

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ROYAL FOOTWEAR & ACCESSORIES, LLC

Consumer Advocacy Group, Inc. ("CAG"), and Royal Footwear & Accessories, LLC, ("Royal") (CAG and Royal collectively, the "Parties") enter into this agreement ("Settlement Agreement") to settle CAG's allegations that Royal Footwear & Accessories, Inc. violated Proposition 65 for the purpose of avoiding prolonged and costly litigation. The effective date of this agreement shall be the date upon which it is fully executed by all Parties hereto (the "Effective Date").

1.0 Introduction

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Royal previously sold, and/or distributed, at various times, **Women's Footwear products** (hereinafter "Covered Products") including but not limited to **Pano New York, Slippers, Style # RFNY1952AJW and RFNY1952STO**.

1.3 CAG alleges that the Covered Products contain Lead and Lead Compounds and that Royal did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code § 25249.5, et seq.* ("Proposition 65")). On February 27, 1987, the Governor of California added **lead**

Settlement Agreement between Consumer Advocacy Group, Inc.
and Royal Footwear & Accessories, Inc.



4-20-12

to the list of chemicals known to the State to cause reproductive toxicity, developmental, female, male, and on October 1, 1992, the Governor added **lead and lead compounds** to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice which is further described below. Lead and Lead Compounds are referred to hereafter as the "Covered Chemical."

1.4 On or about April 15, 2011 and again on May 6, 2011, CAG served Royal and other companies as well as certain relevant public enforcement agencies with documents dated April 15, 2011 and May 6, 2011, each entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" ("May 26, 2009 Notice"). The May 6, 2011 Notice alleged that Royal violated Proposition 65 by failing to warn consumers in California that use of **Pano New York, Slippers, Style # RFNY1952AJW** exposes persons to the Covered Chemical.

1.5 Since CAG first sent the Notice to Royal, the Parties have been in discussion and have been conducting informal discovery. The Parties have been in negotiations for nearly a year and enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.6 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. 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 Royal, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Royal may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2.0 Release

This Settlement Agreement is a full, final, and binding resolution between CAG, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns on the one hand, and (a) Royal and their owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns, including without limitation, Branco Enterprises, Inc., and Pan Oceanic, Inc and their respective owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, have provided, distribute or sell and/or have distributed or have sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers (including without limitation, Big Lots, Inc., and any parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns) franchisees, cooperative members, licensors and licensees ("Downstream Releasees"),


4-20-12

on the other hand, of any violation or claimed violation of Proposition 65 or any statutory or common law claim that has been asserted against the Releasees and Downstream Releasees regarding exposing persons to the Covered Chemical and the failure to warn about exposure to the Covered Chemical arising only in connection with all Covered Products manufactured, shipped, sold and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. Royal's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Covered Chemical in the Covered Products for all Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Covered Chemical, or any failure by Releasees and Downstream Releasees to warn about exposures to the Covered Chemical, contained in the Covered Products.

It is intended by the Parties that the releases provided in this Paragraph 2.0 shall prevent CAG from asserting any Claims against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law, to the extent that such claims relate to

Releasees' and/or Downstream Releasees' alleged exposure of persons to the Covered Chemical or any failure by Releasees and Downstream Releasees to warn about exposures to the Covered Chemical in the Covered Products.

CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Releasees and Downstream Releasees arising under Proposition 65, only to the extent that such claims relate to the alleged exposure of persons to the Covered Chemical in the Covered Products, and the failure to warn about exposures to the Covered Chemical that may be contained in the Covered Products manufactured, sold and/or distributed by Releasees and/or Downstream Releasees through the Effective Date of this Settlement Agreement. CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

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

CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar



4-26-12

effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

3.0 Royal's Duties

3.1 Royal agrees, promises, and represents that within thirty (30) days of the Effective Date it will cease sale of the Covered Products in California, unless the Covered Products are reformulated to a point where the level of Lead and Lead Compounds is below 100ppm.

4.0 Payments

4.1 Royal shall pay a total of thirty-two thousand dollars (\$32,000.00) by separate checks apportioned as follows:

4.1.1. Payment to CAG: Four thousand dollars (\$4,000.00) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

4.1.2. Attorneys' Fees and Costs: Twenty-eight thousand dollars (\$28,000.00) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Royal's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

5.0 Authority to Enter Into Settlement Agreement

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Royal represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Royal to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7.0 Execution in Counterparts and Facsimile

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

8.0 Modification of Settlement Agreement

8.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

9.0 Application of Settlement Agreement

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Releasees and Downstream Releasees identified in Section 2.0 above.

10.0 Enforcement of Settlement Agreement

10.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 10.2 and 10.3 of



Handwritten signature and date: 4-26-12

this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Royal or any other Releasee by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific future acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 below. Any notice to Royal must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or a Proposition 65 compliant warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

10.3 Within 30 days of receiving the notice described in Section 10.2, Royal shall either (1) withdraw the product for sale to the public, or (2) refute the information provided under Section 10.2. Should the Parties be unable to resolve the dispute, any party may seek relief under Section 10.1.

11.0 Notification Requirements

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


4-26-12

For CAG:

Reuben Yeroushalmi
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610 E
Beverly Hills, CA 90212
Fax: 310.623.1930

For Royal:

Michael Hassan, Esq.
Wachtel, Masyr & Missry LLP
One Dag Hammarskjold Plaza
885 Second Avenue, 47th Floor
New York, New York 10017

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

12.0 SEVERABILITY

12.1 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

13.0 GOVERNING LAW

13.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Chemical and/or the Covered Product, than Royal shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations

EC
4-20-12

pursuant to this Agreement with respect to, and to the extent that, the Covered Products are so affected.

Consumer Advocacy Group, Inc.

Date: 4-19-12

By: 

Name: Alicia S. Barlow

Title: Executive Director

Royal Footwear & Accessories, LLC

Date: 4-20-12

By: 

Name: Roy Chaffin

Title: President

As to form only:

Date: 1/13/12

By: 

Reshma Yarcutakian
Yarcutakian & Associates
Attorneys for
Consumer Advocacy Group, Inc.