

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

TECHNICAL MARKETING ASSOCIATES, INC. AND FOOD 4 LESS HOLDINGS,
INC.

Consumer Advocacy Group, Inc. (“CAG”) and Technical Marketing Associates, Inc. (“TMA”), and Food 4 Less Holdings, Inc. (“Food 4 Less”), (hereinafter CAG, TMA, and Food 4 Less collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that TMA and Food 4 Less 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 TMA previously sold, at various times, Footwear, including but not limited to “STARBOW’ and ‘OUTDOOR’ Logos, Size 8, Bar Code 6272030399, ‘All Man Made Materials’ ‘Made in China’; “Starbow Sandals, “Size 6’, brown sandals with gold strap”; “Starbow Sandals, “Size 6’, black, grey, and white plaid type art with dark pink mountain lion head on upper surface of the sold, barcode:

0 62720 30399 1”; and “Star Bow Sandals Light Blue with Multi-Color Design, ‘Made In China, all Man Made Materials’, Barcode 062720 30399 1” (referred to throughout as the “Covered Products”). The Covered Products are limited to those sold by TMA only.

1.3 Food 4 Less or its affiliates previously sold, at various times, “Beach Basics™ Kids Flip Flops Size 11/12, Bar Code# 6 79759 06519 8” and “Beach Basics® Flip Flops ‘11/12’ Bar Code# 6 79759 06520 4” (referred to throughout as the “Additional Covered Products”). The Additional Covered Products are limited to those sold by Food 4 Less or its affiliates only.

1.4 CAG alleges that Covered Products contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and Di-n-butyl phthalate (DBP) and that TMA 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 CAG alleges that Additional Covered Products contain DBP and that Food 4 Less or its affiliates 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”)).

1.6 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 are further described below.

1.7 On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State to cause developmental, female, and 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.

1.8 On or about October 12, 2012, CAG served Super Center Concepts, Inc., dba Superior Grocers, 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 DBP. Then on or about October 31, 2013, CAG served a supplemental notice to TMA, 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 DBP.

1.9 On or about May 10, 2013, CAG served The Kroger Co., Ralphs Grocery Company, Food 4 Less, Food 4 Less of Southern California, 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 DEHP and DBP.

1.10 On or about August 16, 2013, CAG served CVS Caremark Corporation dba CVS/pharmacy, 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 DBP. Then on or about December 10, 2013, CAG served a supplemental notice to TMA, CVS Caremark Corporation dba CVS/pharmacy, 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 DBP.

1.11 The Sixty-Day Notices in paragraphs 1.8, 1.9, and 1.10 above (referred to as “Notices”) alleged that TMA and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to DEHP and DBP.

1.12 On or about August 15, 2011, CAG served The Kroger Co. and Ralphs Grocery Company, 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 “Beach Basics™ Kids Flip Flops Size 11/12, Bar Code# 6 79759 06519 8” containing DBP.

1.13 On or about October 25, 2011, CAG served The Kroger Co., Food 4 Less, 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 "Beach Basics® Flip Flops '11/12' Bar Code# 6 79759 06520 4" containing DBP.

1.14 The Sixty-Day Notices in paragraphs 1.12 and 1.13 above (referred to as "Additional Notices") alleged that Food 4 Less and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Additional Covered Products exposes persons to DBP.

1.15 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' and Additional Covered Products' compliance with Proposition 65 (the "Dispute").

1.16 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 TMA or Food 4 Less, their affiliates, 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 the Parties 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) TMA, 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 CVS Caremark Corporation dba CVS/pharmacy, Super Center Concepts, Inc. dba Superior Grocers, The Kroger Co., Ralphs Grocery Company, Food 4 Less, their corporate affiliates, 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 or could have been asserted against the Releasees and Downstream Releasees regarding exposing persons to DEHP and DBP and the failure to warn about exposure to DEHP and DBP 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 TMA. TMA's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to DEHP and DBP 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 DEHP or DBP contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to DEHP and DBP contained in the Covered Products.

2.2 Further, this Settlement Agreement is a full, final, and binding resolution between CAG, on the one hand, and Food 4 Less, and its employees,

shareholders, officers, directors, insurers, attorneys, affiliated entities, licensors, predecessors, successors, and assigns (collectively "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 Second Releasees regarding exposing persons to DBP and the failure to warn about exposure to DBP arising only in connection with the Additional Covered Products manufactured, shipped and/or otherwise distributed prior to the Effective Date, even if sold by Second Releasees after the Effective Date. The Additional Covered Products are limited to those sold by Food 4 Less or its affiliated entities. Food 4 Less' compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to DBP in the Additional Covered Products for the Second Releasees for any Additional Covered Products sold by Second Releasees after the Effective Date. There is no release to upstream entities selling Additional Covered Products.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Additional 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 Second 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 Second Releasees' alleged exposure of persons to DBP contained in the Additional Covered Products or any failure by Second Releasees to warn about exposures to DBP contained in the Additional Covered Products. There is no upstream release as to Additional 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 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.

3.0 TMA's Duties

3.1 TMA agrees, promises, and represents that TMA shall not import or sell any Covered Products after the Effective Date and offered for sale in California

unless said Covered Products have been reformulated to a point where the level of DEHP and/or DBP in the Covered Products does not exceed 0.1% (1,000 ppm).

3.2 TMA agrees, promises, and represents that, as of the Effective Date, to the extent it imports or sells any Covered Products or ships any Covered Products in its existing 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 "WARNING: 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 DEHP or DBP in the Covered Products for any Covered Products in inventory that had not been reformulated and was distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

4.0 Food 4 Less' Duties

3.1 Food 4 Less and its affiliated companies agree, promise, and represent that Food 4 Less and its affiliated companies shall not sell any Additional Covered Products after the Effective Date and offered for sale in California unless said Additional Covered Products have been reformulated to a point where the level of DBP in the Additional Covered Products does not exceed 0.1% (1,000 ppm).

3.2 Food 4 Less and its affiliated companies agree, promise, and represent that, as of the Effective Date, to the extent that any Additional Covered Products remain in inventory that have not been reformulated, Food 4 Less or its affiliates will provide warnings on such Additional Covered Products that comply with Proposition 65 prior to offering them for sale in California. 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 “WARNING: This product contains chemicals known to the State of California to cause birth defects, or other reproductive harm” shall constitute compliance with Proposition 65 with respect to DBP in the Additional Covered Products for any Additional Covered Products in inventory that had not been reformulated and was distributed and/or sold by Second Releasees after the Effective Date.

5.0 Payments

5.1 TMA 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

240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide TMA 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 TMA's 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 TMA with its Employer Identification Number.

4.1.3 Penalty: TMA 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. Both checks shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, 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.

5.2 Food 4 Less agrees that it or its corporate affiliate will pay a total of eighteen thousand dollars (\$18,000.00) within ten (10) days of the Effective Date. 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 Food 4 Less' 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 Food 4 Less with its Employer Identification Number.

6.0 Authority to Enter Into Settlement Agreement

6.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

6.2 TMA represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind TMA to this Settlement Agreement.

6.3 Food 4 Less represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Food 4 Less to this Settlement Agreement.

7.0 Report of the Settlement Agreement to the Office of the Attorney General Of California

7.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

8.0 Execution in Counterparts and Facsimile

8.1 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.

9.0 Entire Agreement

9.1 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.

10.0 Modification of Settlement Agreement

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

11.0 Application of Settlement Agreement

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

12.0 Enforcement of Settlement Agreement

12.1 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 12.2 and 12.3 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.

12.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products or Additional Covered Products may be served or filed against TMA or Food 4 Less 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 TMA or Food 4 Less 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.

12.3 Within 30 days of receiving the notice described in Section 12.2, TMA or Food 4 Less 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 TMA or Food 4 Less for

full credit, including shipping costs, or (2) refute the information provided under Section 12.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 12.1.

13.0 Notification Requirements

13.1 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 TMA:

Eric P. Weiss, Esq.
MURCHISON & CUMMING, LLP
801 S. Grand Avenue Ninth Floor
Los Angeles, CA 90017

For Food 4 Less:

Lisa A. Cole, Esq.
NIXON PEABODY LLP
2 Palo Alto Square, Suite 500
3000 El Camino Real
Palo Alto, CA 94306

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 DEHP or DBP, and/or the Covered Products and Additional Covered Products, then TMA or Food 4 Less 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 or Additional Covered Products are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 2-14-14

By: 

Printed Name: Michel Saccoccia

Title: Executive Director

TECHNICAL MARKETING ASSOCIATES, INC.

Dated: 2-13-2014

By: *Yashu Niwa*

Printed Name: Yashu Niwa

Title: Vice President

FOOD 4 LESS HOLDINGS, INC.

Dated: _____

By: _____

Printed Name: _____

Title: _____

TECHNICAL MARKETING ASSOCIATES, INC.

Dated: _____

By: _____

Printed Name: _____

Title: _____

FOOD 4 LESS HOLDINGS, INC.

Dated: 2/13/14

By: 

Printed Name: **Steven J. Prough**

**Vice President and
Assistant Secretary**

Title: _____