

SETTLEMENT AGREEMENT AND RELEASE

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

1. INTRODUCTION

1.1. On August 8, 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 Augusta Products regarding the presence of lead and lead compounds (collectively, “Lead”) in footwear (“Footwear”) manufactured, distributed or sold by Augusta Products (the “Notice”).

1.2. The Notice alleges that Augusta Products’ Footwear that is made with leather, vinyl or imitation leather materials contains Lead. The Notice alleges that such Footwear exposes people who touch, wear or otherwise handle the Footwear 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 California 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 Footwear manufactured, distributed and/or sold by Augusta Products. 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 Footwear that is Manufactured, distributed, sold or offered for sale by Augusta Products.

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 Augusta Products.

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, Augusta Products

shall provide the Lead Limits to its Suppliers of Covered Products and shall instruct each Supplier to provide Augusta Products with Covered Products that comply with the Lead Limits on a nationwide basis.

3.2. Lead Limits. Upon execution of this Agreement, Augusta Products shall not purchase, import, Manufacture, sell or offer for sale 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 All other materials or components: 100 ppm.

4. SETTLEMENT PAYMENTS

4.1. In consideration of the mutual covenants and releases provided in this Agreement, on or before October 31, 2015, Augusta Products shall pay a total of \$15,000 as a settlement payment. Any failure by Augusta Products to comply with the payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day the full settlement payment is not paid after the date the payment is due. The late fees required under this Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 6 of this Agreement. The settlement total shall be paid and allocated as follows:

4.2. Civil Penalty. Augusta Products shall pay \$1,900 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty for \$1,425 shall be made payable to

OEHHA and associated with taxpayer identification number 68-0284486. These payments shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$475 shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.3. Payment in Lieu of Civil Penalty. Augusta Products shall pay \$2,900 as a payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall 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 payments pursuant to this Section shall be made payable to the Center For Environmental

Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.4. Attorneys' Fees and Costs. Augusta Products shall pay \$10,200 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement checks shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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 Augusta Products 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 Augusta Products, 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, regarding the failure to warn about exposures to Lead arising in connection with Covered Products manufactured, distributed or sold by Augusta Products 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 Augusta Products' obligations

under this Agreement are unique. In the event that Augusta Products 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 Augusta Products 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:

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

For Augusta Products:

Janice Kuang
Augusta Products, LLC
8184 Highland Drive, Ste. C6
Sandy, UT 84093
janicec@augustaproducts.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 Augusta Products 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



Dated: SEP 25, 2015

Charlie Pizarro
Associate Director

AUGUSTA PRODUCTS, LLC

Dated: _____

Signature

Printed Name

Title

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

Dated: _____

AUGUSTA PRODUCTS, LLC



Signature

Dated: September 11, 2015

Jamie Kuong
Printed Name

Managing Director
Title