

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
ALLURE EYEWEAR, LLC

Consumer Advocacy Group, Inc. (“CAG”) and Allure Eyewear, LLC (referred to as “ALLURE”), (CAG and ALLURE collectively referred to as the “Parties” and each individually as a “Party”) enter into this agreement (“Settlement Agreement”) for the purpose of settling claims and avoiding prolonged and costly litigation to settle CAG’s allegations that ALLURE 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 The products covered by this Settlement Agreement are eyewear that are or were manufactured, sold or distributed by ALLURE (referred to throughout as the “Covered Products”), including but not limited to the following exemplars: 1) “Oscar by Oscar de la Renta Sunglasses, Mod 3022 718”; 2) “Bookmates™ 2 Pair Premium Reading Glasses (+2.00); “Bookmates Readers BM101BP2PC210”, (210) Shiny Brown, barcode: 8 00414 35954 7; 3) “IZOD Sunglasses, SKU

#400083600522”; 4) VAN HEUSEN EYEWEAR, “100% UV PROTECTION”, Aviator Style Sunglasses with Dark Gray Metal Frame, “0991 033”, “SPRING HINGES”, Barcode: 465842700264; and 5) “Madison Avenue” Red framed sunglasses with white outline and white end ear-pieces, ‘China (printed on the left inner temple piece)’ PL907 105 (printed on the right inner temple piece)’ “7270 A0653 EYWR 0614 SUNGLSS LUSH ASTD” Compare at \$14.00, Our Price \$4.99 SKU#1390633”. The Covered Products are limited to those sold by ALLURE only.

1.3 CAG alleges that the 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 ALLURE 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”)). ALLURE denies that it violated Proposition 65 as alleged by CAG.

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. On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State of California 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.

1.5 DEHP and DBP are referred to hereafter as the “Listed Chemicals.”

1.6 On or about March 4, 2013, CAG served Marshalls of MA, Inc., Marmaxx Operating Corp., The TJX Companies, Inc., Marshalls of CA, LLC, Marshalls, Oscar de la Renta, Ltd. 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.

1.7 On or about May 17, 2013, CAG served Allure Eyewear, LLC, Allure Eyewear Collection, LLC, Ross Dress For Less, Inc., Ross 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 DEHP.

1.8 On or about October 28, 2013, CAG served PVH Corp, Phillips-Van Heusen Corporation, and Van Heusen #224 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.

1.9 On or about September 26, 2014, CAG served Tuesday Morning Inc, Tuesday Morning Corporation, Tuesday Morning Partners LLC, Tuesday Morning Partners, Ltd., Days of the Week, Inc., and Tuesday Morning Inc. San Pedro 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 October 31, 2014, CAG served Allure Eyewear, LLC, Tuesday Morning, Inc., Tuesday Morning Corporation, Tuesday Morning Partners, LLC, Tuesday Morning Partners, Ltd., Days of the Week, Inc., and Tuesday Morning Inc. San Pedro 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.

1.11 The Sixty-Day Notices (referred to as the “Notices”) alleged that ALLURE and/or the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to DEHP and/or DBP.

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

1.13 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, be considered or be construed as an admission by the

Parties 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, or compliance with its terms, be offered, or admitted as evidence of an admission or evidence, including but not limited to, of fault, wrongdoing, or liability by ALLURE, 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 with respect to an action seeking to enforce the terms of this Settlement 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 ALLURE may have against one another in any other 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, acting in its individual capacity, its past and current agents, representatives, attorneys, successors, and/or assignees on the one hand, and, on the other hand, (a) ALLURE and each entity to whom ALLURE has directly or indirectly provided, distributed, or sold the Covered Products, including but not limited to Tuesday Morning, Inc., Tuesday Morning Partners, Ltd. and Tuesday Morning Corporation; (b) all distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees of the entities identified in (a) above; and (c) all past and current owners, parents, subsidiaries, affiliates, sister and related

companies, employees, shareholders, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns of ALLURE and the other entities and individuals identified in (a) and (b) above (the released entities and individuals identified in (a), (b) and (c) above, are collectively referred to as “Releasees”) of any violation(s) or alleged violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees regarding exposing persons to the Listed Chemicals and/or the failure to warn about exposure to the Listed Chemicals arising in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Releasees after the Effective Date.

2.2 CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that they may have, 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 that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Releasees after the Effective Date, including without limitation to the extent that such claims relate to Releasees’ alleged

exposure of persons to the Listed Chemicals contained in the Covered Products and/or any failure by Releasees to warn about exposures to the Listed Chemicals contained in the Covered Products.

2.3 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. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 et seq. below are paid in full.

### **3.0 ALLURE's Duties**

3.1 ALLURE, promises, and represents that within sixty (60) days of the Effective Date ALLURE shall reformulate any Covered Products manufactured thereafter that are offered for sale in California so as to not contain more than 0.1% by weight (1,000 parts per million) of either of the Listed Chemicals or it

shall otherwise cease selling or distributing for sale the Covered Products in California.

3.2 ALLURE agrees, promises, and represents that within sixty (60) days of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that contain more than 0.1% by weight (1,000 parts per million) of either of the Listed Chemicals, it will provide warnings on such Covered Products that are offered for sale in California to 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 and birth defects, or other reproductive harm” shall constitute compliance with Proposition 65 with respect to the Listed Chemicals for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by Releasees after the Effective Date.

3.3 CAG and ALLURE agree that compliance with the terms of this Settlement Agreement by ALLURE shall constitute compliance with Proposition 65 with respect to any exposure to the Listed Chemicals in the Covered Products.

#### **4.0 Payments**

4.1 ALLURE agrees to pay a total settlement payment of Forty-two thousand dollars (\$42,000.00), within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1. 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 ALLURE'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 ALLURE with its Employer Identification Number.

4.1.2. Penalty: ALLURE shall issue two separate checks for a total amount of Ten thousand dollars (\$10,000.00) 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 thousand Five hundred dollars (\$7,500.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of Two thousand Five hundred dollars (\$2,500.00), 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 \$7,500.00. The second 1099 shall be issued in the amount of \$2,500.00 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 ALLURE represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind ALLURE 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 Effective Date.

**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 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 ALLURE 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 Notices of Violation and the Parties fail to resolve the Dispute after complying with the requirements set forth in Section 11.3 below. Any notice to ALLURE 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, the Parties shall meet and confer either in person or by telephone to attempt to resolve the Dispute. ALLURE may, at its sole option, resolve the Dispute by either (1) sending 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 ALLURE in accordance with the terms of the applicable distribution agreement with such store, 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, Esq.  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For ALLURE:

Steve Clarke  
Allure Eyewear, LLC  
48 West 37<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, NY 10018

With a copy to:

Peter Duchesneau, Esq.  
Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd  
Los Angeles, CA 90064

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 Chemicals and/or the Covered Products, then ALLURE 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: 9-22-15

By: 

Printed Name: MICHEL SASSPON

Title: Interim director

ALLURE EYEWEAR, LLC

Dated: 9/21/15

By: 

Printed Name: Stephen Clarke

Title: President

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