

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Koehler America, Inc. (“Koehler”). CEH and Koehler are together referred to herein as “the Parties.” The effective date of this Agreement is the date on which it is fully executed by the Parties (the “Effective Date”).

### **1. INTRODUCTION**

1.1. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. This Agreement covers thermal paper that is sold, offered for sale or distributed by Koehler and any of its parents, subsidiaries, or affiliated corporate entities under common ownership or control (“Thermal Paper”). Thermal Paper is used in thermal printers to create transactional documents such as cash register and ATM receipts. Some, but not all, Thermal Paper is coated with bisphenol A (“BPA”), a chemical known to the State of California to cause birth defects or other reproductive harm.

1.2. On or about December 28, 2017, CEH provided a 60-day Notice of Violation under Proposition 65 to Koehler, 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, alleging that Koehler violated Proposition 65 by exposing persons in California to BPA from Thermal Paper without first providing a clear and reasonable Proposition 65 warning (the “Notice”).

1.3. Koehler has agreed to enter this Agreement for the purpose of resolving what it views as a nuisance claim, to avoid the costs and inconveniences involved in defending that claim, and for no other purpose. Koehler specifically denies that it has sold BPA-containing

Thermal Paper in California during the relevant time period, and further specifically denies that the factual allegations embodied in the Notice have any merit.

1.4. 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 future legal proceedings, except as otherwise provided herein.

## **2. INJUNCTIVE RELIEF**

2.1. **No Sales of BPA-Containing Thermal Paper in the United States.** Koehler does not currently purchase, sell, offer for sale, ship or distribute any BPA-containing Thermal Paper in the United States. Koehler adopted this course of business voluntarily, and did so prior to receiving the Notice. Nevertheless, Koehler agrees that, after the Effective Date, Koehler shall not purchase, sell, offer for sale, ship or distribute any Thermal Paper in the United States that contains BPA that was intentionally added to the Thermal Paper in the manufacturing process. Thermal Paper that contains less than 20 parts per million (“ppm”) BPA by weight (the “Reformulation Level”) is deemed to contain no intentionally added BPA, such concentration to be determined by use of a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment.

**3. ENFORCEMENT OF SETTLEMENT AGREEMENT**

3.1. Should a Party to this Agreement prevail on any action, motion, or application to enforce this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

**4. PAYMENTS**

4.1. **Payments by Koehler.** On or before ten (10) business days after the Effective Date, Koehler shall be liable for payment of the total sum of \$20,000 as a settlement payment as further set forth in this Section.

4.2. **Allocation of Payments.** The total settlement amount shall be paid in four (4) separate checks in the amounts specified below and delivered as set forth below. The funds paid by Koehler shall be allocated as set forth below between the following categories and made payable as follows:

4.2.1. Koehler shall pay \$1,800 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, Koehler shall pay the OEHHA portion of the civil penalty payment for \$1,350 by check 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

Koehler shall pay the CEH portion of the civil penalty payment for \$450 by check 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.

4.2.2. Koehler shall pay \$18,200 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$14,300 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$3,900 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3. To summarize, Koehler shall deliver checks made out to the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$1,350	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$450	LLG
Center For Environmental Health	Fees and Costs	\$3,900	LLG
Lexington Law Group	Fees and Costs	\$14,300	LLG

**5. MODIFICATION OF AGREEMENT**

5.1. **Modification.** This Agreement may be modified from time to time by express written agreement of the Parties.

## **6. APPLICATION OF SETTLEMENT AGREEMENT**

6.1. 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.

## **7. CLAIMS COVERED AND RELEASE**

7.1. Provided that Koehler complies in full with its obligations under Section 4 hereof, CEH, on behalf of itself and its successors and assigns, discharges, waives, and releases Koehler and its parents, subsidiaries, affiliated entities that are under common ownership or control, directors, officers, employees, agents, shareholders, assigns and attorneys (collectively, the “Koehler Releasees”) from all claims under Proposition 65 or any other statutory or common law regarding the failure to warn about exposures to BPA arising in connection with Thermal Paper manufactured, distributed, or sold by the Koehler Releasees before, on, or after the Effective Date.

7.2. Provided that Koehler complies in full with its obligations under Section 4 hereof, compliance with the terms of this Agreement by Koehler constitutes compliance with Proposition 65 by Koehler and the Koehler Releasees for purposes of exposures to BPA from the Thermal Paper manufactured, distributed, or sold by the Koehler Releasees after the Effective Date.

## **8. SPECIFIC PERFORMANCE**

8.1. The Parties expressly recognize that Koehler’s obligations under this Agreement are unique. In the event that Koehler is found to be in breach of this Agreement for failure to comply with the provisions of Section 2, the Parties agree that it would be extremely impracticable to measure the 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 Koehler expressly waives the defense that a remedy in damages will be adequate.

## **9. GOVERNING LAW**

9.1. The terms of this Agreement shall be governed by the laws of the State of California. By agreeing that the laws of the State of California govern the terms of this Agreement, the Parties do not hereby waive any other rights and expressly reserve all other such rights, including but not limited to the right to challenge the jurisdiction of any California court.

## **10. PROVISION OF NOTICE**

10.1. When CEH is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Eric S. Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
[esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

10.2. When Koehler is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Nathan McClellan  
Dechert, LLP  
633 West 5th Street, Suite 4900  
Los Angeles, CA 90071  
[nathan.mcclellan@dechert.com](mailto:nathan.mcclellan@dechert.com)

10.3. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

## **11. ENTIRE AGREEMENT**

11.1. 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. Other agreements that are not specifically contained or referenced herein, oral or otherwise, shall be deemed neither to exist nor 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.

**12. AUTHORITY TO STIPULATE TO AGREEMENT**

12.1. 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 to legally bind that Party. The undersigned have read, understood, 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.

**13. NO EFFECT ON OTHER SETTLEMENTS**

13.1. Nothing in this Agreement shall preclude CEH from resolving any claim against an entity that is not Koehler 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 and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.



**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

**KOEHLER AMERICA, INC.**

  
\_\_\_\_\_  
Signature

*Willy Fröh*  
\_\_\_\_\_  
Printed Name

*Director*  
\_\_\_\_\_  
Title

**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

*Michael Green*

Signature

*Michael Green*

Printed Name

*CEO*

Title

**KOEHLER AMERICA, INC.**

Signature

Printed Name

Title