

## **SETTLEMENT AGREEMENT & RELEASE – GRAND TIME CORPORATION**

This Settlement Agreement and Release (the “Agreement”) is between Center for Environmental Health (“CEH”) and Grand Time Corporation (“Grand Time”) (together, the “Parties”).

### **1. INTRODUCTION**

**1.1.** On October 8, 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 Grand Time regarding the presence of lead and lead compounds (collectively, “Lead”) in watches with watch bands and replacement watch bands made of leather, vinyl or imitation leather materials (the “Covered Products”) manufactured, distributed or sold by Grand Time (the “Notice”).

**1.2.** The Notice alleges that Grand Time’s Covered Products contain Lead. The Notice alleges that such Covered Products expose people who touch, wear or otherwise handle the Covered Products 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.** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed and/or sold by Grand Time. 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.** Upon execution of this Agreement, Grand Time shall not manufacture, ship, sell or offer for sale in California or anywhere else any Covered Product that contains:

**2.1.1.** Any component not covered under Section 2.1.2, or that is made of any material not covered under Section 2.1.2, that is more than 0.01 percent (100 parts per million (“ppm”)) Lead by weight; or

**2.1.2.** Any Paint or Surface Coating that is more than 0.009 percent Lead by weight (90 ppm). For purposes of this Consent Judgment, “Paint or Surface Coating” shall carry the same meaning as “Paint or other similar surface coating” under 16 C.F.R. § 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.”).

**2.2. Market Withdrawal of Covered Products.** Upon execution of this Agreement, Grand Time shall cease shipping (i) Golden Classic Women's 1958\_Orange "Spectrum" Modern Bangle Watch with Orange Leather Wrist Band, Style No. 1958\_Orange, and (ii) Golden Classic Women's 2184\_Green "Designer Color" Rhinestone Encrusted Bezel Mother-Of-Pearl Dial Watch with Green Leather Wrist Band, Style No. 2184\_Green (the "Recall Covered Products"), to stores and/or customers in California, and Grand Time shall withdraw the Recall Covered Products from the market in California, and, at a minimum, send instructions to any of its stores and/or customers that offer the Recall Covered Products for sale in California to cease offering such Recall Covered Products for sale and to either return all Recall Covered Products to Grand Time for destruction, or to directly destroy the Recall Covered Products. Any destruction of the Recall Covered Products shall be in compliance with all applicable laws. For a period of three (3) years, Grand Time shall keep and make available to CEH for inspection and copying records and correspondence regarding the market withdrawal and destruction of the Recall Covered Products. If there is a dispute over the corrective action, the disputing party shall provide written notice to the other party detailing such dispute and the Parties shall meet and confer before seeking any remedy in accordance with Section 3 below.

### **3. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**3.1.** The Parties agree that 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. Provided a Party has complied with the requirements of this Section 3, should a Party to this

Agreement become a prevailing party in any final judgment in any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

**3.2. Enforcement Procedures.** Prior to bringing any action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. Within said thirty (30) day time frame, the Parties may agree to participate in mediation or binding arbitration to resolve any action to enforce this Agreement before seeking any remedy in court in an attempt to amicably resolve the dispute. Absent a mutual agreement to mediate or arbitrate any such dispute, upon expiration of the thirty (30) day meet and confer period, the Party seeking to enforce may, by new action before the Superior Court of California in Marin County, seek to enforce the terms and conditions contained in this Agreement.

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

**4.1.** In consideration of the mutual covenants and releases provided in this Agreement, Grand Time shall pay a total of \$25,000 as a settlement payment, such payment to be made as set forth in this Section 4. On or before July 29, 2013, Grand Time shall pay the sum of \$12,500 in three separate checks as follows: (a) \$1,625 made payable to the Center for Environmental Health; (b) \$2,450 made payable to the Center for Environmental Health; and (c) \$8,425 made payable to the Lexington Law Group as partial reimbursement of attorneys' fees and costs. On or before September 23, 2013, Grand Time shall make a second payment of \$12,500 in three separate checks as follows: (a) \$1,625 made payable to the Center for Environmental Health; (b) \$2,450 made payable to the Center for Environmental Health; and (c) \$8,425 made payable to

the Lexington Law Group as partial reimbursement of attorneys' fees and costs.

**4.2. Allocation of Payments.** All of the settlement payments required under this Section 4 shall be delivered to the offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco, California 94117, and allocated as set forth below:

**4.2.1.** A total of \$3,250 of the payments shall be paid pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12.

**4.2.2.** A total of \$4,900 of the payments shall be paid to CEH in lieu of an additional payments under Health & Safety Code § 25249.7(b) and as set forth in California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH may use a portion of such funds to monitor compliance with the reformulation requirements of this Agreement and to purchase and test Covered Products to confirm compliance with such reformulation requirements. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

**4.2.3.** A total of \$16,850 of the payments shall be paid 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 Grand Time's attention, litigating and negotiating a settlement in the public interest.

## **5. MODIFICATION OF SETTLEMENT AGREEMENT**

**5.1.** This Agreement may be modified only by written agreement signed by the authorized representatives of the Parties.

## **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. This Agreement shall not be assignable.

## **7. CLAIMS COVERED**

**7.1.** For good and valuable consideration including any payments made by Grand Time to CEH as required herein, CEH hereby releases and discharges Grand Time 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 Grand Time, 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, based on the failure to warn about exposure to Lead in Covered Products manufactured, distributed or sold by Grand Time prior to the execution of this Agreement as set forth in the Notice.

**7.2.** Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of any alleged failure to warn about Lead in Covered Products manufactured, distributed or sold by Grand Time after execution of this Agreement.

## **8. SPECIFIC PERFORMANCE**

**8.1.** The Parties expressly recognize that Grand Time's obligations under this

Agreement are unique. In the event that Grand Time 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 Grand Time expressly waives the defense that a remedy in damages will be adequate.

## **9. PROVISION OF NOTICE**

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

For CEH:

Eric S. Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
esomers@lexlawgroup.com

For Grand Time Corporation:

President  
Grand Time Corporation  
1555 Valwood Parkway, Suite 154  
Carrollton, TX 75006

w/ copy to

John T. Wilson  
Wilson Legal Group P.C.  
Bent Tree Plaza  
16610 Dallas Parkway, Suite 1000  
Dallas, TX 75248  
john@wilsonlegalgroup.com

**9.2.** Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

## **10. GOVERNING LAW**

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

## **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 authorized representatives of both Parties. 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 Grand Time on terms that are different than those contained in this Agreement.



**13. EXECUTION IN COUNTERPARTS**

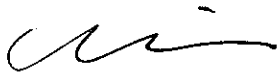
**13.1.** This Agreement may be executed in counterparts by electronic mail or facsimile, which taken together shall be deemed to constitute one document.

**14. AUTHORIZATION**

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: 7/24/13

**GRAND TIME CORPORATION**

\_\_\_\_\_

Dated:

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

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

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**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Charlie Pizarro  
Associate Director

Dated:

**GRAND TIME CORPORATION**

  
\_\_\_\_\_  
Akber Meghani

Dated: 07/17/2013

[Name]  
  
\_\_\_\_\_  
President  
[Title]