

SETTLEMENT AGREEMENT & RELEASE – CUMBERLAND CONCEPTS, INC.

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

1. INTRODUCTION

1.1 On July 16, 2012, 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 Cumberland regarding the presence of lead and lead compounds (collectively, “Lead”) in zipper bags manufactured, distributed or sold by Cumberland (the “Notice”).

1.2 The Notice alleges that Cumberland’s zipper bags contain Lead. The Notice alleges that such zipper bags expose people who touch, wear or otherwise handle the zipper bags to Lead, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenic or reproductive hazards associated with Lead. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.3 For the purposes of this Agreement, “Covered Products” shall mean zipper bags which are not designed for or intended primarily for children 12 years of age or younger.

1.4 The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed and/or sold by Cumberland. 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. INJUNCTIVE RELIEF

2.1 Reformulation of Covered Products. Commencing on November 1, 2012 (the “Effective Date”), Cumberland shall not manufacture, distribute, import, supply, sell or offer for sale in California or anywhere else any Covered Product unless such Covered Product complies with the following Lead Limits:

2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R. § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

2.1.2 All other materials: no more than .02 percent Lead by weight (200 ppm).

2.2 Nothing in this Agreement shall preclude Cumberland or any Releasee (as such term is defined below) from selling or distributing any Covered Product manufactured and acquired by Cumberland prior to the November 1, 2012 Effective Date.

3. SETTLEMENT PAYMENTS

3.1 In consideration of the mutual covenants and releases provided in this Agreement, within fifteen (15) days of execution of this Agreement, Cumberland shall pay a total of \$30,000 as a settlement payment. This total shall be paid in three separate checks delivered to CEH at the address set forth in Section 10.1 and shall be made payable and allocated as follows.

3.2 Civil Penalty. Cumberland shall pay \$3,930 as a penalty pursuant to Health &

Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health.

3.3 Monetary Payment in Lieu of Civil Penalty. Cumberland shall pay \$5,900 as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(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.

3.4 Attorneys' Fees and Costs. Cumberland shall pay \$20,170 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 Cumberland's attention, litigating and negotiating a settlement in the public interest. This payment shall be made payable to the Lexington Law Group.

4. MODIFICATION OF SETTLEMENT AGREEMENT

4.1 This Agreement may be modified only by written agreement of the Parties.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT

5.1 The Parties agree that the any action based on violation of this Agreement shall be brought in the Superior Court of California in Marin County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Marin 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 Marin.

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.

6. APPLICATION OF SETTLEMENT 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. CLAIMS COVERED

7.1 Except as otherwise provided herein, CEH hereby releases and discharges Cumberland 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 Cumberland, or its parents, subsidiaries, directors, officers, employees, agents, and all to whom they distribute or sell Covered Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Wal-Mart Stores, Inc. ("Releasees"), based on the Notice arising from Covered Products manufactured, distributed or sold by Cumberland on or before the Effective Date.

7.2 Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of exposures to Lead from Covered Products manufactured, distributed or sold by Cumberland after the Effective Date.

7.3 Nothing in this Agreement shall preclude Cumberland or any Releasee from selling or distributing any Covered Product manufactured and acquired by Cumberland prior to the November 1, 2012 Effective Date.

8. SPECIFIC PERFORMANCE

8.1 The Parties expressly recognize that Cumberland's obligations under this Agreement are unique. In the event that Cumberland is found to be in breach of this Agreement

for failure to comply with the provisions of Section 2 hereto, the Parties agree that it would be extremely impracticable to measure any 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 Cumberland 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. PROVISION OF NOTICE

10.1 All notices required pursuant to this Agreement and correspondence shall be sent by first class and electronic mail to the following:

For CEH:

Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

For Cumberland Concepts, Inc.:

Michael Schrock, President
Cumberland Concepts, Inc.
500 S. Jefferson Street
Greenup, IL 62428
mike@cumberlandconcepts.com

With a copy to:

Bruce Nye
Adams | Nye | Becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108
bnye@adamsnye.com

11. ENTIRE AGREEMENT

11.1 This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1 Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Cumberland on terms that are different than those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

13.1 The stipulations to this Agreement may be executed in counterparts by electronic mail, 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



Charlie Pizarro
Associate Director

Dated: 12/19/12

CUMBERLAND CONCEPTS, INC.

Dated: _____

[Name]

[Title]

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

Charlie Pizarro
Associate Director

Dated: _____

CUMBERLAND CONCEPTS, INC.

Michael Schrock

Dated: 1-14-13

MICHAEL SCHROCK
_____ [Name]

PRESIDENT
_____ [Title]