

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ZHANGJIANGANG DAFUYI SPORTING GOODS CO., LTD.

Consumer Advocacy Group, Inc. (“CAG”) and Zhangjiangang Dafuyo Sporting Goods Co., Ltd. (hereto referred to as “Zhangjiangang”), (CAG and Zhangjiangang collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Zhangjiangang violated Proposition 65. The effective date of this Settlement Agreement shall be the last 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 Zhangjiangang previously sold, at various times, Jump Ropes, including but not limited to (1) “DELUXE SPEED JUMP ROPE, 9-foot, kathy smith HEALTHY LIVING, “D1066 C6612 982”, “400097712501”, “N 337 03 FITNESS SIZE”, Barcode: 8 16142 01011”, (2) “IRON GYM™ Ultra Speed Rope “Heavy Duty 9 Ft Rope” IGUSR UPC # 8 16142 01366 8”, (3) “SPEED JUMP ROPE, 9-foot, kathy smith HEALTHY LIVING, “D1066 C6612”, “400099448484”, “N 345 03 FITNESS SIZE”, Barcode: 8 16142 01020 9”

(referred to throughout as the “Covered Products”). The Covered Products are limited to those sold by Zhangjiangang only.

1.3 Zhangjiangang previously sold, at various times, Burn Suits, including but not limited to (1) “SAUNA BURN SUITE, kathy smith HEALTHY LIVING, “XXL Fits Waist Size 36”-42””, “D1066 C6612 1646”, “400097712518”, “N 337 03 FITNESS SIZE”, “KSRSSXXL””, (2) “BODY BY JAKE® MAX BURN SUIT, ELASTIC COMFORT FIT, “There’s only one BODY BY!™”, “BURN CALORIES DETOXIFY BODY DESIGNED FOR COMFORT”, “BBJMBS-R”, “Manufactured and distributed under license from Body By Jake by Pivotal 5, Inc., Chicago, IL 60644”, “03 FITNESS SIZE”, “D1066 C6611”, “400097908089””, (3) “IRON GYM® SAUNA SUIT, SMALL/MEDIUM , BLACK, IGSS-SM , 816142013682” (also referred to throughout as the “Covered Products”). The Covered Products are limited to those sold by Zhangjiangang 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 that Zhangjiangang 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 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.

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

1.7 On or about December 20, 2013, CAG served, Kathy Smith Lifestyles L.L.C., Kathy Smith, Inc., Pivotal 5, Fitness Manufacturing Partners, Ross Dress for Less, Inc., and 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 Fitness Accessories, specifically 1) Jump Ropes includes but is not limited to: DELUXE SPEED JUMP ROPE, 9-foot, kathy smith HEALTHY LIVING, “D1066 C6612 982”, “400097712501”, “N 337 03 FITNESS SIZE”, Barcode: 8 16142 01011 7 and 2) Sauna Burn Suits includes but is not limited to: SAUNA BURN SUITE, kathy smith HEALTHY LIVING, “XXL Fits Waist Size 36”-42””, “D1066 C6612 1646”, “400097712518”, “N 337 03 FITNESS SIZE”, “KSRSSXXL” containing the Listed Chemical.

1.8 On or about January 17, 2014, CAG served Pivotal 5, Fitness Manufacturing Partners, Body by Jake Global L.L.C., Ross Dress for Less, Inc., and 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 Fitness Accessories, including but not limited to, “BODY BY JAKE® MAX BURN SUIT, ELASTIC COMFORT FIT, “There’s only one BODY BY!™”, “BURN

CALORIES DETOXIFY BODY DESIGNED FOR COMFORT”, “BBJMBS-R”,  
“Manufactured and distributed under license from Body By Jake by Pivotal 5,  
Inc., Chicago, IL 60644”, “03 FITNESS SIZE”, “D1066 C6611”,  
“400097908089”” containing the Listed Chemical.

1.9 On or about April 14, 2014, CAG served, Kathy Smith Lifestyles  
L.L.C., Pivotal 5, Inc., Pivotal 5, LLC, and Fitness Manufacturing Partners 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 Fitness Accessories, specifically 1) Jump  
Ropes includes but is not limited to: DELUXE SPEED JUMP ROPE, 9-foot,  
kathy smith HEALTHY LIVING, “D1066 C6612 982”, “400097712501”, “N 337  
03 FITNESS SIZE”, Barcode: 8 16142 01011 7 and 2) Sauna Burn Suits includes  
but is not limited to: SAUNA BURN SUITE, kathy smith HEALTHY LIVING,  
“XXL Fits Waist Size 36”-42””, “D1066 C6612 1646”, “400097712518”, “N 337  
03 FITNESS SIZE”, “KSRSSXXL” containing the Listed Chemical.

1.10 On or about April 17, 2014, CAG served Pivotal 5, Inc., Fitness  
Manufacturing Partners, Pivotal 5, LLC, Ontel Products Corporation, Ross Dress  
for Less, Inc., and 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 Fitness Accessories, specifically Sauna Suits including but not limited  
to, “IRON GYM® SAUNA SUIT,SMALL/MEDIUM , BLACK, IGSS-SM ,  
816142013682” containing the Listed Chemical.

1.11 On or about April 17, 2014, CAG served Pivotal 5, Inc., Pivotal 5, LLC, Fitness Manufacturing Partners, LLC, Body by Jake Global L.L.C., and Body by Jake, 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 Fitness Accessories, specifically Burn Suits including but not limited to, “BODY BY JAKE® MAX BURN SUIT, ELASTIC COMFORT FIT, “There’s only one BODY BY!™”, “BURN CALORIES DETOXIFY BODY DESIGNED FOR COMFORT”, “BBJMBS-R”, “Manufactured and distributed under license from Body By Jake by Pivotal 5, Inc., Chicago, IL 60644”, “03 FITNESS SIZE”, “D1066 C6611”, “400097908089””,

1.12 On or about April 28, 2014, CAG served Pivotal 5, Inc., Pivotal 5 LLC, Fitness Manufacturing Partners, Ontel Products Corporation, Ross Dress for Less, Inc., and 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 Fitness Accessories, specifically Jump Ropes including but not limited to, “IRON GYM™ Ultra Speed Rope “Heavy Duty 9 Ft Rope” IGUSR UPC # 8 16142 01366 8” containing the Listed Chemical.

1.13 On or about May 7, 2014, CAG served Kathy Smith Lifestyles L.L.C., Kathy Smith, Inc., Pivotal 5, Inc., Pivotal 5 LLC, Fitness Manufacturing Partners, Ross Dress for Less, Inc., and 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 the Listed Chemical.

1.14 The Sixty-Day Notices in paragraphs 1.7 – 1.13 above (referred to as “Notices”) alleged that the Noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.15 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties and to resolve and moot the allegations CAG presented to the Noticed parties concerning the Covered Products’ compliance with Proposition 65 (the “Dispute”) based on the terms set forth below.

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 Zhangjiangang or the Noticed parties 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, Zhangjiangang or the Noticed parties may have against one another in any other 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) Zhangjiangang, 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 the Noticed parties and other distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“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 Products manufactured, shipped, and/or otherwise distributed by Zhangjiangang or its Releasees prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those manufactured, distributed or sold by Zhangjiangang or its Releasees.

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 in respect of any Covered Products manufactured, distributed or sold by Zhangjiangang or its Releasees 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 Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the 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 Zhangjiangang's Duties**

3.1 Zhangjiangang, promises, and represents that, within sixty (60) days from the Effective Date, Zhangjiangang shall reformulate any Covered Products it manufactures and offers for sale in California to a point where the level of DEHP in the Covered Products does not exceed 0.1% or shall cease importing or selling any Covered Products.

3.2 Zhangjiangang agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in 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, and 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 Zhangjiangang's existing inventory that had not been reformulated as of the Effective Date.

3.3 Zhangjiangang agrees, promises, and represents that, as of the Effective Date it will, directly or indirectly through other Noticed parties, take all measures necessary to ensure that all existing non-reformulated inventory of Covered Products held by or in the possession, custody, or control of Ross Stores, Inc. for sale in California, if any, is destroyed, and within thirty (30) days of the Effective Date shall obtain written verification from Ross Stores, Inc. of said destruction of those Covered Products.

#### **4.0 Payments**

4.1 Zhangjiangang, to pay a total of eighty-five thousand dollars (\$85,000.00) by separate checks apportioned as follows:

4.1.1 Payment to CAG: Ten thousand dollars (\$10,000.00) 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 Zhangjiangang with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Sixty-five thousand dollars (\$65,000.00) 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 Zhangjiangang'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 Zhangjiangang with its Employer Identification Number.

4.1.3 Penalty: Zhangjiangang 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 Zhangjiangang represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Zhangjiangang 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, Zhangjiangang, and the Releasees and Downstream 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 Zhangjiangang 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 Zhangjiangang, the Releasees, or the Downstream Releasees 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, Zhangjiangang 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 Zhangjiangang 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, Esq.  
YEROUSHALMI & ASSOCIATES  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For Zhangjiangang:

Robert Falk, Esq.  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105-2482

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 Zhangjiangang 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: 8-4-14

By: 

Printed Name: Michael Skason

Title: Executive Director

#### ZHANGJIANGANG DAFUYI SPORTING GOODS CO., LTD.

Dated: 2014/07/28

By: Willson

Printed Name: Willson Weng

Title: General Manager