

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
ADAMS MANUFACTURING CO.

Consumer Advocacy Group, Inc. (“CAG”) and Adams Manufacturing Co. (“Adams”), (CAG and Adams, collectively referred to as the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that Adams 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 Adams previously manufactured, imported, distributed and/or sold, at various times, suction cups, including, but not limited to, Combo Pack Suction Cups, Contains 12, CEBL-9512T01 and any and all other models and types of suction cups of various product numbers, descriptions, dimensions and purchase types, which contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and which were directly distributed or shipped by Adams to customers or clients in the State of California

or shipped or distributed by Adams to distribution centers in other states with the purpose and intent of Adams that the suction cups be sold by its customers or clients in the State of California (hereinafter referred to throughout as the “Covered Products”), but excluding products similar to the Covered Products manufactured, imported, distributed and/or sold by Adams’ competitors in the State of California.

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 in concentrations where Adams 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. 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 Di (2-ethylhexyl) phthalate (DEHP) is referred to hereafter as the “Listed Chemical.”

1.6 On or about August 5, 2011, CAG served Adams 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” (the “Notice”). The Notice alleged that Adams violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to DEHP. Adams denies the allegations contained in the Notice.

1.7 The Parties 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”).

1.8 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 Adams, its officers, directors, employees, or parents, subsidiaries or affiliated corporations or entities, 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 Adams 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) Adams, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, agents, principals, 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, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, agents, principals, predecessors, successors and assigns (collectively “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, imported, shipped and/or otherwise sold or distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date, except as otherwise provided herein including Section 3.1 of this Settlement Agreement. Adams’ 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 manufactured, imported, distributed and/or sold by Releasees or Downstream Releasees after the Effective Date. Where applicable, the Downstream Releasees shall be deemed third party beneficiaries of the Settlement Agreement.

CAG, its past and current agents, principals, representatives, affiliates, 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, notices and notices of intent to sue, including 60 Day Notices of Violation of California Proposition 65, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees), including the claims or allegations contained in the Notice or comprising the Dispute, 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 against Releasees and/or Downstream Releasees (collectively "Claims"), only to the extent that such Claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any alleged failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

It is intended by the Parties that the releases provided in this Section 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 Chemical in the Covered Products or any alleged failure by Releasees and/or Downstream Releasees to warn about exposures to the Listed Chemical in the Covered Products.

CAG, its past and current agents, principals, representatives, affiliates, 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 Claims including all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, penalties, liabilities, notices and notices of intent to sue, including 60 Day Notices of Violation of California Proposition 65, 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' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical in the Covered Products and the alleged failure to warn about exposures to the Listed Chemical contained in the Covered Products sold, manufactured, imported, shipped, or otherwise distributed or sold by Releasees and/or Downstream Releasees through the Effective Date of this Settlement Agreement, even if Releasees or Downstream Releasees sell or distribute the Covered Products, received on or before the Effective Date, after the Effective Date, except as otherwise provided at Section 3.0 herein regarding the right of Adams to reformulate the Covered Products by thirty (30) days after the Effective Date or to provide clear and reasonable warnings on the Covered Products no later than June 30, 2013. 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, principals, 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 Adams' Duties

3.1 Adams agrees, promises, and represents that by the thirtieth (30th) day after the Effective Date of this Settlement Agreement, it will reformulate the Covered Products it purchases or manufacturers to a point where the level of the Listed Chemical in the Covered Products does not exceed 0.1%. Clear and reasonable warnings shall be placed on all inventory of the Covered Products, existing in the manufacturing and warehouse facilities of Adams on the thirtieth (30th) day after the Effective Date of this Settlement Agreement, no later than June 30, 2013 and shall be deemed compliance with Adams' obligations under this Settlement Agreement in consideration for the Section 2.0 release of the Claims in favor of Releasees and Downstream Releasees.

4.0 Payments

4.1 Within ten (10) days from the Effective Date, Adams agrees to pay a total of thirty-five thousand dollars (\$35,000.00) by separate checks apportioned as follows:

4.1.1 Payment to CAG: Five thousand dollars (\$5,000.00) 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. By the Effective Date, CAG shall provide Adams with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Twenty-nine thousand dollars (\$29,000.00) 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 Adams' 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 Adams with its Employer Identification Number.

4.1.3 Penalty: Adams shall issue two separate checks for a total amount of one thousand dollars (\$1,000.00) 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 \$750.00, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250.00, 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 \$750.00. The second 1099 shall be issued to

CAG in the amount of \$250.00 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 Adams represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Adams 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 Adams or Downstream Releasees 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 Adams or Downstream Releasees 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, Adams or the Downstream Releasees 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 Adams 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
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
Fax: 310.623.1930

For Adams:

Robert Parks
Buchanan, Ingersoll, & Rooney LLP
600 West Broadway, Ste. 1100
San Diego, CA 92101
Fax: 619.702.3898

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 Chemical and/or the Covered Products, then Adams 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: 5-24-13

By: 

Printed Name: Michel Sassoon

Title: executive director

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ADAMS MANUFACTURING CO.

Dated: 5/10/13

By: 

Printed Name: William E. Adams

Title: President

