

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
FANTAS EYES, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Fantas Eyes, Inc. (hereto referred to as “Fantas Eyes”), (CAG and Fantas Eyes collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that Fantas Eyes and companies related to it 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 Fantas Eyes previously sold, directly and through companies related to it, at various times, Sunglasses and Eyewear (referred to throughout as the “Covered Products”) directly or indirectly (including but not limited) to suppliers, distributors, wholesalers, customers, retailers (including their affiliates),

franchisees, cooperative Members, and licensees. The Covered Products are limited to those sold by Fantas Eyes and Lungyen Optical Corporation Ltd., only.

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 Fantas Eyes 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 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 Notices of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” which are further described below.

1.5 DEHP is referred to hereafter as the “Listed Chemical.”

1.6 CAG alleges as follows: On or about January 11, 2013, CAG served Express, 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 Covered Products containing the Listed Chemical. CAG then served a supplemental Sixty-Day Notice to Fantas Eyes on or about September 12, 2013.

1.7 CAG alleges as follows: On or about April 4, 2013, CAG served Wal-Mart 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 Covered Products containing the Listed Chemical.

1.8 CAG alleges as follows: On or about May 20, 2013, CAG served Payless Holdings, Collective Brands Licensing, LLC, Payless Shoesource Worldwide, 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 Covered Products containing the Listed Chemical. CAG then served a supplemental Sixty-Day Notice to Fantas Eyes on or about September 12, 2013.

1.9 CAG alleges as follows: On or about July 3, 2013, CAG served Hot Topic, Inc., Hot Topic Merchandising, 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 Covered Products containing the Listed Chemical. CAG then served a supplemental Sixty-Day Notice to Fantas Eyes on or about September 25, 2013.

1.10 CAG alleges as follows: On or about August 1, 2013, CAG served Tilly’s Inc., World of Jeans & Tops dba Tilly’s, Tilly’s Clothing Shoes & Accessories, 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 Covered Products

containing the Listed Chemical. CAG then served a supplemental Sixty-Day Notice to Fantas Eyes on or about September 12, 2013.

1.11 CAG alleges as follows: On or about October 15, 2013, CAG served Big Lots, Inc., Big Lots 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 Covered Products containing the Listed Chemical.

1.12 CAG alleges as follows: On or about January 11, 2013, CAG served Lane Bryant, 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 Covered Products containing the Listed Chemical.

1.13 The Sixty-Day Notices (referred to as “Notices”) alleged that Fantas Eyes and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical. Fantas Eyes denies the material allegations in such notices and denies that it and its related companies violated Propositions 65.

1.14 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth herein concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.15 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 Fantas Eyes, 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 Fantas Eyes 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

2.1. This Settlement Agreement is a full, final, and binding resolution between CAG, on behalf of itself and its past and current agents, representatives, attorneys, successors and/or assignees, on the one hand, and (a) Fantas Eyes, and its owners, parents, subsidiaries, affiliates, sister and related companies, including without limitation, companies related to Fantas Eyes by ownership interests and financial relationships, i.e.-Lungyen Optical Corporation Ltd., and as to all of the foregoing, their employees, shareholders, officers, directors, insurers, attorneys,

predecessors, successors, and assigns (collectively “First Releasees”) and (b) all entities to whom First Releasees directly or indirectly provide, distribute or sell the Covered Products, including but not limited to suppliers; distributors; wholesalers; customers; retailers including but not limited to Wal-Mart Stores, Inc. and its affiliates and subsidiaries, Express, Inc., Payless Holdings, Collective Brands Licensing, LLC, Payless Shoesource Worldwide, Inc., Hot Topic, Inc., Hot Topic Merchandising, Inc., Tilly’s Inc., World of Jeans & Tops dba Tilly’s, Tilly’s Clothing Shoes & Accessories, Big Lots, Inc and Lane Bryant Inc.; franchisees; cooperative members; and licensees (“Second 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 First Releasees and Second Releasees regarding exposing persons to the Listed Chemical 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 Second Releasees after the Effective Date. The Covered Products are limited to those sold by Fantas Eyes and Lungyen Optical Corporation Ltd.,, and their compliance with the reformulation standards in this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for both First Releasees and Second Releasees for any Covered Products distributed and/or sold by the First Releasees or Second Releasees after the Effective Date, shall bar any claims against any of them with respect to the listed Chemical in the Covered Products.

2.2 CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive and release 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 First Releasees and/or Second Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted, whether now known or unknown, only to the extent that such claims relate to First Releasees' and/or Second Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products, any failure by First Releasees and Second Releasees to warn about alleged exposures to the Listed Chemical contained in the Covered Products or the facts alleged in the notice.

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 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER 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.

2.3 It is intended by the Parties that the releases provided in this Paragraph 2.3 shall prevent CAG from asserting any Claims against First Releasees and/or Second Releasees that arise under Proposition 65 or any other statutory or common law, to the extent that such claims relate to First Releasees' and/or Second Releasees' alleged exposure of persons to the Listed Chemical in the Covered Products or any failure by First Releasees and Second Releasees to warn about exposures to the Listed Chemical in the Covered Products.

3.0 Fantas Eyes' Duties

3.1 Fantas Eyes agrees, promises, and represents that immediately after the Effective Date of this Settlement Agreement, it has in the past or will, reformulate the Covered Products to a point where the level of DEHP in the Covered Products does not exceed 0.1%.

3.2 Fantas Eyes agrees, promises, and represents that, as of the Effective Date, to the extent it ships any Covered Products in inventory that have not been reformulated, it will provide warnings on such Covered Products 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. The Parties agree that product labeling stating that “This product contains chemicals known to the State of California to cause cancer, or birth defects, or other reproductive harm” shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in inventory that had not been reformulated and was distributed and/or sold by First Releasees or Second Releasees after the Effective Date.

4.0 Payments

4.1 Fantas Eyes agrees, to pay a total of fifty-six thousand dollars (\$56,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: Three thousand dollars (\$3,000.00) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide Fantas Eyes with CAG’s Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Fifty-two thousand dollars (\$52,000.00) 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 Fantas Eyes' attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide Fantas Eyes with its Employer Identification Number.

4.1.3 Penalty: Fantas Eyes 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 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 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 240W, 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 Fantas Eyes represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Fantas Eyes 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 First Releasees and Second Releasees identified in Section 2 above.

10.2 Within twelve (12) months of the Effective Date, if another party, other than CAG, serves a "Sixty-Day Notice Of Intent to Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" on Fantas Eyes or Lungyen Optical Corporation Ltd. regarding the Covered Products, Fantas Eyes may send CAG a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. CAG shall have no obligation to act upon such request until it receives payment of twenty-five thousand dollars (\$25,000) from Fantas Eyes. Within 30 days of receipt of such payment, CAG will file the Complaint and take all reasonable steps necessary to obtain entry of the terms of this Settlement Agreement pertaining to the Covered Products as a consent judgment by a superior court in California in a timely manner. Such proposed consent judgment shall include language sufficient to

preclude third parties from filing suit based on a “Sixty-Day Notice Of Intent to Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” served on Fantas Eyes or Lungyen Optical Corporation Ltd. regarding the Covered Products, including, if necessary, language stating that the proposed consent judgment is in the public interest.

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 Fantas Eyes 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 Fantas Eyes 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, Fantas Eyes 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 Fantas Eyes 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 only as set forth 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 240W
Beverly Hills, CA 90212

For Fantas Eyes:

George Gottlieb and Marc P. Misthal
GOTTLIEB RACKMAN & REISMAN, P.C.
270 Madison Avenue
New York, NY 10016

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 Fantas Eyes 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: 12-16-13

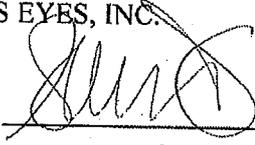
By: 

Printed Name: Michel Sasson

Title: Executive Director

FANTAS EYES, INC.

Dated: 12/9/2013

By: 

Printed Name: TERZI, SAMUEL

Title: PRESIDENT