

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ACE HARDWARE CORPORATION

Consumer Advocacy Group, Inc., on behalf of itself and suing in the public interest pursuant to Health and Safety Code section 25249.7, subdivision (d) ("CAG") and Ace Hardware Corporation ("Ace") enter into this agreement ("Settlement Agreement") to settle the case entitled *Consumer Advocacy Group, Inc. v. Ace Hardware Corporation, et al.*, filed on March 4, 2008, and pending in the Superior Court of California for the County of Alameda, Case No. RG08374636 (consolidated with *Consumer Advocacy Group, Inc., v. Oreg Corporation, et al.*, Alameda County Superior Court Case No. RG07331650 ("Lawsuit"), as follows:

1.0 Introduction

1.1 CAG and Ace Hardware Corporation ("Parties") enter into this Settlement Agreement to settle disputed claims between the Parties as set forth hereafter.

1.2 The Lawsuit alleges violations of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Saf. Code, §§ 25249.5, et seq.) ("Proposition 65"). Ace denies the material allegations of the Lawsuit, and denies liability for the cause of action alleged in the complaint.

1.3 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, including, but not limited to, any admission concerning the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Ace, its retailers, officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the cause of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or

impair any right, remedy, argument, or defense that CAG and Ace may have against one another in any other pending legal proceeding.

2.0 Release

2.1 Upon court approval of the settlement between the Parties, execution of the obligations under this Settlement Agreement, and the expiration of time to appeal the same, CAG fully releases and forever discharges Ace, its related affiliates, predecessors, successors, and assigns and all officers, directors, its retailers (only as to the products sold by Ace), the manufacturer and supplier of the OTO products sold to Ace (only for the sales of OTO products to Ace, and not any other entity) and employees of any of the released entities (collectively, "Released Parties") from all known and unknown rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out of the facts and claims alleged or which could have been alleged in the Lawsuit. Without limiting the foregoing, the Parties intend the scope of this release to cover all Claims Covered (as defined in Section 3 below) as to the Released Parties put in controversy by the Lawsuit.

2.2 CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG acknowledges that the claims released in section 2.1 above may include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CAG acknowledges and understands the significance and consequences of this specific waiver of Civil Code Section 1542.

3.0 Claims Covered

3.1 This Settlement Agreement is a final and binding resolution between CAG and the Released Parties of the following claims and causes of action:

All Proposition 65 claims that were or could have been asserted in the Lawsuit, including those arising from allegations that the Released Parties exposed, knowingly and intentionally, users of Ace Products to 3,3'-Dimethylbenzidine (ortho-Tolidine) and/or 3,3'-Dimethylbenzidine dihydrochloride (collectively "OTO"), chemicals allegedly designated by the State of California to cause cancer

without first giving clear and reasonable warning of such to persons exposed up to the effective date of this Settlement Agreement.

4.0 Defendant's Duties

4.1 Ace agrees that as of June 15, 2009, Ace or its supplier shall place a Proposition 65-compliant warning label conspicuously in or on the packaging of any pool test kits or chemicals sold by Ace into the state of California that contain any OTO, where persons who handle such products are likely to see and read the warning labels. To the extent that Ace retailers sell OTO products after June 15, 2009 without Proposition 65 warning labels, which they may have obtained from sources other than Ace, those retailers are not covered by the release in this Agreement as to those products.

5.0 Payments

5.1 Payment in Lieu of Civil Penalties. Within 5 days following the Court's entry of judgment as provided in Section 9.1, Ace shall pay \$12,000 to CAG. The payment shall be made to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and purposes related to environmental protection, worker health and safety, or reduction of human exposure to hazardous substances (including administrative and litigation costs arising from such projects), as CAG may choose. CAG shall provide its address and federal tax identification number to Ace prior to such payment.

5.2 Payment to Yeroushalmi & Associates. Within 5 days following the Court's entry of judgment as provided in Section 9.1 Ace shall pay CAG \$80,000.00 for its attorney fees and costs incurred in this matter. The payment shall be made to "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the payment of attorney fees and costs, and that the payment and any application or distribution of such payment will not violate any agreement between CAG and its attorneys. CAG releases and agrees to hold harmless the Released Parties with regard to any issue concerning the allocation or distribution of the amount paid under this section. The total to be paid by Ace to CAG and or its Attorneys under this Settlement Agreement is \$92,000.

6.0 Authority to Enter Into Settlement Agreement

6.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. Ace represents that its signatory to this Settlement Agreement has full authority to enter into this Settlement Agreement on behalf of Ace and to bind legally Ace

7.0 Attorney General Review

7.1 Consistent with section 3003(a) of Title 11 of the California Code of Regulations, CAG shall submit this Settlement Agreement to the Attorney General's Office for review within five days of the Parties' execution of this Settlement Agreement.

7.2 Following submittal to the Attorney General, the Parties shall proceed as set forth in this Settlement Agreement.

8.0 Execution in Counterparts and Facsimile

8.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or pdf signature shall be as valid as the original.

9.0 Entry of Judgment Pursuant to Settlement Agreement Required

9.1 CAG shall submit this Settlement Agreement to the Court for consideration as required by Health and Safety Code section 25249.7, subdivision (f)(4). CAG will provide the Court with the necessary information to allow the Court to make the findings required by Health and Safety Code section 25249.7, subdivision (f)(4)(A)-(C).

10.0 Entire Agreement

10.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

11.0 Modification of Settlement Agreement

11.1 Any modification to this Settlement Agreement shall be in writing by the Parties.

12.0 Application of Settlement Agreement

12.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Released Parties identified in Section 2.1 above.

13.0 Notification Requirements

13.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

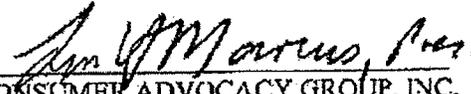
Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Telephone: 213-382-3183
Fax: 213.382.3430

For Ace:

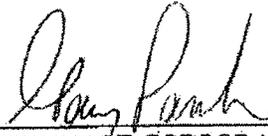
Lee N. Smith, Esq.
STOEL RIVES LLP
980 Ninth Street, Suite 1900
Sacramento, CA 95814
Telephone: 916-447-0700
Fax: 916.447.4781

Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

Dated: April 8, 2009

By: 
CONSUMER ADVOCACY GROUP, INC.

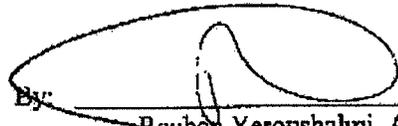
Dated: April 9, 2009

By: 
ACE HARDWARE CORPORATION

As to form only:

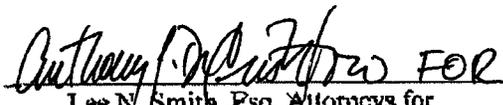
YEROUSHALMI & ASSOCIATES

Dated: April 9, 2009

By: 
Reuben Yeroushalmi, Attorneys for
Consumer Advocacy Group, Inc.

STOEL RIVES LLP

Dated: 4/9/09

By:  FOR
Lee N. Smith, Esq. Attorneys for
Ace Hardware Corporation

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Settlement Agreement between Consumer Advocacy Group and Ace Hardware Corporation.