

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”) is between Center for Environmental Health (“CEH”) and Idea Design Concepts, Inc. (“IDC”) (together, the “Parties”).

### **1. INTRODUCTION**

**1.1** On February 9, 2009, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation of Proposition 65” to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to IDC regarding the presence of lead in jewelry manufactured, distributed or sold by IDC (the “Notice”).

**1.2** The Notice alleges that IDC manufactures, distributes and/or sells jewelry containing lead and/or lead compounds (referred to interchangeably herein as “Lead”). The Notice alleges that IDC exposes people who touch, wear or otherwise handle the jewelry to Lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive toxicity, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notice alleges that IDC’s conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

**1.3** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding jewelry manufactured, distributed and/or sold by IDC. 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. DEFINITIONS**

**2.1** The term “Covered Product” means (a) the following ornaments worn by a person: an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, decorated hair accessories, earring, necklace, pin, ring and Body Piercing Jewelry; or (b) any bead, chain, link, pendant, or other component of such an ornament.

## **3. INJUNCTIVE RELIEF**

**3.1 Reformulation of Covered Products.** On or before the execution of this Agreement, IDC shall not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product that contains:

**3.1.1** Any metal or other component that is not covered under Sections 3.1.2 or 3.1.3, or is made of any metal or other material that is not covered under Sections 3.1.2 or 3.1.3, that is more than 0.03 percent lead by weight (300 parts per million (“ppm”));

**3.1.2** Any polyvinyl chloride material, that is more than 0.02 percent Lead by weight (200 ppm); and

**3.1.3** Any Surface Coating that is more than 0.009 percent Lead by weight (90 ppm). For purposes of this Agreement, “Surface Coating” shall carry the same meaning as “Paint or other similar surface coating” under 16 CFR §1303.2(b)(1) (“Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other 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.”).

**3.2 Market Withdrawal of Covered Products.** On or before the execution of this Agreement, IDC shall cease shipping the Metal and Cubic Zirconia Earrings, Item No. YE0020GD-CR, which was identified in the 60-Day Notice of Violation sent by CEH to IDC (the “Recall Products”), to customers in California, and IDC shall withdraw the Recall Products from the market in California, and, at a minimum, send instructions to any of its customers that offer the Recall Products for sale in California to cease offering such Recall Products for sale in California and to either return all Recall Products to IDC for destruction, or to directly destroy the Recall Products. Any destruction of the Recall Products shall be in compliance with all applicable laws. IDC shall keep and make available to CEH for inspection and copying records and correspondence regarding the market withdrawal and destruction of the Recall Products. If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in court.

#### **4. SETTLEMENT PAYMENTS**

**4.1** In consideration of the mutual covenants and releases provided in this Agreement, within 10 days of execution of this Agreement, IDC shall pay a total of \$15,000 as a settlement payment. This total shall be paid in two separate checks delivered to the address set forth in Section 12.1 within 10 days of execution of this Agreement and shall be made payable and allocated as follows.

**4.2 Monetary Payment in Lieu of Penalty.** IDC shall pay to CEH \$5,000 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH will use such funds to

continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such funds to monitor compliance with the reformulation requirements of this Agreement. The payment in lieu of penalty check shall be made payable to the Center For Environmental Health.

**4.3 Attorneys' Fees and Costs.** IDC shall pay \$10,000 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to IDC's attention, litigating and negotiating a settlement in the public interest. This payment shall be made payable to the Lexington Law Group.

**5. MODIFICATION OF SETTLEMENT AGREEMENT**

**5.1** This Settlement Agreement may be modified only by written agreement of the Parties.

**6. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**6.1** The Parties agree that the any action based on violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.4 above, the Parties agree that the Superior Court of California in Alameda 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 Alameda. Should a party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

**7. APPLICATION OF SETTLEMENT AGREEMENT**

**7.1** 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.

## **8. CLAIMS COVERED**

**8.1** Except as otherwise provided herein, CEH hereby releases and discharges IDC with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to Lead in the Covered Products) that was or could have been asserted against IDC, or its parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or customers based on the Notice arising from Covered Products manufactured, distributed or sold by IDC on or before the execution of this Agreement. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of exposures to Lead from the Covered Products.

## **9. SEVERABILITY**

**9.1** 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.

## **10. SPECIFIC PERFORMANCE**

**10.1** The Parties expressly recognize that IDC's obligations under this Agreement are unique. In the event that IDC is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 hereto, 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 IDC expressly waives the defense that a remedy in damages will be adequate.

**11. GOVERNING LAW**

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

**12. PROVISION OF NOTICE**

**12.1** All notices required pursuant to this Agreement and correspondence shall be sent by certified mail and electronic mail to the following:

For CEH:

Eric S. Somers  
Lexington Law Group  
1627 Irving Street  
San Francisco, CA 94122  
esomers@lexlawgroup.com

For Idea Design Concepts, Inc.:

Charles M. Yoon  
Yoon & Kim LLP  
11 E. 44th Street, Suite 1400  
New York, NY 10017  
CYoon@yoonkimlaw.com

**13. EXECUTION AND COUNTERPARTS**

**13.1** 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.


**14. AUTHORIZATION**

**14.1** 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**

  
\_\_\_\_\_

Dated: 3/9/10

CHARLIE PIZZANO  
\_\_\_\_\_

[Name]

ASSOCIATE DIRECTOR  
\_\_\_\_\_

[Title]

**IDEA DESIGN CONCEPTS, INC.**

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Title]

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**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Title]

**IDEA DESIGN CONCEPTS, INC.**

Ken Choi

Dated: 04/09/10

Ken Soo Choi  
[Name]

Director.  
[Title]