

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Consumer Advocacy Group, Inc. and the Settling Defendant.

This Settlement Agreement is entered into by and between, Consumer Advocacy Group, Inc. ("CAG" or "Plaintiff") and Maytex Mills, Inc. (the "Settling Defendant" or "Maytex"), with CAG and the Settling Defendant collectively referred to as the "Parties." CAG seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Maytex employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* ("Proposition 65").

### 1.2 General Allegations

CAG has alleged that Maytex has manufactured, distributed and/or sold, through J.C. Penney Company, Inc. ("JCP"), certain consumer products in the State of California, without the warnings allegedly required by Proposition 65, with respect to di(2-ethylhexyl)phthalate ("DEHP") and di-n-butyl phthalate ("DBP") contained in such products. In addition to DEHP and DBP, butyl benzyl phthalate ("BBP") is listed under Proposition 65 (and the three chemicals in question are collectively referred to herein as the "Listed Phthalates").

### 1.3 Product Description

The consumer product category covered by this Settlement Agreement are bath and tub mats manufactured by or for Maytex and which are offered for sale in the State of California ("Covered Products"). These shall include such Covered Products whether they are sold in

Maytex's own name or in the names of others from whom it licenses or for whom it private labels and Covered Products whether sold by Maytex directly or as sold by retailers doing business in California, including, but not limited JCP.

#### **1.4 Notices of Violation**

In the fall of 2011, CAG served JCP and several related corporate entities and all public enforcement agencies required to receive such notices under Proposition 65 with a document entitled "60-Day Notice of Violation" ("Notice") that provided JCP and such public enforcers with notice that alleged that JCP and its other customers who offer the Covered Products for sale in California were in violation of California Health and Safety Code section 25249.6 for failing to warn California consumers that a tub mat contained and allegedly exposed users to DEHP and DBP. On or about April 25, 2012, CAG issued a 60-day notice to Maytex as well as JCP which again alleged that the Covered Products were in violation of Proposition 65 due to DEHP and DBP exposures, including as to an exemplar tub mat item supplied by Maytex that CAG purchased at a JCP store in California. No public enforcer has filed suit on or otherwise diligently prosecuted the allegations set forth in the Notices.

#### **1.5 No Admission**

Maytex, on behalf of itself and JCP and its related corporate entities, denies the material factual and legal allegations contained in the Notices and maintain that all products that they have sold and distributed in California, including the Covered Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Maytex or JCP of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by them of any fact, finding, conclusion, issue of law or violation of law, such being

specifically denied. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties set forth under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean thirty (30) days following the date this Settlement Agreement is fully executed by the Parties.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Standard and Commitments**

For purposes of this Settlement Agreement, the term "Reformulation Standard" means a maximum concentration, by weight, of DEHP, BBP and DBP each, of 0.1% (1,000 parts per million) or less, in each a poly vinyl chloride or other soft plastic, vinyl, or synthetic leather component of a Covered Product that could be touched by a person during reasonably foreseeable use.

**2.1.1** No more than 30 days after the Effective Date, to the extent it has already not done so, Maytex shall provide the Reformulation Standard to all of its then-current suppliers of the Covered Products and shall instruct each such supplier to use reasonable efforts to provide Covered Products that comply with the Reformulation Standard as soon as possible. In addressing the obligation set forth in the preceding sentence, Maytex shall not employ statements that will encourage a supplier to delay compliance with the Reformulation Standard.

**2.1.2** Commencing on December 15, 2012, Maytex shall not purchase, import, manufacture, or supply to an unaffiliated third party, any Covered Product intended for sale to California consumers if they know it exceeds the Reformulation Standard.

3. **PENALTY PAYMENT/REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

In resolution of the claims made in the Notices, Maytex shall pay \$1,000 in statutory civil penalties pursuant to California Health and Safety Code section 25249.7(b) and an additional \$4,000 to CAG. The statutory penalty amount shall be apportioned in accordance with California Health and Safety Code section 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Consumer Advocacy Group, Inc. as provided by California Health and Safety Code section 25249.12(d). In fulfillment of these obligations, two separate checks shall be issued accordingly and be provided to CAG's counsel on or before fifteen (15) days following the execution of this Settlement Agreement by all parties, at the following address:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90210

In addition to penalties, the Parties reached an accord on the compensation due to Plaintiff and its counsel under the private attorney general doctrine, California Code of Civil Procedure section 1021.5, and principles of contract law. Under these legal principles, Maytex shall reimburse Plaintiff's counsel for fees and costs, incurred as a result of investigating, bringing this matter to their attention, and negotiating a settlement. More specifically, Maytex shall pay CAG and its counsel \$29,000 for all attorneys' fees, expert and investigation fees, and related costs incurred and, as an accord and satisfaction, neither it or JCP shall have any further liability to CAG or responsibility to CAG or CAG's counsel for payments in association with this matter. The payment shall be issued in a check made payable to "Yeroushalmi &

Associates” and shall be delivered on or before fifteen (15) days following the execution of this Settlement Agreement by all parties, at the following address:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90210

Yeroushalmi & Associates’ tax identification number and a form W-9 shall be furnished to Settling Defendant’ counsel by CAG’s counsel at least fourteen (14) calendar days before payment is due.

#### **4. RELEASE OF ALL CLAIMS**

##### **4.1 Release of Settling Defendant and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Section 3 above, Plaintiff on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby releases and waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against Maytex and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, (including but not limited to JCP), as well as owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities of Maytex or any of them (collectively “Releasees”). This release and waiver is limited to those

Claims that arise under Proposition 65, as such Claims relate to an alleged failure to warn about exposures to or identification of Listed Phthalates in the Covered Products.

In addition, CAG hereby waives any and all rights and benefits which it now has, or in the future may have as to Maytex, conferred upon it by virtue of the provisions of California Civil Code section 1542, 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 understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG hereafter discovers facts in addition to, or different from those which it now knows or believes to be true, it will not be able to make any claim against Maytex, its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of them who may sell the Settling Defendant's products based on those facts. Furthermore, CAG acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which CAG does not know exist, and which, if known, would materially affect its decision to enter into this settlement, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

#### **4.2 Settling Defendant's Release of Plaintiff**

Maytex, on behalf of itself and JCP, waives any and all claims against Plaintiff and its attorneys and other representatives, for any and all actions taken or statements made by Plaintiff and/or its attorneys and other representatives, whether in the course of investigating claims or

otherwise seeking enforcement of Proposition 65 in this matter, and/or with respect to any other application of Proposition 65 to the Covered Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by any court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and shall apply only within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products specifically, then Maytex may provide written notice to Plaintiff 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.

**7. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90210

For Maytex:

Leonard Mendel  
Maytex Mills, Inc.  
c/o Decolin  
9150 Park Avenue  
Montreal, Q.C. H2N 1Z2  
Canada

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, by a scan suitable for email or by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Plaintiff agrees to report this settlement to the Office of the California Attorney General ("AG") as required under the AG's Proposition 65 regulations.

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties, or as the result of an order issued by a court of competent jurisdiction.



**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

  
\_\_\_\_\_  
Signature

MICHEL SASSOON  
\_\_\_\_\_  
By (Print Name)

EXECUTIVE DIRECTOR  
\_\_\_\_\_  
On Behalf of the Consumer Advocacy Group

6-15-12  
\_\_\_\_\_  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name)

\_\_\_\_\_  
On Behalf of Maytex Mills, Inc.

\_\_\_\_\_  
Date

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

  
\_\_\_\_\_  
Signature

MICHEL SASSOON  
\_\_\_\_\_  
By (Print Name)

EXECUTIVE DIRECTOR  
\_\_\_\_\_  
On Behalf of the Consumer Advocacy Group

6-15-12  
\_\_\_\_\_  
Date

**AGREED TO:**

  
\_\_\_\_\_  
Signature

Leonard Mendel  
\_\_\_\_\_  
By (Print Name)

Chairman  
\_\_\_\_\_  
On Behalf of Maytex Mills, Inc.

26/6/12  
\_\_\_\_\_  
Date