

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is between Center for Environmental Health ("CEH") and Central Park Products, Inc. ("CPP") (together, the "Parties").

1. INTRODUCTION

1.2 On December 11, 2008, CEH, a non-profit corporation acting in the public interest, served Wal-Mart Stores, Inc. ("Wal-Mart"), CPP, and the appropriate public enforcement agencies with a 60-day Notice (the "Notice") alleging that Wal-Mart and CPP are in violation of Proposition 65.

1.2 The Notice stated that Wal-Mart and CPP manufacture, distribute and/or sell faux leather furniture (the "Products") containing lead and/or lead compounds ("Lead") in the State of California, thereby exposing people who use or otherwise handle the Products to Lead, chemicals known to the State of California to cause cancer, birth defects and other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notice listed two non-exclusive examples of the Products at issue. The Notice states that this conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

1.3 Shortly after CEH served the Notice, CEH was informed that CPP is and at all relevant times was the exclusive supplier of both of the specific Products identified in the Notice.

1.4 CPP manufactures, distributes and/or sells the Products for sale in California. Some of the Products are sold by Wal-Mart.

1.5 The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Products manufactured, imported or sold, or caused to be manufactured, imported, or sold, by CPP irrespective of the identity of the ultimate seller of the Products to consumers. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

2. COMPLIANCE - REFORMULATION, TESTING, AND RECALL

2.1 Level. After thirty days (30) following entry of this Agreement (the "Compliance Date"), CPP shall not manufacture, import, distribute, ship, or sell or cause to be manufactured, distributed or sold, any Product that is comprised of any material that contains Lead in concentrations that exceed 200 parts per million ("ppm").

2.2 Certification of level from suppliers. CPP shall issue specifications to all of its suppliers requiring that any material supplied for incorporation into a Product manufactured by CPP shall not contain Lead in concentrations exceeding 200 ppm. CPP shall obtain written certification from its suppliers certifying that the materials supplied for incorporation into a Product do not contain Lead in concentrations exceeding 200 ppm.

2.3 Testing. In order to ensure compliance with the requirements of Section 2.1, CPP shall conduct (or cause to be conducted) testing to confirm that Products it

manufactures, distributes, ships, or sells or causes to be manufactured, distributed or sold, are not comprised of any material that contains Lead in concentrations that exceed 200 ppm. All testing pursuant to this Section shall be performed by an independent laboratory either in accordance with EPA Method 3050B or using x-ray fluorescence (“XRF”) technology (the “Test Protocol”). The duration of any XRF testing shall be at least sixty seconds. The laboratory shall follow standard practices for calibrating and standardizing any XRF testing device that is used. The results of the testing performed pursuant to this Section shall be made available to CEH upon request.

2.3.1 Testing Frequency. After the Compliance Date, CPP shall test 3 random pieces of each unit of vinyl or polyvinyl chloride material supplied to CPP for incorporation into a Product intended for sale in California.

2.3.2 Products that Exceed Stipulated Levels Pursuant to CPP’s Testing. If the results of the testing required pursuant to Section 2.3.1 show levels of Lead exceeding 200 ppm, CPP shall: (1) refuse to accept all of the materials supplied for incorporation into a Product that were purchased under the particular purchase order; and (2) send a notice to the supplier explaining that such materials supplied for incorporation into a Product do not comply with the suppliers’ certification.

2.4 Confirmatory Testing by CEH. CEH intends to conduct periodic testing of the Products after the Compliance Date. Any such testing will be conducted by CEH at an independent laboratory, in accordance with the Test Protocol. In the event that CEH’s testing demonstrates Lead levels in excess of 200 ppm in violation of this section, CEH shall inform CPP of the test results, including information sufficient to permit CPP to identify the Product(s).

CPP shall, within 30 days following such notice, provide CEH, at the address listed in Section 11, with the certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Agreement. If CPP fails to provide CEH with information demonstrating that it complied with Sections 2.2 and/or 2.3, CPP shall be liable for stipulated payments in lieu of penalties for Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm, as set forth below. The payments shall be made by check payable to Center for Environmental Health and delivered to the address set forth in Section 11.

2.4.1 Stipulated Payments In Lieu of Penalties. If stipulated payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as follows for each unit of Product for which CEH produces a test result with Lead levels exceeding 200 ppm:

First Occurrence:	\$1,250
Second Occurrence:	\$1,500
Third Occurrence:	\$1,750
Thereafter:	\$2,500

Notwithstanding the foregoing, the maximum stipulated payment amount in a calendar year, regardless of the number of units of Product tested by CEH in violation of the Lead levels set forth in this Agreement, shall be \$5,000.

3. SETTLEMENT PAYMENT

3.1 In consideration of the mutual covenants and releases provided in this Agreement, within 10 days of execution of this Agreement, CPP shall pay a total of \$10,000 as a settlement payment. This total shall be paid in two separate checks delivered to the address set

forth in Section 11.1 and made payable and allocated as follows:

3.2 Monetary Payment in Lieu of Penalty. CPP shall pay the sum of \$3,250 as payment to CEH in lieu of penalty pursuant to Health & Safety Code section 25249.7(b). This payment in lieu of penalty check shall be made payable to the Center For Environmental Health. CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals.

3.3 Reimbursement for Attorneys' Fees and Costs. CPP shall pay the sum of \$6,750 as reimbursement of reasonable attorneys' fees and any other costs incurred as a result of investigating, bringing this matter to CPP and Wal-Mart's attention, and negotiating a settlement in the public interest. This attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group, LLP.

4. CLAIMS RELEASED

4.1 CEH hereby releases and discharges CPP and Wal-Mart with respect to any violation of Proposition 65 that was or could have been asserted against CPP, Wal-Mart, and all other customers of CPP, and their respective parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or customers based on the Notice (which is attached hereto as Exhibit 1) arising from Products manufactured, distributed or sold by CPP on or prior to the date of entry of this Agreement. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of Lead exposures from the Products.

5. MODIFICATION OF AGREEMENT

5.1 This Agreement may be modified by written agreement of the Parties

only. **6. APPLICATION OF AGREEMENT**

6.1 This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. SEVERABILITY

7.1 In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

8. SPECIFIC PERFORMANCE

8.1 The parties expressly recognize that CPP's obligations under this Agreement are unique. In the event that CPP is found to be in breach of this Agreement for failure to comply with any provision, except Sections 2.4.1 and 3, herein, the Parties agree that it would be extremely impracticable to measure the resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and CPP expressly waives the defense that a remedy in damages will be adequate.

9. GOVERNING LAW

9.1 The terms of this Agreement shall be governed by the laws of the State of California.

10. ENFORCEMENT

10.1 The Parties agree that the any action based on violation of this Agreement shall be brought in the Superior Court of California in San Francisco County. For purposes of

this Agreement, notwithstanding Sections 1.5 and 4.1 above, the Parties agree that the Superior Court of California in San Francisco County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of San Francisco.

11. PROVISION OF NOTICE

11.1 All notices required pursuant to this Agreement and correspondence shall be sent to the following:

For CEH:

Howard Hirsch
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For CPP:

C. Michael Janowitz
Central Park Products, Inc.
222 N. Sepulveda Blvd., Suite 1328
El Segundo, CA 90245-6544

12. EXECUTION AND COUNTERPARTS

12.1 The stipulations to this Agreement may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

13. AUTHORIZATION

13.1 Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Associate Director
Center for Environmental Health

Dated: 3/2/09

CENTRAL PARK PRODUCTS, INC.

Dated: _____

C. Michael Janowitz

Title

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro, Associate Director
Center for Environmental Health

Dated: _____

CENTRAL PARK PRODUCTS, INC.

C. Michael Janowitz

C. Michael Janowitz

PRESIDENT

Title

Dated: MARCH 3, 2009