

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is between the Center for Environmental Health ("CEH") and Mellow World, Inc. ("Mellow World") (together, the "Parties").

### **1. INTRODUCTION**

**1.1.** On May 28, 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 Mellow World, 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 Mellow World 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 Mellow World. 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. "Accessible Component" means a component of a Covered Product that could be touched by a person during normal and reasonably foreseeable use.

2.2. "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 Mellow World.

2.3. "Lead Limits" means the maximum concentrations of lead and lead compounds by weight specified in Section 3.2.

2.4. "Manufactured" and "Manufactures" means to manufacture, produce, or assemble.

2.5. "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.

2.6. "Supplier" means a person or entity that Manufactures, imports, distributes, or supplies a Covered Product to Mellow World.

## 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, Mellow World 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, Mellow World 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, Mellow World shall cease selling the following products:

- (i) Mellow World Alyssa Handbag in Orange, SKU No. 7-00604-34478-3, Style No. HB2238-Orange;
- (ii) Mellow World Crossroad Purse in Mustard, SKU No. 8-18478-01864-5, Style No. HB2841-Mustard;
- (iii) Mellow World Crossroad Purse in Olive, SKU No. 8-18478-01865-2, Style No. HB2841-Olive;
- (iv) Mellow World Orchid Purse in Green, SKU No. 8-18478-01888-1, Style No. HB4276-Green;
- (v) Mellow World Orchid Purse in Orange, SKU No. 8-18478-01890-4, Style No. HB4276-Orange;
- (vi) Mellow World Bailey Clutch in Blue Grey, SKU No. 8-18478-01439-5, Style No. HB2820-BlueGrey;
- (vii) Mellow World Cobble Hill Purse in Red Orange, SKU No. 8-18478-01844-7, Item No. HB2838-RedOrange;

- (viii) Mellow World Anita Handbag in Orange, SKU No. 8-18478-01627-6, Style No. HB4261-Orange;
- (ix) Mellow World Karina Handbag in Mustard, SKU No. 8-18478-01431-9, Style No. HB3508; and
- (x) Mellow World Rosette Handbag in Yellow, SKU 16-D1 512541, Item No. 22-1498, Style No. HB2703-Yellow

(the “Recall Covered Products”) to customers who sell or offer for sale the Recall Covered Products to California consumers. Upon execution of this Agreement, Mellow World 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 Mellow World 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, Mellow World shall provide CEH with written certification from Mellow World 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, Mellow World shall pay a total of \$48,000 as a settlement payment. Any failure by Mellow World 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 6.1. This total payment shall be made in three installments according to the following schedule: (a) on or

before March 11, 2016, Mellow World shall pay \$20,000 as a settlement payment; (b) on or before September 1, 2016, Mellow World shall pay \$15,000 as a settlement payment; and (c) on or before November 1, 2016, Mellow World shall pay \$13,000 as a settlement payment. Each of these payments shall be paid in three separate checks delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, and shall be made payable and allocated as follows.

**4.2. Civil Penalty.** Mellow World shall pay the total sum of \$6,300 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")). \$2,625 of this amount shall be included with the first payment due on March 11<sup>th</sup>, \$1,970 of this amount shall be included with the second payment due on September 1<sup>st</sup>, and \$1,705 of this amount shall be included with the third payment due on November 1<sup>st</sup>. Each penalty check shall be made payable to the Center for Environmental Health.

**4.3. Payment in Lieu of Civil Penalty.** Mellow World shall pay the total sum of \$9,500 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 (4%) 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). \$3,965 of this amount shall be included with the first payment due on

March 11<sup>th</sup>, \$2,965 of this amount shall be included with the second payment due on September 1<sup>st</sup>, and \$2,570 of this amount shall be included with the third payment due on November 1<sup>st</sup>. Each payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

**4.4. Attorneys' Fees and Costs.** Mellow World shall pay \$32,200 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 Mellow World's attention, and negotiating a settlement in the public interest. \$13,410 of this amount shall be included with the first payment due on March 11<sup>th</sup>, \$10,065 of this amount shall be included with the second payment due on September 1<sup>st</sup>, and \$8,725 of this amount shall be included with the third payment due on November 1<sup>st</sup>. Each payment made pursuant to this section shall be made payable to the Lexington Law Group.

**4.5 Refund to eBags, Inc.** Within 15 days of receiving Mellow World's final settlement payment, CEH shall refund any amounts due to eBags, Inc. pursuant to section 4.5.7 of its Consent Judgment with eBags, Inc. However, if eBags, Inc. seeks a refund sooner, the Parties shall meet and confer in good faith as to an appropriate resolution. If: (a) those meet and confer efforts are unsuccessful at resolving the issue; (b) Mellow World has already made its first settlement payment of \$20,000; and (c) eBags, Inc. refuses to do business with Mellow World unless it receives the refund sooner, CEH shall refund any amounts due to eBags, Inc. within 15 days of the Parties' impasse.

## **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.** Any Party may, after meeting and conferring, seek to enforce the terms and conditions contained in this Agreement by new action before the Superior Court of California in Alameda County. Enforcement of the terms and conditions of Section 3.2 of this Agreement shall be brought exclusively pursuant to Sections 6.3 through 6.4.

**6.3. Notice of Violation.** CEH may seek to enforce the requirements of Section 3.2 by issuing a Notice of Violation pursuant to this Section 6.3.

**6.3.1. Service of Notice.** CEH shall serve the Notice of Violation on Mellow World within 45 days of the date the alleged violation(s) was or were observed, provided, however, that: (i) CEH may have up to an additional 45 days to provide Mellow World with the test data required by Section 6.3.2(d) below if it has not yet obtained it from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a Covered Product so long as: (a) the identity of the supplier cannot be discerned from the labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served within 45 days of the date the supplier is identified by CEH.

**6.3.2. Supporting Documentation.** The Notice of Violation shall, at a minimum, set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed, (b) the location at which the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the alleged violation, and of each material or component that is alleged not to comply with the Lead Limits, including a picture of the Covered Product and all identifying information on tags and labels, and (d) all test data obtained by CEH regarding the Covered Product and related supporting documentation, including all laboratory reports, quality assurance reports and quality control reports associated with testing of the Covered Products. Such Notice of Violation shall be based at least in part upon total acid digest testing performed by an independent accredited laboratory. Wipe, swipe, x-ray fluorescence, and swab testing are not by themselves sufficient to support a Notice of Violation, although any such testing may be used as additional support for a Notice. The Parties agree that the sample Notice of Violation attached hereto as Exhibit A is sufficient in form to satisfy the requirements of subsections (c) and (d) of this Section 6.3.2.

**6.3.3. Additional Documentation.** CEH shall promptly make available for inspection and/or copying upon request by and at the expense of Mellow World, all supporting documentation related to the testing of the Covered Products and associated quality control samples, including chain of custody records, all laboratory logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all printouts from all analytical instruments relating to the testing of Covered Product samples and any and all calibration, quality assurance, and quality control tests performed or relied upon in conjunction with the testing of the Covered Products, obtained by or available to CEH that pertains to the Covered



Product's alleged noncompliance with Section 3 and, if available, any exemplars of Covered Products tested.

**6.3.4. Multiple Notices.** If Mellow World has received more than four Notices of Violation in any 12-month period, at CEH's option, CEH may seek whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment. For purposes of determining the number of Notices of Violation pursuant to this Section 6.3.4, the following shall be excluded:

- (a) Multiple notices identifying Covered Products Manufactured for or sold to Mellow World from the same Vendor; and
- (b) A Notice of Violation that meets one or more of the conditions of Section 6.4.3(c).

**6.4. Notice of Election.** Within thirty (30) days of receiving a Notice of Violation pursuant to Section 6.3, including the test data required pursuant to 6.3.2(d), Mellow World shall provide written notice to CEH stating whether it elects to contest the allegations contained in the Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be deemed an election to contest the Notice of Violation. Any contributions to the Fashion Accessory Testing Fund required under this Section 6.4 shall be made payable to The Center for Environmental Health and included with Mellow World's Notice of Election.

**6.4.1. Contested Notices.** If the Notice of Violation is contested, the Notice of Election shall include all then-available documentary evidence regarding the alleged violation, including any test data. Within thirty (30) days the Parties shall meet and confer to attempt to resolve their dispute. Should such attempts at meeting and conferring fail, CEH may file an enforcement motion pursuant to Section 6.2. If Mellow World withdraws its Notice of Election

to contest the Notice of Violation before any motion concerning the violations alleged in the Notice of Violation is filed pursuant to Section 6.2, Mellow World shall make a contribution to the Proposition 65 Fashion Accessory Testing Fund in the amount of \$12,500 and shall comply with all of the non-monetary provisions of Section 6.4.2. If, at any time prior to reaching an agreement or obtaining a decision from the Court, CEH or Mellow World acquires additional test or other data regarding the alleged violation, it shall promptly provide all such data or information to the other Party.

**6.4.2. Non-Contested Notices.** If the Notice of Violation is not contested, Mellow World shall include in its Notice of Election a detailed description of corrective action that it has undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at a minimum, provide reasonable assurance that the Covered Product will no longer be offered by Mellow World or its customers for sale in California. If there is a dispute over the sufficiency of the proposed corrective action or its implementation, CEH shall promptly notify Mellow World and the Parties shall meet and confer before seeking the intervention of the Court to resolve the dispute. In addition to the corrective action, Mellow World shall make a contribution to the Fashion Accessory Testing Fund in the amount of \$10,000, unless one of the provisions of Section 6.4.3 applies.

**6.4.3. Limitations in Non-Contested Matters.**

(a) If it elects not to contest a Notice of Violation before any motion concerning the violation(s) at issue has been filed, the monetary liability of Mellow World shall be limited to the contributions required by Section 6.4.2 and this Section 6.4.3, if any.

(b) For non-contested Notices of Violation, only one required contribution may be assessed as to any particular Covered Product.

(c) The contribution to the Fashion Accessory Testing Fund shall be:

(i) One thousand seven hundred fifty dollars (\$1,750) if Mellow World, prior to receiving and accepting for distribution or sale the Covered Product identified in the Notice of Violation, obtained test results demonstrating that all of the materials or components in the Covered Product identified in the Notice of Violation complied with the applicable Lead Limits, and further provided that such test results meet the same quality criteria to support a Notice of Violation as set forth in Section 6.3.2 and that the testing was performed within two years prior to the date of the sales transaction on which the Notice of Violation is based. Mellow World shall provide copies of such test results and supporting documentation to CEH with its Notice of Election; or

(ii) Not required or payable, if the Notice of Violation identifies the same Covered Product or Covered Products, differing only in size or color, that have been the subject of another Notice of Violation within the preceding 12 months.

## **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 Mellow World 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 Mellow World, 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 Mellow World, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to Lead contained in Covered Products that were sold by Mellow World prior to the Effective Date.

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

## **9. SPECIFIC PERFORMANCE**

**9.1.** The Parties expressly recognize that Mellow World’s obligations under this Agreement are unique. In the event that Mellow World 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 Mellow World 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 Mellow World:   Marilyn He  
                                  Mellow World, Inc.  
                                  13889 Redwood Avenue  
                                  Chino, CA 91710  
                                  marilyn@mellowworld.net

**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 Mellow World 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:**

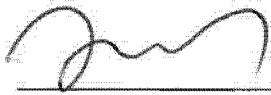
**CENTER FOR ENVIRONMENTAL HEALTH**



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

Dated: 11 March 2016

MELLOW WORLD, INC.



Signature

Dated: 3-03-16

Li Chen

Printed Name

President

Title

365 North Canyons Parkway, Suite 201  
Tech Center: 2441 Constitution Drive  
Livermore CA 94551



925-828-1440  
www.TheNFL.com

## Analytical Report

August 03, 2011

Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117

Analytical Report No.: CL3573-33  
Analysis Dates: 07/26/11 - 08/03/11

Listed below are the results of our analyses for sample(s) received on July 26, 2011.

CEH ID#AB789L, [REDACTED] Wallet (Orange Surface Material On Main Part Of W  
NFL ID AF02363

Analyte	Result	Units	Method Ref.
Lead	67500	ppm	NIOSH 7082

A portion of the sample was digested in a microwave oven with concentrated nitric acid and analyzed by ICP-MS.

Sample(s) were received in good condition unless and results are reported based on the sample(s) as received, unless otherwise noted. Please note that these results apply only to the sample(s) submitted for this report. Samples from a different portion of the same lot may produce different results.

The National Food Lab services are provided subject to our standard terms and conditions, which can be found on our website, [www.TheNFL.com](http://www.TheNFL.com). Should you have any questions concerning these results, please do not hesitate to contact us. Thank you for using the services of the National Food Lab.

Sincerely,

Grace Bandong, Division Manager, Food Contaminants -Chemistry

cc: The NFL's Accounts Receivable



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# **Exhibit A**

