

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
INNOVATIVE CUSTOM BRANDS, INC.

Consumer Advocacy Group, Inc. ("CAG") and Innovative Custom Brands, Inc. ("Innovative"), (CAG and Innovative collectively referred to as, the "Parties") enter into this agreement ("Settlement Agreement") to settle CAG's allegations that Innovative 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 Innovative previously sold, at various times, Footwear products including but not limited to (1) NBA Children's Sandals (Black 001), and (2) NBA Adult Sandals (Black/Grey Size 12) JD005372008 (All these Footwear products including ICB style numbers NS1101, NS1003, and NS1001 collectively referred to hereafter throughout this Settlement Agreement as the "Covered Products").

1.3 CAG alleges that : (1) NBA Children's Sandals (Black 001) contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and Di-n-butyl Phthalate (DBP),and that Innovative 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")); 2) CAG further alleges that NBA Adult Sandals (Black/Grey Size 12) JD005372008 contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and that Innovative 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 Di (2-ethylhexyl) phthalate (DEHP) and Di-*n*-butyl Phthalate (DBP) are referred to hereafter as the "Listed Chemicals."

1.6 On or about July 25, 2011, CAG served Innovative's customers Ross Dress for Less, Inc., Ross Stores Inc. (collectively "Ross") and its licensee NBA Media Ventures, LLC 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 the noticed parties violated Proposition 65 by failing to warn consumers in California that use of "NBA Children's Slippers (Black 001)" exposed persons to DBP and DEHP.

1.7 On or about October 17, 2011, CAG served Innovative, Ross, NBA Media Ventures, LLC 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 the noticed parties violated Proposition 65 by failing to warn consumers in California that use of "NBA Children's Sandals (Black 001)" exposed persons to DEHP and DBP.

1.8 On or about July 27, 2012, CAG served Innovative, Ross, the National Basketball Association, NBA Properties, Inc., and NBA Media Ventures, LLC 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 the noticed parties violated Proposition 65 by failing to warn consumers in California that use of "Footwear", including but not limited to: "NBA Adult Sandals (Black/Grey Size 12) JD005372008" exposed persons to DEHP.

1.9 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").

1.10 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 or any of the released entities referred to below in paragraph 2.0 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 Innovative, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, or any of the released entities referred to below in paragraph 2.0 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 any of the released entities referred to below in paragraph 2.0 or Innovative 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 on the other hand: (a) Innovative, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Innovative Releasees”), and (b) National Basketball Association, NBA Properties, Inc. and NBA Media Ventures, LLC and their owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, governors, insurers, attorneys, predecessors and assigns (collectively “NBA Releasees”), and (c) all entities to whom the Innovative Releasees directly or indirectly provided, distributed or sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, including but not limited to Ross Stores, Inc., Ross Dress for Less, Inc., franchisees, cooperative members, and licensees (“Downstream Releasees”), 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 Innovative Releasees, NBA 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. Innovative’s compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Products for all of Innovative Releasees, NBA Releasees, and Downstream Releasees for

any Covered Products distributed and/or sold by Releasees, NBA Releasees, or Downstream Releasees after the Effective Date.

CAG and its past and current owners, agents, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, representatives, attorneys, predecessors, 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, to the extent that such claims relate to Releasees', NBA Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemicals contained in the Covered Products or any failure by Innovative 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 Innovative Releasees, NBA 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 Innovative Releasees', NBA Releasees' and/or Downstream Releasees' to warn about exposures to the Listed Chemicals in the Covered Products.

CAG, its past and current owners, agents, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, representatives, attorneys, predecessors, 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 Innovative Releasees, NBA Releasees and Downstream Releasees arising under Proposition 65, only to the extent that such claims relate to Innovative Releasees', NBA Releasees' and Downstream 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 Innovative Releasees, NBA 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 owners, agents, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, representatives, attorneys, predecessors, successors, and/or assignees, 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 Innovative's Duties

3.1 Innovative agrees, promises, and represents that by the tenth day after the Effective Date of this Settlement Agreement, it will either reformulate the Covered Products to a point where the level of DEHP in the Covered Products does not exceed 0.1%, or cease shipping the Covered Products to customers for sale in California.

4.0 Payments

4.1 Innovative agrees, to pay a total of thirty-four thousand dollars (\$34,000.00) by separate checks apportioned as follows:

4.1.1 Payment to CAG: three thousand dollars (\$3,000.00) 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 Innovative with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: thirty thousand dollars (\$30,000.00) 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 Innovative'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 Innovative with its Employer Identification Number.

4.1.3 Penalty: Innovative 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 in the amount of \$250.00 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 Innovative represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Innovative 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, CAG and the Innovative Releasees, the NBA Releasees and Downstream Releasees identified in Section 2 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 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.

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 Innovative, the NBA Releasees or the 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 Innovative 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 11.2, Innovative 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 Innovative 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.

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:

For CAG:

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

For Innovative:

Michael Featherston
Innovative Custom Brands, Inc.
148 West 37th Street
Sixth Floor
New York, NY 10018

Norman C. Hile
Orrick, Herrington & Sutcliffe LLC
400 Capitol Mall, Ste 3000
Sacramento, CA 95816

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 Listed Chemicals and/or the Covered Products, then Innovative 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: 11-20-12

By: 

Printed Name: MICHEL SASSOON

Title: EXECUTIVE DIRECTOR

INNOVATIVE CUSTOM BRANDS, INC.

Dated: NOVEMBER 20, 2012

By: 

Printed Name: MICHAEL FEATHERSTON

Title: PRESIDENT