

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
POWSA ENTERPRISES, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Powsa Enterprises, Inc. (referred to as “Powsa”), (CAG and Powsa collectively referred to herein as the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Powsa and/or Quang Hoa II Supermarket, Inc. (referred to as “Quang Hoa”) 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. Powsa previously sold, at various times:

1.1.1. ““Qunfeng” strainer, UPC 6 940978 327089, with small multicolored cardboard tag attached, printed in green, yellow, red, blue with cartoon character of a chef, information is all in Chinese.” (referred to herein as “Strainer”).

- 1.1.2. ““Zhang Xiao Quan” shears, “ZH-102”, “ISO9001 : 2000”, “QB/T2289.4-2001”, HANGZHOU ZHANGXIAOQUAN GROUP CO., LTD., 400-88-1663, 310011, <http://www.zhangxiaoquan.com.cn>” UPC 6 901350 339229” (referred to herein as “Shears”).
- 1.1.3. “Love Baby children’s sandals, color blue with angry birds characters, “28” (encircled), “ZM-3116”, “Made in China”” (referred to herein as “Sandals 1”).
- 1.1.4. “Love Baby children’s sandals, color pink with angry birds characters, “27” (encircled), “ZM-3116”, “Made in China”” (referred to herein as “Sandals 2”).
- 1.1.5. “A-ONE children’s sandals, black sandals with white floral design, size 6 ½”” (referred to herein as “Sandals 3”).
- 1.1.6. “Pearl White Knotted Rope Design Rubber Flip Flops “Made in China” “38” with Black Rectangular Label with White Chinese Characters Near Heel” (referred to as “Sandals 4”).
- 1.1.7. “jymnk® Bright Pink Iridescent Wavy Texture Crisscross Strap Sandals With White Orange & Blue Label on Strap JIE YANG MONIC SHOES INDUSTRY CO., LTD Size 37 “MNK-1305W MADE IN CHINA” “www.jyshoes.com.cn” “EVA, PVC” “MNK-W1305” UPC 6956031600310 “0663-8878888 8868888”” (referred to as “Sandals 5”).
- 1.1.8. “Black SPORT One-strap Sandals with Blue, Grey & White “Sport” Logo on Strap, Rectangular Ribbed Texture Design on Footbed, Oblong Oval

Cutouts on top and sides of strap, Geometrical textured designs on strap,  
Size 40, “D-859”” (referred to as “Sandals 6”).

1.1.9. “Black jymnk® Sandals, “SPORT”, Size: 40, “MNK-1319M”, “MADE  
IN CHINA”” (referred to as “Sandals 7”).

1.1.10. “Blue Flip Flops with Pink straps with a Bunny face on the bottom, “PINK  
LOVE”, “PEACE IN YOUR SOLI”, “MADE IN CHINA”, Size: 38, , “JS-  
209”” (referred to as “Sandals 8”).

1.1.11. “Pink children’s sandals with a cartoon tiger and multicolored flowers on  
the sandal and a pink tiger face on the strap, “HAPPY”, “MADE IN  
CHINA” Size 29, “XQ-028”” (referred to as “Sandals 9”).

1.1.12. Stariners, Shears, Sandals 1, Sandals 2, Sandals 3, Sandals 4, Sandals 5,  
Sandals 6, Sandals 7, Sandals 8, and Sandals 9 collectively referred to herein  
as the “Covered Products.”

1.1.13. The Covered Products are limited to those sold by Powsa to Quang Hoa.

1.2 CAG alleges that the Covered Products contain Di (2-ethylhexyl)  
phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate, and Bis (2-  
ethylhexyl) phthalate and/or Di-*n*-butyl Phthalate (“DBP”) also known as Dibutyl  
Phthalate and that Powsa and/or Quang Hoa 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”)).

1.3 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.

1.4 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. This addition 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 collectively referred to hereafter as the “Listed Chemicals”.

1.6 On or about July 12, 2013, CAG served Quang Hoa, Quang Hoa Supermarket, Inc. and Hang Zhang Xiaquan Group Co., 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 the Strainers and Shears containing the DEHP.

1.7 On or about August 1, 2013, CAG served Quang Hoa, and Quang Hoa Supermarket, 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 the Sandals 1, Sandals 2 and Sandals 3 containing the Listed Chemicals.

1.8 On or about November 20, 2013, CAG served Quang Hoa, and Quang Hoa Supermarket, 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 the Sandals 4, Sandals 5, and Sandals 6 containing the Listed Chemicals.

1.9 On or about December 15, 2014, CAG served Quang Hoa, Quang Hoa Supermarket, Inc. and Monic Shoes Industry Co., 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 the Sandals 7, Sandals 8, and Sandals 9 containing the Listed Chemicals.

1.10 On or about August 1, 2013, CAG served Powsa and Winluck Inc., 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 the Covered Products containing the Listed Chemicals.

1.11 The Sixty-Day Notices (referred to as the “Notices”) alleged that Powsa and Quang Hoa and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of the Covered Product exposes persons to the Listed Chemical.

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

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 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 Powsa, 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 Powsa 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, acting in its individual capacity, on the one hand, and (a) Powsa, 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 Product, including but not

limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including, without limitation, Quang Hoa (“Downstream Releasees”), on the other hand, of any violation(s) or claimed 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 and Downstream 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 Product manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Product is limited to those sold by Powsa to Quang Hoa. CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product 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 in respect of any Covered Product sold up to the Effective Date, including without limitation 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 Product or any failure by

Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Product.

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 Powsa's Duties**

3.1 Powsa promises and represents that as of the Effective Date, Powsa shall cease sale and not offer for sales in California any Covered Product unless it is a Reformulated Covered Product. A Reformulated Covered Product shall be a product in which the level of DEHP and/or DBP in the Covered Product does not exceed 0.1% by weight.



#### **4.0 Payments**

4.1 Powsa agrees to pay a total of Forty-two thousand dollars (\$42,000.00) as follows by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Thirty-eight thousand dollars (\$38,000.00) 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 Powsa'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 & Yeroushalmi shall provide Powsa with its Employer Identification Number.

4.1.3 Penalty: Powsa shall issue two separate checks for a total amount of Four thousand dollars (\$4,000.00) 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 three thousand dollars (\$3,000.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of one thousand dollars (\$1,000.00), 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 \$3,000.00. The second 1099 shall be issued in the amount of \$1,000.00 to CAG and delivered to: Yeroushalmi & Yeroushalmi, 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 Powsa represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Powsa 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 Modification of Settlement Agreement**

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

**9.0 Application of Settlement Agreement**

9.1 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.

**10.0 Enforcement of Settlement Agreement**

10.1 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.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Product may be served or filed against Powsa 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 entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to Powsa 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.

10.3 Within 30 days of receiving the notice described in Section 11.2, Powsa 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 Powsa 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.

**11.0 Notification Requirements**

11.1 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 & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For Powsa Enterprise, Inc.:

Kevin B. Sawkins, Esq.  
Sawkins & Albert, A Professional Law Corporation  
405 South Mission Drive  
San Gabriel, CA 91776

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 Product, then Powisa 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 Product are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 4-28-16

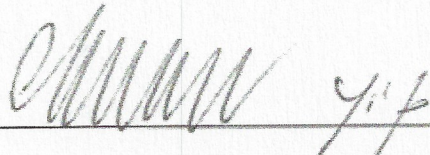
By: 

Printed Name: Michel Sasso

Title: executive director

POWSA ENTERPRISES, INC.

Dated: 4-26-16

By: 

Printed Name: CHARLTON YIP

Title: PRESIDENT