

SETTLEMENT AGREEMENT BETWEEN
CONSUMER ADVOCACY GROUP, INC., AND
JACK MARTIN COMPANY, INC.

For the purpose of avoiding prolonged and costly litigation, Consumer Advocacy Group, Inc. (“CAG”) and Jack Martin Company, Inc. (“Jack Martin”) (CAG and Jack Martin are collectively referred to as the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that Jack Martin and Zumiez, Inc. (“Zumiez”) violated Proposition 65. 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 Jack Martin previously manufactured, distributed, or sold, or will manufacture, distribute, or sell, Sunglasses (referred to throughout as the “Covered Products”). The Covered Products are limited to those manufactured, distributed, or sold in the past or the future by Jack Martin.

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 Jack Martin and Zumiez 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 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 DEHP is referred to hereafter as the “Listed Chemical.”

1.6 On or about April 17, 2013, CAG served Jack Martin, Zumiez, 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 Sunglasses containing DEHP.

1.7 The Sixty-Day Notice (referred to as “Notice”) alleged that Jack Martin, Zumiez, 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. Jack Martin denies the material allegations of the Notice, and denies that it or Zumiez have violated Proposition 65.

1.8 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”).

1.9 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 Jack Martin, Zumiez, or their respective 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, Jack Martin, or Zumiez 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 the one hand, and (a) Jack Martin, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) Zumiez and all other 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 ("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, could have been, or could be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising in

connection with the Covered Products manufactured, shipped, sold and/or otherwise distributed by Releasees prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. Jack Martin's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for both Releasees and Downstream Releasees for any Covered Products manufactured, distributed and/or sold by Releasees or Downstream Releasees after the Effective Date, and shall bar any claims asserted against any of them with respect to the Listed Chemical in the Covered Products.

2.2 CAG, on behalf of itself and 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 known or unknown past, present and future 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 state or federal statutory or common law that were, could have been, or could be asserted, to the extent that such Claims relate to the Covered Products, Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products, any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products, or the facts alleged in the Notice.

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, on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which it/they may have under, or which may be conferred on it/them 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/they may lawfully waive such rights or benefits pertaining to the released matters.

3.0 Jack Martin's Duties

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

3.2 Jack Martin agrees, promises, and represents that, as of the Effective Date, to the extent it ships any Covered Products in its 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, birth defects, and other reproductive harm” shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in Jack Martin’s inventory that have not been reformulated and are distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

4.0 Payments

4.1 Jack Martin agrees to pay a total of thirty-two thousand dollars (\$32,000.00) 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 Jack Martin with CAG’s Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Twenty-five thousand dollars (\$25,000.00) 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 Jack Martin’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 Jack Martin with its Employer Identification Number.

4.1.3 Penalty: Jack Martin 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: Yerousalmi & 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 Jack Martin represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Jack Martin 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, the Releasees and Downstream Releasees identified in Section 2 above, and the public to the extent provided under the law.

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 Jack Martin or any Downstream Releasee 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 Jack Martin must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation or a 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, Jack Martin 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 Jack Martin 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 Jack Martin:

Stephen J. Martin
Jack Martin Company, Inc.
1608 Yeager Ave.
La Verne, CA 91750

and

Jeffrey J. Parker
SHEPPARD MULLIN RICHTER & HAMPTON LLP
333 South Hope Street
Forty-Third Floor
Los Angeles, CA 90071

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 Jack Martin 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: 8-5-13

By: 

Printed Name: Michel Sassoon

Title: executive director

JACK MARTIN COMPANY, INC.

Dated: _____

By: _____

Printed Name: _____

Title: _____

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14.0 GOVERNING LAW

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CONSUMER ADVOCACY GROUP, INC.

Dated: _____

By: _____

Printed Name: _____

Title: _____

JACK MARTIN COMPANY, INC.

Dated: 8/7/13

By: 

Printed Name: STEPHEN J. MARTIN

Title: PRESIDENT/CEO

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