

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY-GROUP, INC.

AND

MECHANICAL SERVANTS, INC.

Consumer Advocacy Group, Inc. ("CAG"), on behalf of itself and acting in the public interest pursuant to California Health and Safety Code section 25249.7, subdivision (d) and Mechanical Servants, Inc. ("Mechanical Servants") enter into this agreement ("Settlement Agreement") to resolve all claims related to the Sixty-Day Notices of Intent to Sue for [Alleged] Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 prepared by CAG and addressed to Mechanical Servants, Inc., et al., dated October 17, 2011 and November 30, 2012 (the "Notices"), regarding Di(2-ethylhexyl)phthalate (DEHP) and lead, respectively, in Electrical Tape (the "Covered Product"). The Covered Product is limited to those sold, distributed, or licensed by Mechanical Servants.

**1.0 Introduction**

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

1.2 The Notices allege violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5-25249.13 ("Proposition 65"). Mechanical Servants denies the material allegations of the Notices, and denies liability for any claim that was or could have been raised in the Notices.

1.3 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 California 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 Mechanical Servants, its 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 Mechanical Servants may have against one another in any other pending legal proceeding.

## **2.0 Release**

2.1 Upon the complete execution of this Settlement Agreement and the payment of the amount described in section 5.0 below (the "Effective Date"), CAG fully releases and forever discharges Mechanical Servants and its parents, subsidiaries, and affiliates; their customers, predecessors, successors, licensors, licensees, and assigns; and all officers, directors, 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 in the Notice. 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 that were or could have been put in controversy by the Notice.

2.2 CAG has full knowledge of the contents of the California Civil Code section 1542 ("Section 1542"). 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 California Civil Code section 1542.

## **3.0 Claims Covered**

This Settlement Agreement is a final and binding resolution between the 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 Notices arising from allegations that the Released Parties exposed, knowingly and intentionally, their employees and users of the Covered Products to Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and lead.

#### 4.0 Defendant's Duties

##### 4.1 Reformulate or Warn

On or after the Effective Date, Mechanical Servants will not knowingly ship Covered Products, to California or to a third party for distribution or sale in California, unless (1) the most recent test results Mechanical Servants has obtained for the Covered Products indicate that the Covered Products are DEHP Free and Lead Free as defined in sections 4.2 and 4.3 below; or (2) these Covered Products contain a Proposition 65 Warning (as set forth in Section 4.4 below); or (3) a Court of Law or the California Office of Environmental Health Hazard Assessment ("OEHHA") determines that no such warning for these Covered Products is required. Defendant shall make a good faith effort to source Covered Products within one year of the Effective Date that (1) are Lead Free and DEHP Free so as not to require the use of a Proposition 65 Warning, and (2) are available from a commercially viable source that would allow it to continue to sell electrical tape in California.

##### 4.2 DEHP Free

As used in section 4.1 DEHP Free shall mean that the Covered Product contains no more than 0.1% (1000 ppm) DEHP by weight.

##### 4.3 Lead Free

As used in section 4.1 Lead Free shall mean that the Covered Product either (a) contains no more than 0.009% (90 ppm) Lead by weight, or (b) yields no more than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100.

##### 4.4 Warnings

The warning required by sections 4.1 above shall read as follows:

**WARNING:** This product contains a chemical known to the State of California to cause [cancer,] or birth defects, or other reproductive harm.

The warning shall, in compliance with section 25601 of Title 27 of the California Code of Regulations, be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure.

## **5.0 Payments**

Mechanical Servants agrees that within ten (10) days of complete execution of this Settlement Agreement, Mechanical Servants shall pay \$32,000 for full settlement of this matter by sending separate checks apportioned as follows:

5.1 Payment to CAG: \$5,000 dollars shall be paid to Consumer Advocacy Group, Inc. Yeroushalmi & Associates shall provide its address and CAG's Employer Identification Number to Mechanical Servants prior to such payment.

5.2 Attorneys' Fees and Costs: \$26,000 dollars 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 Mechanical Servants' attention. Yeroushalmi & Associates shall provide its address and federal tax identification number to Mechanical Servants prior to such payment.

5.3 Penalty: Mechanical Servants shall issue two separate checks for a total amount of \$1,000 dollars as penalties pursuant to Health & Safety Code section 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 dollars, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250.00 dollars, 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 in the amount of \$250.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

## **6.0 Authority to Enter Into Settlement Agreement**

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. Mechanical Servants represents that its signatory to this Settlement Agreement has full authority to enter into this Settlement Agreement on behalf of Mechanical Servants.

## **7.0 Attorney General Review**

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.

**8.0 Execution in Counterparts and Facsimile**

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

**9.0 Entire Agreement**

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.

**10.0 Modification of Settlement Agreement**

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

**11.0 Application of Settlement Agreement**

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.

**12.0 Notification Requirements**

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 Blvd., Suite 610 E  
Beverly Hills, CA90212

For Mechanical Servants:

Barry Margolin, CFO  
Mechanical Servants, Inc.  
2755 West Thomas Street  
Melrose Park, IL 60160

With a copy to:

James Mattesich  
Greenberg Traurig LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

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

CONSUMER ADVOCACY GROUP, INC.

Dated: 9-24-13

By: 

Printed Name: Michel Sassoa

Title: executive director

MECHANICAL SERVANTS, INC.

Dated: 09 / 30 / 2013

By: 

Printed Name: Barry Margolin

Title: CFO