

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
JESCO FOOTWEAR, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Jesco Footwear, Inc. (herein referred to as “Jesco”), (CAG and Jesco collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that Jesco violated Proposition 65 for the purpose of avoiding prolonged and costly litigation. The effective date of this Settlement 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 Jesco previously sold or shipped for sale in California, at various times, children’s jelly sandals (herein referred to as the “Covered Products”) as described in the 60-day notice served by CAG on or about July 6, 2011.

1.3 CAG alleges that the Covered Products contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and Di-n-butyl Phthalate (DBP), also known as Dibutyl Phthalate, and that Jesco 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”)).

1.4 On January 1, 1988, the Governor of California added Di (2-ethylhexyl) phthalate (DEHP) to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added Di (2-ethylhexyl) phthalate (DEHP) to the list of chemicals known to the State to cause developmental male reproductive toxicity. On December 2, 2005, the Governor of California added Di-*n*-butyl Phthalate (DBP) to the list of chemicals known to the State to cause developmental, female, and male reproductive toxicity. All 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” which is further described below.

1.5 DEHP and DBP are referred to hereafter as the “Listed Chemicals.”

1.6 On or about July 6, 2011, CAG served Jesco 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 Jesco violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to DEHP and DBP.

1.7 The Parties enter into this Settlement Agreement as a full and final settlement of all claims between the Parties as set forth below, or that could have been raised concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.8 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 Jesco, 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 Jesco 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, on the one hand, and (a) Jesco and its 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, distribute or sell the Covered Products, including but not limited to Ross Dress for Less, Inc., Ross Stores, Inc., distributors,

wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”), on the other hand, of any violation or claimed 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 regarding exposing persons to the Listed Chemicals and the failure to warn about exposure to the Listed Chemicals arising only in connection with the Covered Products manufactured, shipped and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. Jesco’s compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Products for both Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

CAG, 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 that were or could have been asserted, only to the extent that such claims relate to Releasees’ and/or Downstream Releasees’ alleged exposure of persons to the Listed Chemicals contained in the Covered Products or any

failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals 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 Listed Chemicals or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals in the Covered Products.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, provide 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 Releasees' alleged exposure of persons to the Listed Chemicals in the Covered Products, and the failure to warn about exposures to the Listed Chemicals contained in the Covered Products sold 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, 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 Jesco's Duties

3.1 Jesco agrees, promises, and represents that within 60-days after the Effective Date of this Settlement Agreement, it will reformulate the Covered Products that it sells, offers to ship for sale, and ships for sale in California to a point where the level of DEHP and/or DBP in the Covered Products does not exceed 0.1%.

3.2 Jesco agrees, promises, and represents that, as of the Effective Date, to the extent it ships any Covered Products in inventory for sale in California that has not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that product labeling stating that "This product contains chemicals known to the State of California to cause cancer, or birth defects, or other reproductive harm" shall constitute compliance

with Proposition 65 with respect to the Listed Chemicals in the Covered Products for any Covered Products in inventory that had not been reformulated and was distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

4.0 Payments

4.1 Jesco agrees to pay a total of twenty-thousand dollars and zero cents (\$20,000.00) by separate checks apportioned as follows:

4.1.1 Payment to CAG: one thousand five-hundred dollars (\$1,500.00) of such payment 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. By the Effective Date, CAG shall provide Jesco with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Eighteen-thousand dollars (\$18,000.00) 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 Jesco's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide Jesco with its Employer Identification Number.

4.1.3 Penalty: Jesco shall issue two separate checks for a total amount of Five-hundred dollars (\$500.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of three-hundred seventy-five dollars \$375.00, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of one-hundred twenty-five dollars \$125.00, 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 \$375.00. The second 1099 shall be issued in the amount of \$125.00 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 and legally bind CAG to this Settlement Agreement.

5.2 Jesco represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Jesco 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 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 and signed 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, the 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, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of 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.

11.2 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 Jesco 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 11.3 below. Any notice to Jesco 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.

11.3 Within 30 days of receiving the notice described in Section 11.2, Jesco shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Jesco for full credit, including shipping costs, or (2) refute the information provided under Section 11.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

12.0 Notification Requirements

12.1 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:

For CAG:

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

For Jesco:

Jack Habert
Jesco Footwear, Inc.
37 W. 37th St., Ste. 301
New York, NY 10018

With a copy to:

Mark R. Kaster, Esq.
DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Fax: 952.516.5607

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

13.0 SEVERABILITY

13.1 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.

14.0 GOVERNING LAW

14.1 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 Listed Chemicals and/or the Covered Products, then Jesco shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 6-19-12

By: 

Printed Name: MICHEL SASSOON

Title: EXECUTIVE DIRECTOR

For: JESCO FOOTWEAR, INC.

Dated: _____

By: _____

Printed Name: _____

Title: _____

reason of law generally, or as to the Listed Chemicals and/or the Covered Products, then Jesco shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: _____

By: _____

Printed Name: _____

Title: _____

For: JESCO FOOTWEAR, INC.

Dated: 6/20/12

By: [Signature]

Printed Name: JACK HABERT

Title: Pres.