

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

OCEAN DESERT SALES

Consumer Advocacy Group, Inc. (“CAG”) and Ocean Desert Sales (“ODS”) (collectively, the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that ODS 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 ODS sold measuring tapes (referred to throughout as the “Covered Product”). An exemplar of the violations caused by the Covered Product includes but is not limited to: Tape Measure with Key Ring, Item No. I-2336.

1.3 CAG alleges that the Covered Product contains Lead and that ODS 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 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 components to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served its “Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986.” Lead and lead compound are referred to hereafter as the “Listed Chemicals.”

1.4 On or about May 26, 2011, CAG served ODS and certain relevant public enforcement agencies with a document entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” (“Notice”). The Notice alleged that ODS violated Proposition 65 by failing to warn consumers in California that use of the Covered Product exposes persons to the Listed Chemicals.

1.5 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Covered Product’s 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 ODS, 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 ODS 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 Agreement is a full, final, and binding resolution between CAG, acting on behalf of itself and in the interest of the general public, and ODS, its owners, subsidiaries, affiliates, sister and related companies, employees, shareholders, directors, insurers, attorneys, successors, and assigns (“Releasees”), and all entities to whom they directly or indirectly distribute or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”) of any violation of Proposition 65 or any statutory or common law claim that has been or could have been asserted against the Releasees and

Downstream Releasees individually or in the public interest regarding the failure to warn about exposure to the Listed Chemicals arising in connection with Covered Products manufactured and/or shipped prior to the Effective Date even if sold by Downstream Releasees after the Effective Date. ODS's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Product for both Releasees and Downstream Releasees for Covered Products distributed and/or sold by ODS after the Effective Date.

CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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 Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in the public interest, as such claims relate to Releasees' and Downstream Releasees' alleged failure to warn about exposures to the Listed Chemicals contained in the Covered Product.

CAG also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, 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, as such claims relate to Releasees' alleged failure to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in the Covered Product sold by 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, in its individual capacity only and *not* in its representative capacity, and 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 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

### **3.0 ODS's Duties**

3.1 ODS agrees, promises, and represents that upon execution of this Settlement Agreement, they will cease sale of the Covered Product in California, unless the Covered Product is reformulated to a point where the Covered Product contains no more than 40 ppm of Lead.

### **4.0 Payments**

4.1 Within ten business (10) days after the Effective Date, ODS shall pay a total of thirty-five thousand dollars (\$35,000) by separate checks apportioned as follows:

4.1.1 Payment to CAG: Eight thousand dollars (\$8,000) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

4.1.2 Attorneys' Fees and Costs: Twenty-six thousand dollars (\$26,000) 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, bringing this matter to ODS's attention and negotiating a settlement in the public interest. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. Yeroushalmi & Associates shall provide its address and federal tax identification number to ODS prior to such payment.

4.1.3 Penalty: ODS shall issue two separate checks for a total amount of one thousand dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25192: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the

amount of \$,750 representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the amount of \$250 to CAG and delivered to: 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 this Settlement Agreement on behalf of CAG and to bind legally CAG.

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

**6.0 Report to Attorney General**

6.1 Consistent with section 3003, subdivision (a) of Title 11 of the California Code of Regulations, 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 Entire Agreement**

8.1 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.

**9.0 Modification of Settlement Agreement**

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

**10.0 Application of Settlement Agreement**



10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above.

**11.0 Enforcement of Settlement Agreement**

11.1 Any party may file suit before the Superior Court of the County of Los Angeles 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.

11.2 No action to enforce this Settlement Agreement may be commenced, and no notice of violation related to the Covered Product may be served or filed against ODS by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 30 days before serving or filing any action or Notice of Violation in order to resolve the dispute in good faith.

**12.0 Notification Requirements**

12.1 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  
9100 Wilshire Boulevard, Suite 610 E  
Beverly Hills, CA 90212  
Fax: 310.623.1930

For ODS:

Robert Schiff  
Ocean Desert Sales  
1004 New Rd  
Northfield, NJ 08225  
Tele# 609-407-2190

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

**13.0 SEVERABILITY**

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

**14.0 GOVERNING LAW**

14.1 The terms of this 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 Listed Chemicals and/or the Covered Product, then ODS shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the

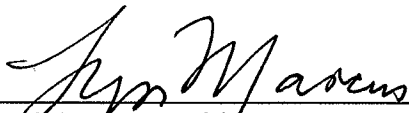
extent that, the Covered Products are so affected.

**15.0 COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

CAG agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

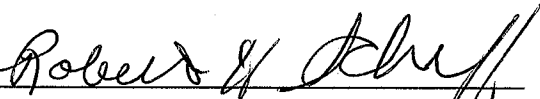
CONSUMER ADVOCACY GROUP, INC.

Dated: 8/18/11

By:   
Lynn Marcus, President

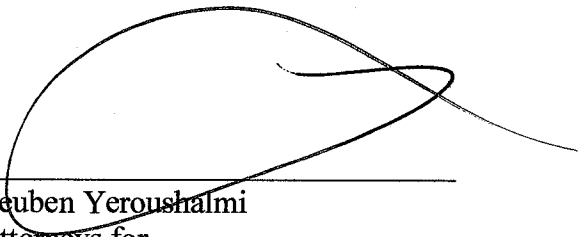
OCEAN DESERT SALES

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

By:   
Name: Robert H. Schiff  
Title: Sec. Treasurer

As to form only:

Dated: August 18/11

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