

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
MARCOLIN USA, INC.

Consumer Advocacy Group, Inc. ("CAG") and Marcolin USA, Inc. ("Marcolin") (CAG and Marcolin collectively referred to as the "Parties" and individually as a "Party") enter into this agreement ("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 Marcolin has supplied, sold, or distributed Sunglasses (referred to throughout as the "Covered Products"). The "Covered Products" are only limited to those supplied, sold, or distributed by Marcolin.

1.3 CAG alleges that Covered Products contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate and that Marcolin 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. This addition 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 On or about September 7, 2012, CAG served The TJX Companies, Inc., T.J. Maxx of CA, LLC, and Kenneth Cole Productions, Inc. (collectively, the “Noticed Companies”), 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” (“Original Notice”). On or about December 12, 2012, CAG served the Noticed Companies, Marcolin, and certain relevant public enforcement agencies with another “Sixty-Day Notice of Intent To Sue for Violations Of the Safe Drinking Water And Toxic Enforcement Act of 1986” (“Additional Notice”). The Original Notice and Additional Notice are collectively referred to as the “Notices.” The Notices variously alleged that Marcolin and the Noticed Companies violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to DEHP.

1.6 Marcolin denies the allegations of the Notices and maintains that the Covered Products have been in compliance with Proposition 65 at all times relevant to CAG’s claims.

1.7 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties concerning the allegations of the Notices 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 Marcolin may have against one another in any other pending legal proceeding as to allegations unrelated to the Notices 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) Marcolin, Kenneth Cole Productions, Inc., The TJX Companies, Inc. dba T.J. Maxx, and T.J. Maxx of CA, LLC dba T.J. Maxx, and each of their respective parent companies, subsidiaries, affiliates, sister and related companies, and divisions; (b) for the entities listed in (a), above, all entities to which they directly or indirectly provide, distribute or sell the Covered Products, including but not limited to distributors, wholesalers, cooperative members, retailers, 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 DEHP 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.

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 DEHP in the Covered Products, or a Releasee's failure to warn of exposures to any DEHP 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 Marcolin's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to DEHP in the Covered Products for any Releasee.

3. MARCOLIN'S DUTIES

3.1 Marcolin agrees, promises, and represents that any Covered Product manufactured after February 15, 2013 ("Compliance Date") that Marcolin thereafter ships to California, distributes in California, or sells in California will contain less than 0.1 % (1000 parts per million) of DEHP. The obligations of Section 3 do not apply to any Covered Products manufactured prior to the Compliance Date, regardless of when such products are distributed or sold, but such products are covered within the release of claims in Section 2.

4. PAYMENTS

4.1 Marcolin agrees, to pay a total of thirty-eight thousand dollars (\$38,000.00) within ten (10) 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 Marcolin with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Thirty-two thousand dollars (\$32,000.00) 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 Marcolin'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 Marcolin with its Employer Identification Number.

4.1.3 Penalty: Marcolin'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 Marcolin represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Marcolin 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 those matters addressed herein.

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 Marcolin 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 Marcolin 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, Marcolin 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 Marcolin 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 Marcolin:

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 DEHP and/or the Covered Products, then Marcolin 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: Feb 18, 2013

By: Michael Marcus

Printed Name: Michael Marcus

Title: Director

MARCOLIN USA, INC.

Dated: Feb 20, 2013

By: 

Printed Name: GAMBINI

Title: CEO MUSA