

## **SETTLEMENT AGREEMENT AND RELEASE**

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

### **1. INTRODUCTION**

**1.1.** On June 6, 2014, 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 Playethics regarding the presence of lead and lead compounds (collectively, “Lead”) in clothing made with leather, vinyl, or imitation leather materials manufactured, distributed, or sold by Playethics (the “Notice”).

**1.2.** The Notice alleges that Playethics’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 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, 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 Playethics. 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.** “Covered Products” means clothing made with leather, vinyl, or imitation leather materials that are Manufactured, distributed, sold, or offered for sale by Playethics.

**2.2.** “Lead Limits” means the maximum concentrations of lead and lead compounds by weight specified in Section 3.2.

**2.3.** “Manufactured” and “Manufactures” means to manufacture, produce, or assemble.

**2.4.** “Paint or other Surface Coatings” 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.

**2.5.** “Supplier” means a person or entity that Manufactures, imports, distributes, or supplies a Covered Product to Playethics.

## **3. INJUNCTIVE RELIEF**

**3.1. Specification Compliance Date.** To the extent it has not already done so, no more than 30 days after execution of this Agreement, Playethics shall provide the Lead Limits to its Suppliers of Covered Products and shall instruct each Supplier to use reasonable efforts to provide Covered Products that comply with the Lead Limits on a nationwide basis.

**3.2. Lead Limits.** Upon execution of this Agreement, Playethics shall not purchase, import, Manufacture, or supply to an unaffiliated third party any Covered Product that will be sold or offered for sale to California consumers that exceeds the following Lead Limits:

3.2.1. Paint or other Surface Coatings on Accessible Components: 90 parts per million (“ppm”).

3.2.2. Polyvinyl chloride (“PVC”) Accessible Components: 200 ppm.

3.2.3 All other Accessible Components other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass, or rhinestones: 300 ppm.

**3.3. Action Regarding Specific Products.**

3.3.1. Upon execution of this Agreement, and to the extent not previously completed, Playethics shall cease selling the Sunday in Brooklyn Perforated Faux Leather Skirt in Ruby, SKU No. 8-49775-00489-5, Item No. 58781484 (the “Recall Covered Products”) to customers who sell or offer for sale the Recall Products to California consumers. Upon execution of this Agreement, Playethics shall also: (i) cease shipping the Recall Products to any of its customers that resell the Recall Products in California, and (ii) send instructions to its customers that resell the Recall Products in California instructing them to either (a) return all the Recall Products to Playethics for destruction; or (b) directly destroy the Recall Products.

3.3.2. Any destruction of the Recall Product shall be in compliance with all applicable laws.

3.3.3. Within sixty days of execution of this Agreement, Playethics shall provide CEH with written certification from Playethics confirming compliance with the requirements of this Section 3.3.

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

**4.1.** In consideration of the mutual covenants and releases provided in this Agreement, Playethics shall pay a total of \$35,000 as a settlement payment. Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late payment fee of \$100 per day, which amount shall be recoverable by CEH, together with its reasonable attorneys' fees and costs, in an enforcement proceeding brought pursuant to Section 6. This total payment shall be made in two equal installments according to the following schedule: (a) on or before October 6, 2014, Playethics shall pay \$17,500 as a settlement payment; and (b) on or before November 3, 2014, Playethics shall pay an additional \$17,500 as a settlement payment. Each of these payments shall be paid in three separate checks delivered to the address set forth in Section 11.1 and shall be made payable and allocated as follows.

**4.2. Civil Penalty.** Playethics shall pay a total of \$4,600 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. \$2,300 of this amount shall be included with the first payment due on October 6th and \$2,300 of this amount shall be included with the second payment due on November 3rd. Each \$2,300 penalty check shall be made payable to the Center for Environmental Health.

**4.3 Monetary Payment in Lieu of Civil Penalty.** Playethics shall pay a total of \$6,900 as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11 § 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). \$3,450 of this amount shall be included with the first payment due on October 6th and \$3,450 of this amount shall be included with the second payment due on November 3rd. Each \$3,450 penalty check shall be made payable to the Center for Environmental Health.

**4.4. Attorneys' Fees and Costs.** Playethics shall pay \$23,500 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 Playethics's attention, litigating, and negotiating a settlement in the public interest. \$11,750 of this amount shall be included with the first payment due on October 6th and \$11,750 of this amount shall be included with the second payment due on November 3rd. Each \$11,750 penalty check 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 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 1.3 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.

**6.2. 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. 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.

## **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 Playethics and its parents, subsidiaries, directors, officers, employees, agents, 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 (collectively "Releasees"), 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 Playethics or Releasees arising in connection with Covered Products manufactured, distributed, or sold by Playethics on or before the execution of this Agreement.

**8.2.** Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of exposures to Lead from the Covered Products.

## **9. SPECIFIC PERFORMANCE**

**9.1.** The Parties expressly recognize that Playethics's obligations under this Agreement are unique. In the event that Playethics 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 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 Playethics expressly waives the defense that a remedy in damages will be adequate.

## **10. GOVERNING LAW**

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

## **11. PROVISION OF NOTICE**

**11.1.** 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 Playethics:

Sean Ahn  
Playethics, Inc.  
2036 Sacramento Street  
Los Angeles, CA 90021  
[Sean.a@playethics.com](mailto:Sean.a@playethics.com)

With a Copy to:  
Kim, Shapiro, Park & Lee  
3435 Wilshire Blvd., Suite 2050  
Los Angeles, CA 90010  
jlee@kspllaw.com

## **12. ENTIRE AGREEMENT**

**12.1.** 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.

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

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



**14. EXECUTION IN COUNTERPARTS**


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

**15. AUTHORIZATION**

**15.1.** 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: 10/3/2014

**PLAYETHICS, INC.**

\_\_\_\_\_

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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

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

**PLAYETHICS, INC.**

  
\_\_\_\_\_

Dated: 9/30/2014

Sean Ahn  
\_\_\_\_\_  
Name

President  
\_\_\_\_\_  
Title