

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
Merkury Innovations LLC

Consumer Advocacy Group, Inc. ("CAG") and Merkury Innovations LLC ("Merkury") (collectively referred to herein as the "Parties" and individually as a "Party") enter into this agreement ("Settlement Agreement") to settle claims 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 Merkury previously sold, at various times, Computer Cooling Fans, Webcams, Speakers, and Computer Mouses (collectively referred to throughout as the "Covered Products"). The Covered Products are limited to those supplied, sold, or distributed by Merkury.

1.3 CAG alleges that Covered Products contain lead, and that Merkury 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 February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity, Cal. Code Regs. tit. 27, §

27001(c). Lead is known to the State to cause developmental, female, and male reproductive toxicity. 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, Cal. Code Regs. tit. 27, § 27001(b). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of lead and lead compounds to the list of chemicals known to the State to cause cancer and reproductive toxicity, lead and lead compounds became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.5 On or about May 11, 2012, CAG served Merkury, Ross Dress For Less, Inc., Ross Stores, Inc., and certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" regarding Computer-Cooling Fans containing lead.

1.6 On or about August 30, 2012, CAG served Merkury, The TJX Companies, Inc., T.J. Maxx of CA, LLC dba T.J. Maxx, The TJX Companies, Inc., dba T.J. Maxx, and certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" regarding Webcams containing lead.

1.7 On or about October 5, 2012, CAG served Merkury, The TJX Companies, Inc., T.J. Maxx of CA, LLC dba T.J. Maxx, and certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" regarding Speakers containing lead.

1.8 On or about November 14, 2012, CAG served Merkury, The TJX Companies, Inc., T.J. Maxx of CA, LLC dba T.J. Maxx and certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" regarding Computer Mouses containing lead.

1.9 The Sixty-Day Notices (referred to as "Notices") alleged that Merkury and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Covered Chemical.

1.10 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").

1.11 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 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 Merkury may have against one

another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

1.12 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) Merkury and its parent company, subsidiaries, affiliates, sister and related companies, and divisions; (b) their distributors, wholesalers, cooperative members, retailers, licensees, franchisees, and customers, including but not limited to The TJX Companies, Inc., T.J. Maxx of CA, LLC (dba T.J. Maxx), The TJX Companies, Inc. (dba T.J. Maxx), Ross Dress For Less, Inc., and Ross Stores, Inc. 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, obligations, damages, losses, costs, fines, penalties, fees (including but not limited to investigation fees, attorney's fees and expert fees), and expenses (collectively, "Claims") of any nature, character or kind, whether known or unknown, or suspected or unsuspected, 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 Compliance Date. This Settlement

Agreement is a full, final, and binding resolution as to the Claims released in Section 2. Compliance with Section 3 of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 with respect to any lead in the Covered Products.

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.

3. MERKURY'S DUTIES

3.1 Merkury agrees, promises, and represents that any Covered Products manufactured after the Effective Date that Merkury thereafter sells in California or ships or distributes for sale in California will contain no more than 100 parts per million lead in any Accessible Components. As used in this Section 3.1, an "Accessible Component" means any component of a Covered Product that could be touched by a person during reasonably foreseeable use. 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 Merkury agrees, to pay a total of fifty-five thousand dollars (\$55,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: six-thousand dollars (\$6,000.00) 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 Merkury with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: forty-eight thousand dollars (\$48,000.00) 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 Merkury'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 Merkury with its Employer Identification Number.

4.1.3 Penalty: Merkury 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 Merkury represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Merkury 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. MODIFICATION OF SETTLEMENT AGREEMENT

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

9. APPLICATION OF SETTLEMENT AGREEMENT

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees identified in Section 2 above.

10. 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 10.2 and 10.3 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 Merkury by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific 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 10.3 below. Any notice to Merkury must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (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 10.2, Merkury 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 Merkury for full credit, including shipping costs, or (2) refute

the information provided under Section 10.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 10.1.

11. NOTIFICATION REQUIREMENTS

11.5 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
YERUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212

For Merkury:

Douglas Winthrop
Sarah Esmaili
ARNOLD & PORTER, LLP
Three Embarcadero Center, 10th Fl
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.

12. 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. 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 lead and/or the Covered Products, then Merkury 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.

14. BINDING EFFECT

14.1 This Settlement Agreement shall be binding upon and inure to the benefit of any successors or assigns of any of the Parties.

CONSUMER ADVOCACY GROUP, INC.

Dated: 6-7-13

By: 

Printed Name: Michel Sasseon

Title: executive director

MERKURY INNOVATIONS, LLC

Dated: 6-13-13

By: 

Printed Name: Charby O'Fallon

Title: VP