

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
WESTERN FAMILY FOODS, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Western Family Foods, Inc. (“Western Family”) (CAG and Western Family are collectively referred to as the “Parties” and individually as a “Party”) enter into this Settlement Agreement to settle claims by CAG as follows:

**1. 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 Western Family has sold, at various times, Western Family®-branded disposable razors (referred to throughout as the “Covered Products”). The “Covered Products” are only limited to those distributed or sold by Western Family.

1.3 CAG alleges that Covered Products contain lead and that Western Family 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 or about February 23, 2012, CAG served Western Family, Berberian Enterprises, Inc. dba Jons International Marketplace, 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 Western Family violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to lead.

1.5 Western Family denies the allegations of the Notice and maintains that the Covered Products have been in compliance with Proposition 65 at all times relevant to CAG's claims.

1.6 On October 1, 1992, the Governor of California added lead and lead compounds to the list of chemicals known to the State to cause cancer. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity. This addition took place more than twenty (20) months before CAG served its Notice.

1.7 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties concerning the allegations of the Notice for the purpose of avoiding prolonged and costly litigation.

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 constitute or be construed as an admission by the Parties, or by any Releasee, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged violation of Proposition 65, nor shall this Settlement Agreement, nor compliance with its terms, be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum, except with respect to an action seeking to enforce the terms of this Agreement. 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 Western Family may have against one another in any other pending legal proceeding as to allegations unrelated to the Notice or claims released herein.

1.9 The "Effective Date" of this Agreement is the date by which it is fully executed by both Parties.

**2. RELEASE**

2.1 CAG, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action against and releases and discharges (a) Western Family and its respective parent companies, subsidiaries, affiliates, sister and related companies, and divisions; (b) all entities to whom the entities listed in (a), above, directly or indirectly provide, distribute or sell the Covered Products, including but not limited to distributors, wholesalers, cooperative members, retailers (including but not limited to Berberian Enterprises, Inc. dba Jons International Marketplace), licensees, franchisees, and customers; and (c) each of the respective owners, officers, directors, shareholders, employees, and agents of the persons and entities described in (a) through (b), above (the persons and entities identified in (a), (b), (c), above, including the predecessors, successors and assigns of any of them, are collectively referred to as the "Releasees") regarding any and all claims, actions, causes of action, suits, demands, liabilities, damages, losses, costs, penalties, fees (including but not limited to investigation fees, attorney's fees and expert fees), and expenses (collectively, "Claims"), which arise under Proposition 65, or any other statutory or common law, concerning alleged exposures to, or failure to warn of, any lead in the Covered Products manufactured prior to the Effective Date. This Settlement Agreement is a full, final, and binding resolution as to the Claims released in Section 2.

CAG, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, additionally provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of any nature, character or kind, known or unknown, suspected or unsuspected, against any Releasee

arising under Proposition 65, or any other statutory or common law, only to the extent that such claims relate to any Releasee's alleged exposure of persons to any lead in the Covered Products, or a Releasee's failure to warn of exposures to any lead in the Covered Products manufactured prior to the Effective Date. 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.

2.2 Western Family's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to lead in the Covered Products for any Releasee.

### **3. WESTERN FAMILY'S DUTIES**

3.1 Western Family agrees, promises, and represents that any Covered Product manufactured after the Effective Date of this Settlement Agreement that Western Family thereafter ships to California, distributes in California, or sells in California will contain less than 100 parts per million ("ppm") of lead. The obligations of Section 3 do not apply to any Covered Products manufactured prior to the Effective Date, regardless of when such products are distributed or sold.

4. **PAYMENTS**

4.1 Western Family agrees to pay a total of thirty-four thousand dollars (\$34,000.00) within seven (7) days of the Effective Date 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 Western Family with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: twenty-eight thousand dollars (\$28,000.00) 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 Western Family'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 Western Family with its Employer Identification Number.

4.1.3 Penalty: Western Family's 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 seven hundred and fifty dollars (\$750.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of two hundred and fifty dollars (\$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. **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 Western Family represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Western Family to this Settlement Agreement.

6. **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. **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. **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. **MODIFICATION OF SETTLEMENT AGREEMENT**

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

**10. 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 identified in Section 2 above.

**11. 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 Western Family 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 Western Family 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, Western Family 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 Western Family 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. 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

For Western Family:

Sarah Esmaili  
Arnold & Porter LLP  
Three Embarcadero Center, 7th Floor  
San Francisco, CA 94111

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

**13. 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. 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 lead and/or the Covered Products, then Western Family 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: 12/29/2012 By: Michael Marcus  
Printed Name: Michael Marcus  
Title: Director

WESTERN FAMILY FOODS, INC.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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.

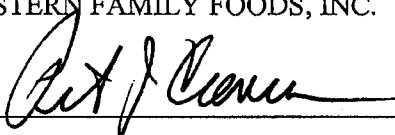
Dated: \_\_\_\_\_ By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

WESTERN FAMILY FOODS, INC.

Dated: 12/21/12

By: 

Printed Name: PETER J. CRAVEN

SR. VICE PRESIDENT &

Title: CHIEF FINANCIAL OFFICER