

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”) is entered into between the Center for Environmental Health (“CEH”) and BSCStore Inc. (“BSC”) (together, the “Parties”).

### **1. INTRODUCTION**

1.1 On April 11, 2014, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation” relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“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 BSC regarding the presence of lead and lead compounds (collectively referred to herein as “Lead”) in keyboard cases made with leather, vinyl, or imitation leather materials (“Covered Products”). The Notice alleges that BSC’s Covered Products contain Lead, and that such Covered Products expose people who touch, use, or otherwise handle the Covered Products to Lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenic or reproductive toxicity of Lead. The Notice alleges that such conduct violates Health & Safety Code § 25249.6

1.2 BSC asserts that it has fewer than 10 employees and thus is exempt from Proposition 65. However, upon receipt of the Notice, BSC promptly contacted CEH in an effort to resolve CEH’s claims regarding products manufactured, distributed, and/or sold by BSC in order to resolve any Proposition 65 liability its customers may have as a result of selling products manufactured, distributed, and/or sold by BSC.

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 BSC.

1.4 By executing this Agreement, the Parties do not admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law, or equitable requirements. 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 future legal proceedings.

## **2. INJUNCTIVE RELIEF**

2.1 **Reformulation of Covered Products.** As of the date of execution of this Agreement (the “Effective Date”), BSC shall not manufacture, ship, sell, or offer for sale any Covered Product in California or anywhere else in the United States 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), on Accessible Components: no more than 0.009 percent Lead by weight (90 parts per million (“ppm”). An “Accessible Component” means a component of a Covered Product that could be touched by a person during normal or reasonably foreseeable use.

2.1.2 Polyvinyl chloride (“PVC”) Accessible Components: no more than 0.02 percent Lead by weight (200 ppm).

2.1.3 All other Accessible Components other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass, or rhinestones: no more than 0.03 percent Lead by weight (300 ppm).

2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date, BSC shall cease shipping the MoKo Amazon Bluetooth Keyboard Case for New Kindle Fire HD 7 in Red, SKU No. X000I1JL39, as identified in CEH’s Notice of Violation to BSC (the “Recall Covered Products”), to stores and/or customers in California, and BSC 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 BSC 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. BSC 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 Parties shall meet and confer before seeking any remedy in court

### **3. SETTLEMENT PAYMENTS**

3.1 **Payments From BSC.** Within five (5) days of the final signature of execution of the Agreement, BSC shall pay the total sum of \$26,500 as a settlement payment.

3.2 **Allocation of Payments.** The total settlement amount for BSC shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Joseph Mann), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated as follows:

3.2.1 BSC shall pay the sum of \$3,450 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.

3.2.2 BSC shall pay the sum of \$5,200 as payment to CEH in lieu of penalty pursuant to Health & Safety Code § 25249.7(b), and 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. 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). The payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

3.2.3 BSC shall pay the sum of \$17,850 as a partial reimbursement of CEH's reasonable attorneys' fees and costs incurred as a result of investigating this matter, bringing the

issues to BSC's attention, and negotiating a settlement in the public interest. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington Law Group.

**4. MODIFICATION OF SETTLEMENT AGREEMENT**

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

**5. ENFORCEMENT OF SETTLEMENT AGREEMENT**

5.1 The Parties agree that 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.

5.2 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. After such thirty (30) day period, the Party seeking to enforce may, by new action before the Superior Court of California in Alameda County, seek to enforce the terms and conditions contained in this Agreement.

**6. APPLICATION OF SETTLEMENT AGREEMENT**

6.1 This 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 AND RELEASE**

7.1 Except as otherwise provided herein, CEH hereby releases and discharges BSC 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 BSC, or its parents, subsidiaries, partners, sister companies, and their successors and assigns (“BSC Releasees”), and all entities to whom they distribute or sell Covered Products, including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”), regarding the failure to warn about exposures to Lead arising in connection with Covered Products manufactured, distributed, or sold by BSC prior to the Effective Date.

7.2 Compliance with the terms of this Agreement by BSC and Downstream Releasees shall constitute compliance with Proposition 65 by BSC and Downstream Releasees with respect to exposures to Lead from Covered Products manufactured, distributed, or sold by BSC after to the Effective Date.

## **8. SPECIFIC PERFORMANCE**

8.1 The Parties expressly recognize that BSC’s obligations under this Agreement are unique. In the event that BSC 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 BSC expressly waives the defense that a remedy in damages will be adequate.

## **9. PROVISION OF NOTICE**

9.1 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail as follows:

9.1.1 **Notices to BSC.** The persons for BSC to receive notices pursuant to this Agreement shall be:

Rebecca L. Woodson  
McKenna Long & Aldridge LLP  
One Market Plaza  
Spear Tower, 24th Floor  
San Francisco, CA 94105

rwoodson@mckennalong.com

Stanley W. Landfair  
McKenna Long & Aldridge LLP  
One Market Plaza  
Spear Tower, 24th Floor  
San Francisco, CA 94105  
slandfair@mckennalong.com

9.1.2 **Notices to CEH.** The person for CEH to receive notices pursuant to this Agreement shall be:

Joseph Mann  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
jmann@lexlawgroup.com

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

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 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. AUTHORITY TO STIPULATE TO SETTLEMENT AGREEMENT**

12.1 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 to bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement.

## **13. NO EFFECT ON OTHER SETTLEMENTS**

13.1 Nothing in this Agreement shall preclude CEH from resolving any claim against another entity on terms that are different from those contained in this Agreement.

## **14. EXECUTION IN COUNTERPARTS**

14.1 The stipulations to this Agreement may be executed in counterparts and by electronic mail, which taken together shall be deemed to constitute one document.

**AGREED TO:**

Dated: Sept 22, 2014

**CENTER FOR ENVIRONMENTAL HEALTH**

*Chi*

*CHARLES PIZANO*

Printed Name

*Associate Director*

Title

Dated: Sept 9th, 2014

**BSCSTORE INC.**

*Jin Lee*

Jin Lee

Printed Name

Owner an president

Title