

## **SETTLEMENT AGREEMENT AND RELEASE**

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

### **1. INTRODUCTION**

**1.1.** On February 13, 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 Carson-Saeks, 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 Carson-Saeks violated Proposition 65 by exposing persons to lead and lead compounds (collectively, “Lead”) contained in wallets, handbags, purses, and clutches 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 Carson-Saeks. By executing this Agreement, the Parties do not admit any facts or conclusions of law. Specifically, Carson-Saeks does not admit that it is subject to the provisions of The Safe Drinking Water and Toxic Enforcement Act of 1986. Carson-Saeks enters into this Agreement solely to resolve allegations concerning the Covered Products as defined herein and to resolve and avoid litigation against its California customers released as set forth in paragraph 8.1 herein. 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 wallets, handbags, purses, and clutches made with leather, vinyl, or imitation leather materials that are manufactured, distributed, sold, or offered for sale by Carson-Saeks.

**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 Carson-Saeks.

## **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, Carson-Saeks 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.** On or after November 15, 2015, Carson-Saeks shall not purchase, import, Manufacture, sell or otherwise 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. Warnings for Covered Products.**

3.3.1 **Warning Option.** After November 15, 2015, as an alternative to meeting the Lead Limits of Section 3.2, Carson-Saeks may purchase, import, Manufacture or sell a Covered Product that will be sold or offered for sale to California consumers provided that such Covered Product has a Clear and Reasonable Warning that complies with the provisions of this Section 3.3. A Clear and Reasonable Warning may only be provided for Covered Products that Carson-Saeks reasonably believes do not meet the Lead Limits. Notwithstanding this Section 3.3, Carson-Saeks shall utilize good faith efforts to achieve reformulation of the Covered Products to reduce the Lead levels so that all Covered Products meet the Lead Limits as soon as possible.

3.3.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this Consent Judgment shall state:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

A Clear and Reasonable Warning shall not be preceded, followed or surrounded by, or include, any additional words or phrases that contradict, obfuscate or otherwise undermine the warning, or that reduce its conspicuousness, or that qualify or interpret the required text, such as “legal notice required by law.” For internet, catalog or any other sale where the consumer is not physically present and cannot see a warning displayed on the Covered Product or the packaging of the Covered Product prior to purchase or payment, the warning statement shall be displayed in such a manner that it is likely to be read and understood prior to the authorization of or actual payment. For internet sales, the warning statement shall: (a) be displayed before a consumer commits to purchasing the Covered Product and without the need for the consumer to follow any additional hyperlinks beyond those required as part of the ordinary purchasing process; (b) be set out in a text, box on a separate line or in a separate paragraph; (c) be displayed in a font size that is no smaller than that used in the product description; and (d) be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual.

### **3.4 Action Regarding Specific Products.**

3.4.1. Upon execution of this Agreement, and to the extent not previously completed, Carson-Saeks shall cease selling the following products: (i) the D’argeaux Single Strap Shoulder Handbag in Orange Pebbled Leather, SKU No. 7-34750-18049-0, Item No. 25-51021962, Style No. 61326; and (ii) the Harve Bernard Detachable Chain Clutch in Red, TJ

Maxx SKU No. 1000044538828482, Style No. HBDQ6833 (the “Recall Covered Products”) to customers who sell or offer for sale the Recall Covered Products to California consumers.

3.4.2. Within sixty (60) days of execution of this Agreement, Carson-Saeks shall provide CEH with written certification from Carson-Saeks confirming that it has ceased selling the Recall Covered Products to customers who sell or offer for sale Recall Covered Products to California consumers.

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

**4.1.** In consideration of the mutual covenants and releases provided in this Agreement, Carson-Saeks shall pay a total of \$45,000 as a settlement payment. This total shall be paid on the dates and in the amounts as further set forth in this Section and Exhibit A and allocated as follows:

**4.2 Civil Penalty.** 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 payment for the amount designated for Settling Defendant on Exhibit A as “Civil Penalty OEHHA Portion” shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment 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 the amount designated for Settling Defendant on Exhibit A as “Civil Penalty CEH Portion” shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**4.3** 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](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**4.4** A reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the Lexington Law

Group and associated with taxpayer identification number 94-3317175. This payment 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 Carson-Saeks has complied with all of its obligations under Section 4 hereof and except as otherwise provided herein, CEH hereby releases and discharges Carson-Saeks 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 Carson-Saeks, or its parents, subsidiaries, directors, officers, employees, agents, and all entities to whom they distribute or sell Covered Products, including but not limited to Stein Mart, Inc. and its parents, subsidiaries, directors, officers, employees, and agents, and 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 Carson-Saeks on or before November 1, 2015.

**8.2.** Compliance with the terms of this Agreement by Carson-Saeks 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 Carson-Saeks' obligations under this Agreement are unique. In the event that Carson-Saeks 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 Carson-Saeks 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 Carson-Saeks:

Jeff Smith  
Carson-Saeks, Inc.  
2601 Kimber Lane  
Dayton, OH 45413

Michael E. Delehunt  
Foley & Lardner LLP  
555 California Street, Suite 1700  
San Francisco, CA 94104  
mdelehunt@foley.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 Carson-Saeks 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: 12/11/2015

**CARSON-SAEKS, INC.**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

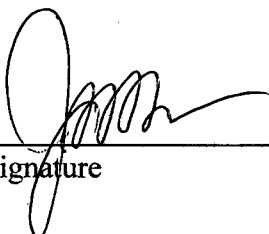
**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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

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

**CARSON-SAEKS, INC.**

  
\_\_\_\_\_  
Signature

Dated: 12/7/15

Jerney Smith  
\_\_\_\_\_  
Printed Name

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

**EXHIBIT A**  
**Payments and Allocations**

Total Settlement Payment	\$45,000
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Payment 1 – Total \$15,000 - Due November 1, 2015

Payment 1 Allocation:

Total Civil Penalty	\$ 1,900
Civil Penalty OEHHA Portion	\$ 1,425
Civil Penalty CEH Portion	\$ 475
Payment in Lieu of Civil Penalty	\$ 2,900
Attorneys' Fees and Costs	\$10,200

Payment 2 – Total \$15,000 - Due December 1, 2015

Payment 2 Allocation:

Total Civil Penalty	\$ 1,900
Civil Penalty OEHHA Portion	\$ 1,425
Civil Penalty CEH Portion	\$ 475
Payment in Lieu of Civil Penalty	\$ 2,900
Attorneys' Fees and Costs	\$10,200

Payment 3 – Total \$15,000 - Due January 1, 2015

Payment 3 Allocation:

Total Civil Penalty	\$ 1,900
Civil Penalty OEHHA Portion	\$ 1,425
Civil Penalty CEH Portion	\$ 475
Payment in Lieu of Civil Penalty	\$ 2,900
Attorneys' Fees and Costs	\$10,200