment between  
26 CEH and the direct or indirect Vendor of the Noncompliant Non-Covered Product does  
27 not provide for the refund to be paid directly by the Vendor to Settling Defendant, then  
28

1 CEH shall pay the refund to Settling Defendant within 15 days of receiving the Vendor's  
2 settlement payment.

3 4.5.8 Any notice served by CEH pursuant to this Section 4.5 shall not be  
4 considered a Notice of Violation for purposes of Section 4.3. Nothing in this Section 4.5  
5 affects CEH's right to issue a 60-Day Notice under Proposition 65 against any entity other  
6 than a Settling Defendant.

7 **5. PAYMENTS**

8 5.1 **Payments by Settling Defendant.** Within five (5) days of entry of this Consent  
9 Judgment, Settling Defendant shall pay the sum of \$15,000, and on or before December 27, 2012,  
10 Settling Defendant shall pay the sum of \$15,000, for a total sum of \$30,000 as a settlement  
11 payment. The payment due within five (5) days of entry of this Consent Judgment shall be paid  
12 in two separate checks as follows: (a) \$9,830 made payable to the Center for Environmental  
13 Health; and (b) \$5,170 made payable to Lexington Law Group. The \$15,000 payment due on  
14 December 27<sup>th</sup> shall be made by check payable to Lexington Law Group. All of these payments  
15 shall be delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503  
16 Divisadero Street, San Francisco, California 94117-2212. Any failure by Settling Defendant to  
17 comply with the payment terms herein shall be subject to a stipulated late fee in the amount of  
18 \$100 for each day after the delivery date the payment is received. The late fees required under  
19 this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement  
20 proceeding brought pursuant to Section 4.1 of this Consent Judgment.

21 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
22 be allocated as follows:

23 5.2.1 \$3,930 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),  
24 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12  
25 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard  
26 Assessment).

27 5.2.2 \$5,900 as a payment in lieu of civil penalty to CEH pursuant to Health &  
28 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use

1 such funds to continue its work educating and protecting people from exposures to toxic  
2 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
3 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots  
4 environmental justice groups working to educate and protect people from exposures to toxic  
5 chemicals. The method of selection of such groups can be found at the CEH web site at  
6 [www.keh.org/justicefund](http://www.keh.org/justicefund).

7 5.2.3 \$20,170 as reimbursement of a portion of CEH's reasonable attorneys' fees  
8 and costs.

## 9 **6. MODIFICATION**

10 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
11 time by express written agreement of the Parties with the approval of the Court, or by an order of  
12 this Court upon motion and in accordance with law.

13 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
14 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
15 modify the Consent Judgment.

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

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

27 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
28 constitutes compliance with Proposition 65 with respect to Lead in Settling Defendant's Covered

1 Products.

2 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an  
3 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
4 Releasee, or Downstream Defendant Releasee.

5 7.4 Nothing in Section 7 affects CEH's right to commence or prosecute an action  
6 under Proposition 65 against a Downstream Defendant Releasee that: (a) is not a direct customer  
7 of Settling Defendant under Section 3.3; and (b) sells or offers for sale a Covered Product to  
8 California consumers that does not comply with the Lead Limits after the applicable Final Retail  
9 Compliance Date set forth in Section 3.3.

10 7.5 CEH represents that as of the date this Consent Judgment is executed by CEH,  
11 it does not know of any footwear and/or belts, made with leather, vinyl or imitation leather  
12 materials manufactured, distributed and/or sold by Settling Defendant in California that contain  
13 lead at levels requiring a warning under Proposition 65. It is the understanding of the Parties that  
14 should CEH identify in the future any footwear and/or belts, made with leather, vinyl or imitation  
15 leather materials manufactured, distributed and/or sold by Settling Defendant in California that  
16 contain lead or any other Proposition 65 chemical and are being sold in violation of Proposition  
17 65, that CEH may enforce Proposition 65 against Defendant as to such products and that nothing  
18 in this Consent Judgment shall act to bar or limit in any way such an enforcement action.

19 **8. NOTICE**

20 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
21 notice shall be sent by first class and electronic mail to:

22 Howard Hirsch  
23 Lexington Law Group  
24 503 Divisadero Street  
25 San Francisco, CA 94117  
26 hhirsch@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
28 Judgment, the notice shall be sent by first class and electronic mail to:

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Kenneth E. Keller, Esq.  
Anne E. Kearns, Esq.  
Krieg, Keller, Sloan, Reilley & Roman LLP  
555 Montgomery Street  
17<sup>th</sup> Floor  
San Francisco, CA 94111  
kkeller@kksrr.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 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement action brought pursuant to Sections 4.1, 4.2, 4.3 or 4.4 may seek an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this provision shall not be construed as altering any procedural or substantive requirements for obtaining such an award.

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



1           10.4       Except as otherwise provided in this Consent Judgment, each Party shall bear  
2 its own attorneys' fees and costs.

3       **11.    TERMINATION**

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

8           11.2       Should this Consent Judgment be terminated pursuant to this Section, it shall  
9 be of no further force or effect as to the terminated parties; provided, however that if CEH is the  
10 terminating Party, the provisions of Sections 5, 7, and 12.1 shall survive any termination and  
11 provided further that if Settling Defendant is the terminating Party, the provisions of Sections 5,  
12 7.1 and 12.1 shall survive any termination.

13       **12.    OTHER TERMS**

14           12.1       The terms of this Consent Judgment shall be governed by the laws of the State  
15 of California.

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

19           12.3       This Consent Judgment contains the sole and entire agreement and  
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
22 merged herein and therein. There are no warranties, representations, or other agreements between  
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
24 implied, other than those specifically referred to in this Consent Judgment have been made by any  
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
27 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
28 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent

1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

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

6 12.5 This Court shall retain jurisdiction of this matter to implement or modify the  
7 Consent Judgment.

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

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

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

24 **IT IS SO ORDERED:**

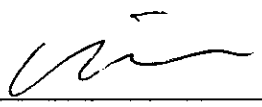
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26 Dated: Sept. 24, 2012

27 **STEVEN A. BRICK**

The Honorable Steven A. Brick  
Judge of the Superior Court

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**IT IS SO STIPULATED:**  
**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Signature

CHARLIE PIZNERO

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

ASSOCIATE DIRECTOR

\_\_\_\_\_  
Title

**IRON FIST INTERNATIONAL, INC.**

\_\_\_\_\_  
Signature

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

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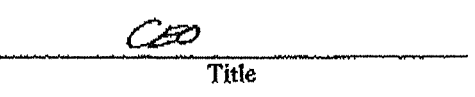
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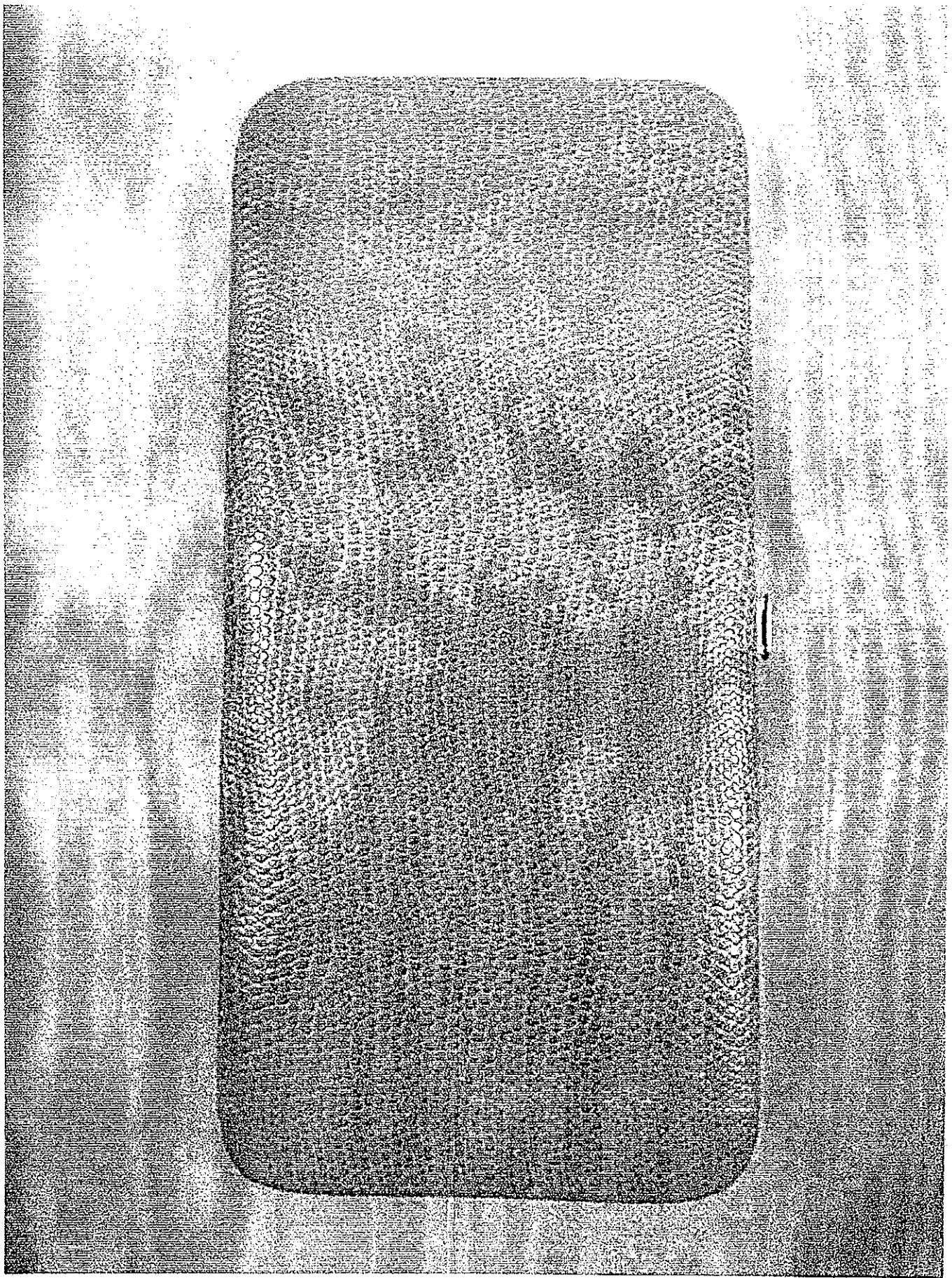
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# **Exhibit A**



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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](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