

SETTLEMENT AGREEMENT AND RELEASE

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

1. INTRODUCTION

1.1. On January 16, 2015, CEH, a non-profit corporation acting in the public interest, served a 60-Day Notice of Violation of Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to EastStar, the California Attorney General, the District Attorneys of every county in California, and the City Attorneys of every California city with a population greater than 750,000. The Notice alleges that EastStar violated Proposition 65 by exposing persons to lead and lead compounds (collectively, “Lead”) contained in footwear without first providing a clear and reasonable warning to such persons regarding the carcinogenic or reproductive toxicity of Lead.

1.2. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed, and/or sold by EastStar. 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 footwear that is Manufactured, distributed, sold, or offered for sale by EastStar.

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 EastStar.

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, EastStar 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, EastStar 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, EastStar shall cease selling the following products: (i) Mojo Moxy Celebrity Pumps in Copper, SKU No. 8225290 (NFA308); (ii) Mojo Moxy Harlow Pumps in Cognac/Nude/Bronze, SKU No. 8-49856-04788-9, Item No. 312011 (FAT2806); (iii) Dolce by Mojo Moxy Delta Ankle Boots in Tan, SKU No. 429925 (FAT2932); (iv) Dolce by Mojo Moxy Mary Jane Jude Wedge Pumps in Nude, SKU No. 436615 (FAT2798); and (v) the Mojo Moxy Dolce Daffy Sandal in Sand, PLN No. 6909732, Item No. D1720392 (NFA438) (the “Recall Covered Products”) to customers who sell or offer for sale the Recall Covered Products to California consumers. Upon execution of this Agreement, EastStar shall also: (i) cease shipping the Recall Covered Products to any of its customers that resell the Recall Covered Products in California; and (ii) send instructions to its customers that resell the Recall Covered Products in California instructing them to either (a) return all the Recall Covered Products to EastStar for destruction; or (b) directly destroy the Recall Covered Products.

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

3.3.3. Within sixty (60) days of execution of this Agreement, EastStar shall provide CEH with written certification from EastStar 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, EastStar shall pay a total of \$20,000 as a settlement payment. Any failure by EastStar 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 installments according to the following schedule: (a) on or before January 22, 2016, EastStar shall pay \$10,000 as a settlement payment; and (b) on or before March 22, 2016, EastStar shall pay \$10,000 as a settlement payment. Each of these payments shall be made payable and allocated as follows.

4.2. Civil Penalty. EastStar shall pay a total of \$2,600 as a 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 total OEHHA portion of the civil penalty payment shall be \$1,950. \$975 of this amount shall be included with the first payment due on January 22, 2016, and \$975 of this amount shall be included with the second payment due on March 22, 2016. These payments shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486, and 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 total CEH portion of the civil penalty payment shall be \$650. \$325 of this amount shall be included with the first payment due on January 22, 2016, and \$325 of this amount shall be included with the second payment due on March 22, 2016. These payments shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.3. Payment in Lieu of Civil Penalty. EastStar shall pay a total of \$3,900 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). \$1,950 of this amount shall be included with the first payment due on January 22, 2016, and \$1,950 of this amount shall be included with the second payment due on March 22, 2016. These payments shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. 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.

4.4. Attorneys' Fees and Costs. EastStar shall pay a total of \$13,500 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 EastStar's attention, and negotiating a settlement in the public interest. \$6,750 of this amount shall be included with the first payment due on January 22, 2016 and \$6,750 of this amount shall be included with the second payment due on March 22, 2016. Each check pursuant to this section shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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 1.2 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. To the extent that EastStar has complied with all of its obligations under Section 4 hereof, this Settlement Agreement is a full, final and binding resolution between CEH on behalf of itself and the public interest and EastStar, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, and attorneys (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or could have been asserted against EastStar, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to Lead contained in Covered Products that were sold by EastStar prior to the Effective Date.

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

9. SPECIFIC PERFORMANCE

9.1. The Parties expressly recognize that EastStar's obligations under this Agreement are unique. In the event that EastStar 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 EastStar 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 EastStar:

Marcel Oliveira
Oliveira Law Group
22 East Mifflin Street, Suite 302
Madison, WI 53703
Marcel.Oliveira@oliveiralawgroup.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 EastStar 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: _____

22 Jun 2018

EASTSTAR SOLUTIONS, LTD.

Signature

Dated: _____

Printed Name

Title

15. AUTHORIZATION

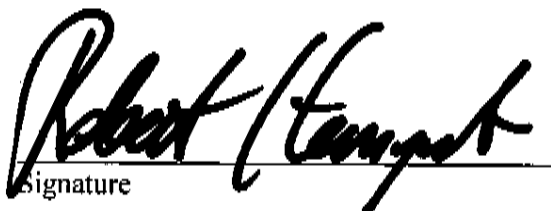
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AGREED TO:**CENTER FOR ENVIRONMENTAL HEALTH**

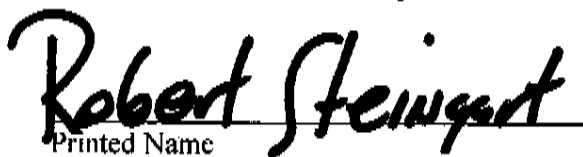
Charlie Pizarro
Associate Director

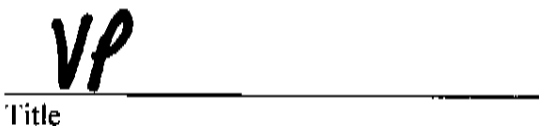
Dated: _____

EASTSTAR SOLUTIONS, LTD.


Signature

Dated: 2/26/16


Printed Name


Title