

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Miss Avenue, Inc. (“Miss Avenue”) (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” (the “Notice”) 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 retailer Cornerstone Apparel, Inc. (“Cornerstone”) 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 Cornerstone. CEH later learned that the non-exclusive exemplar item identified in the Notice – the Miss Avenue Dress in Red (Item No. 165185000000, MA3227-Junior-SDRS) – was supplied to Cornerstone by Miss Avenue.

1.2. The Notice alleges that the Covered Products sold by Cornerstone, which Miss Avenue supplied, 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. Miss Avenue asserts that it has fewer than ten (10) employees and thus is exempt from Proposition 65. However, after learning of the Notice, Miss Avenue promptly contacted

CEH in an effort to resolve CEH's claims regarding products manufactured, distributed, and/or sold by Miss Avenue in order to resolve any Proposition 65 liability its customers may have as a result of selling products manufactured, distributed, and/or sold by Miss Avenue.

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 Miss Avenue. By executing this Agreement, the Parties do not admit any facts or conclusions of law. 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 Miss Avenue.

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 Miss Avenue.

3. INJUNCTIVE RELIEF

3.1. Specification Compliance Date. To the extent it has not already done so, no more than thirty (30) days after execution of this Agreement, Miss Avenue 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, Miss Avenue 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, Miss Avenue shall cease selling the Miss Avenue Dress in Red, Item No.

16518500000, MA3227-Junior-SDRS (the “Recall Products”) to customers who sell or offer for sale the Recall Products to California consumers. Upon execution of this Agreement, Miss

Avenue 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 Miss Avenue for destruction; or (b) directly destroy the Recall Products.

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

3.3.3. Within sixty (60) days of execution of this Agreement, Miss Avenue shall provide CEH with written certification from Miss Avenue 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, within five (5) business days of execution of this Agreement, Miss Avenue shall pay a total of \$35,000 as a settlement payment. This total 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. Miss Avenue shall pay \$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. The penalty check shall be made payable to the Center for Environmental Health.

4.3. Monetary Payment in Lieu of Civil Penalty. Miss Avenue shall pay \$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. The payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

4.4. Attorneys' Fees and Costs. Miss Avenue 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 the alleged violations, bringing this matter to Miss Avenue's attention, 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 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 a 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 its intent to enforce 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 Miss Avenue 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 Miss Avenue, or 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, including Cornerstone Apparel, Inc., regarding the failure to warn about exposures to Lead arising in connection with Covered Products manufactured, distributed, or sold by Miss Avenue on or before the execution of this Agreement.

8.2. Compliance with the terms of this Agreement by Miss Avenue 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 Miss Avenue's obligations under this Agreement are unique. In the event that Miss Avenue 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 Miss Avenue 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 Miss Avenue:

John Kim
LAW OFFICES OF KIM, AU & ASSOCIATES
3435 Wilshire Blvd., Suite 2080
Los Angeles, CA 90010
john@kimaulaw.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.

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 Miss Avenue 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 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: 12/18/14

MISS AVENUE, INC.

Dated: _____

Name

Title

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

Dated: _____

MISS AVENUE, INC.



Dated: 12/15/14

Sun W. Yoon
Name

President
Title