

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Innovative Business Group, Inc. (“IBG”) (together, the “Parties”).

### **1. INTRODUCTION**

**1.1.** On September 21, 2015, 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 retailers Neiman Marcus Group LTD LLC and The Neiman Marcus Group LLC (collectively, “Neiman Marcus”) 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 Neiman Marcus. CEH later learned that the non-exclusive exemplar item identified in the Notice – the Neiman Marcus Leather Mesh Front Scoop Sleeveless Top in Ginger (SKU No. 1103-5124; Item No. LCS15\_T7V0J) – was supplied to Neiman Marcus by IBG.

**1.2.** The Notice alleges that the Covered Products sold by Neiman Marcus, which IBG 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.** IBG asserts that it has fewer than ten (10) employees and thus is exempt from Proposition 65. However, after learning of the Notice, IBG promptly contacted CEH in an effort to resolve CEH's claims regarding products manufactured, distributed, and/or sold by IBG in order to resolve any Proposition 65 liability its customers may have as a result of selling products manufactured, distributed, and/or sold by IBG.

**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 IBG. 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 IBG.

**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 IBG.

### **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, IBG 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, IBG 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, IBG shall cease selling the Neiman Marcus Leather Mesh Front Scoop Sleeveless Top in Ginger (SKU No. 1103-5124; Item No. LCS15\_T7V0J) (the “Recall Products”) to customers who sell or offer for sale the Recall Products to California consumers. Upon

execution of this Agreement, IBG 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 IBG 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, IBG shall provide CEH with written certification from IBG 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, on or before March 15, 2016, IBG shall pay a total of \$22,500 as a settlement payment. Any failure by IBG 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 shall be paid in four 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.** IBG shall pay a total of \$2,940 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 OEHHA portion of the civil penalty payment in the amount of \$2,205 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 in the amount of \$735 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. Monetary Payment in Lieu of Civil Penalty.** IBG shall pay a total of \$4,390 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](http://www.ceh.org/justicefund). The payment in lieu of penalty check 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. Attorneys' Fees and Costs.** IBG shall pay a total of \$15,170 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 IBG's attention, and negotiating a settlement in the public interest. This payment 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 1.4 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 in Section 3 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 IBG has complied with all of its obligations under Section 4 hereof, and except as otherwise provided herein, CEH hereby releases and discharges IBG 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 IBG, 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 (including but not limited to Neiman Marcus Group LTC LLC and The Neiman Marcus Group LLC), 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 IBG on or before the execution of this Agreement.

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

## **9. SPECIFIC PERFORMANCE**

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

Merrit Jones  
Bryan Cave LLP  
560 Mission Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105-2994  
Merrit.Jones@bryancave.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 IBG 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: 19 Feb 2016

**INNOVATIVE BUSINESS GROUP, INC.**

\_\_\_\_\_

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

\_\_\_\_\_

Name

\_\_\_\_\_

Title

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**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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

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

**INNOVATIVE BUSINESS GROUP, INC.**

\_\_\_\_\_  
  
Jean Pierre GUEL  
Name

Dated: 02/11/16

\_\_\_\_\_  
CEO  
Title