

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
HOWARD BERGER COMPANY, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Howard Berger Company, Inc. and Howard Berger Company, LLC (hereto referred to as “Howard Berger”), (CAG and Howard Berger collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that Howard Berger 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 Howard Berger previously sold, at various times, Steering Wheel Locks and Flashlights with Rubber Grips (referred to throughout as the “Covered Products”). The Covered Products are limited to those sold by Howard Berger only.

1.3 CAG alleges that Steering Wheel Locks contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl)

phthalate, and lead and that Howard Berger 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 CAG alleges that Flashlights contain lead and that Howard Berger 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”)).

1.5 On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. These 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.

1.6 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

reproductive toxicity, lead and lead compounds became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.7 DEHP and lead are referred to hereafter as the “Listed Chemicals.”

1.8 On or about December 11, 2012, CAG served Howard Berger, Ross Stores, Inc., Ross Dress For Less, Inc., dd’s DISCOUNTS, 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 Steering Wheel Locks containing DEHP and lead.

1.9 On or about March 4, 2013, CAG served Howard Berger, Ross Stores, Inc., Ross Dress For Less, Inc., dd’s DISCOUNTS, 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 Flashlights with Rubber Grips containing lead.

1.10 The Sixty-Day Notices (referred to as “Notices”) alleged that Howard Berger 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 Chemicals.

1.11 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”).

1.12 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 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 Howard Berger, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, 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 Howard Berger 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 (a) Howard Berger, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including without limitation Ross Stores, Inc., Ross Dress for Less, Inc., and dd's DISCOUNTS, Inc. ("Downstream Releasees"), on the other hand,

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 Releasees and Downstream Releasees regarding exposing persons to the Listed Chemicals and the failure to warn about exposure to the Listed Chemical 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. The Covered Products are only limited to those sold by Howard Berger. Howard Berger's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Products for both Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

CAG, its past and current agents, representatives, attorneys, 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, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees

and Downstream Releasees to warn about exposures to the Listed Chemicals contained 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.

3.0 Howard Berger's Duties

3.1 For the purposes of this Agreement, "Reformulated Products" are those Products that contain a maximum of (a) 0.1% (1,000 parts per million) of DEHP with respect to the Steering Wheel Locks subject to the December 11, 2012 Notice, and (b) 100 parts per million of lead with respect to the Steering Wheel Locks. and Flashlights with Rubber Grips subject to the March 4, 2013 Notice.

3.2 Howard Berger agrees, promises, and represents as follows:

- 3.2.1 Covered Products in Howard Berger's inventory as of the Effective Date and placed into the stream of commerce through July 31, 2013 shall not be required to be Reformulated Products nor shall such products require any warning labels as described below in 3.2.2.
- 3.2.2 Covered Products in Howard Berger's inventory as of the Effective Date and placed into the stream of commerce after July 31, 2013 shall not be required to be Reformulated Products but shall include warnings that comply with Proposition 65. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.
- 3.2.3 No Covered Product that is first placed in Howard Berger's inventory after July 31, 2013 may be shipped, sold, or offered for sale in California unless such Covered Product is a Reformulated Product.

3.3 The requirements set forth in this Section 3 shall apply to any Covered Product that is shipped, sold, or offered for sale in California by Howard Berger after the Effective Date. Any Covered Product that has been shipped, sold, or offered for sale in California by Howard Berger to any consumer or Downstream Releasee prior to the Effective Date shall not be subject to the requirements set

forth in this Section 3.

3.4 Compliance with the terms of this Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Products.

4.0 Payments

4.1 Howard Berger agrees, to pay a total of fifty-two thousand dollars (\$52,000.00) by separate checks apportioned as follows:

4.1.1 Payment to CAG: Seven thousand dollars (\$7,000.00) 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 Howard Berger with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Forty four thousand dollars (\$44,000.00) 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 Howard Berger'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 Howard Berger with its Employer Identification Number.

4.1.3 Penalty: Howard Berger 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.

5.0 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 Howard Berger represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Howard Berger 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 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.

9.0 Modification of Settlement Agreement

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

10.0 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 and Downstream Releasees identified in Section 2 above.

11.0 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 Howard Berger 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 11.3 below. Any notice to Howard Berger 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.

11.3 Within 30 days of receiving the notice described in Section 11.2, Howard Berger 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 Howard Berger 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.

12.0 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 Howard Berger:

Joshua Bloom
BARG, COFFIN, LEWIS & TRAPP
350 California St, 22nd Floor
San Francisco, CA 94104

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

13.0 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.

14.0 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 the Listed Chemical and/or the Covered Products, then Howard Berger 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.

15.0 Consent Judgment

15.1 If, no later than one year after Effective Date, Howard Berger requests in writing that CAG file a complaint with regard to the substance of either or both of the Notices:

15.1.1 CAG shall draft a complaint, stipulated consent judgment and motion to approve the consent judgment. The stipulated consent judgment shall be wholly based on the Settlement Agreement such that the Settlement Agreement shall be converted to a consent judgment, and its terms shall not be modified except to the extent necessary to convert the Settlement Agreement to a consent judgment or as otherwise set forth below.

15.1.2 The Consent Judgment shall indicate payments made by Howard Berger under the Settlement Agreement, and in addition, shall specify that HBC pay an additional \$10,000. Of the \$10,000 payment, no less than \$5,000 shall be allocated as a penalty, of which 75% will be designated to be paid to the California Office of Environmental Health Hazard Assessment, and 25% to CAG. The remainder shall be designated to be paid to Yeroushalmi & Associates in full payment of attorneys' fees and costs.

15.1.3 CAG shall provide to Howard Berger a copy of a draft complaint and consent judgment, and any associated motions within 14 days after receipt of Howard Berger's request. Howard Berger shall provide any comments to CAG within 7 days of receipt of the drafts. The parties shall act and negotiate in good faith to effect CAG's filing of agreeable documents as soon as practicable.

CONSUMER ADVOCACY GROUP, INC.

Dated: 6-10-13

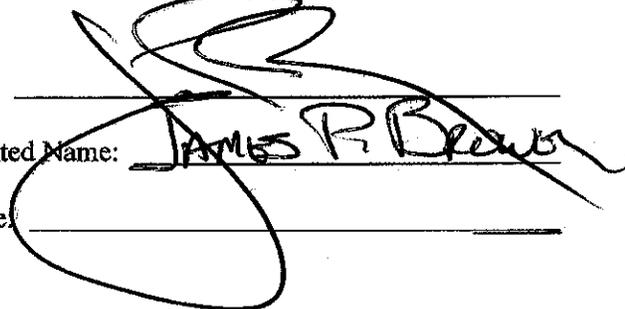
By: 

Printed Name: Michel Sassoon

Title: executive director

HOWARD BERGER COMPANY, INC.

Dated: 6/12/13

By: 

Printed Name: JAMES R. BROWN

Title: _____

