

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
HDS TRADING CORP.

Consumer Advocacy Group, Inc. (“CAG”) and HDS Trading Corp. (hereto referred to as “HDS Trading”), (CAG and HDS Trading collectively referred to as the “Parties” and each as a “Party”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that HDS Trading violated California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“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 HDS Trading previously sold, at various times, Shower Heads, including, but not limited to “Bath Basics 3 Function Shower Massager, Item number SM10052 UPC number 857198100520” (collectively referred to throughout Settlement Agreement as the “Covered Products”). The Covered Products are limited to those sold by HDS Trading only.

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 HDS Trading did not provide a required warning in compliance with 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 February 18, 2014, CAG served HDS Trading, Ross Dress for Less, Inc., Ross Stores, Inc., and Ross Dress for Less, d/b/a DD’s Discounts 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.

1.7 The Sixty-Day Notice (referred to as “Notice”) alleged that HDS Trading 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.

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 HDS Trading, its officers, directors, employees, or shareholders, parents, subsidiaries or affiliated corporations and/or customers, 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 HDS Trading 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, and its past and current agents, representatives, attorneys, successors, and assignees ("Releasers"), on the one hand, and (a) HDS Trading, and its owners,

parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, agents, representatives, 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 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 prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those sold by HDS Trading.

Releasers hereby waive and release 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

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 Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

Releasers acknowledge that they are 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.

Releasers expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on 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 they may lawfully waive such rights or benefits pertaining to the released matters.

### **3.0 HDS Trading's Duties**

3.1 HDS Trading agrees, promises, and represents that within sixty (60) days from the Effective Date, HDS Trading shall either (a) reformulate, by way of reengineering, substituting or eliminating the main hose described in the lab report of [name of lab] with a "PLS Report No: 1401113" and referred to as "DD's HDS Shower Massager Main Hose", any Covered Products manufactured

after the Effective Date and offered for sale in California to a point where the level of DEHP in the Covered Products does not exceed 0.1% or (b) cease selling any Covered Products manufactured after the Effective Date in California, provided, however, that this Section 3.1 is subject to the provisions of Section 3.3 of this Agreement.

3.2 HDS Trading agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory as of the Effective Date to California that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in a clear manner which is reasonably calculated to make the warning message available to the consumer prior to or at the time of the sale or purchase. The Parties agree that product labeling stating “**CALIFORNIA PROP 65 WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. *(California law requires this warning to be given to customers in the State of California)* shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory as of the Effective Date that had not been reformulated and were distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

3.3 HDS Trading agrees, promises, and represents that, sixty (60) days from the Effective Date, HDS Trading shall pay an additional five thousand dollars (\$5,000.00) to CAG, if HDS offers for sale in California any Covered Products

manufactured after the Effective Date and such Covered Products have not been reformulated to a point where the level of DEHP does not exceed 0.1%. If after eight (8) months of the Effective Date, HDS offers for sale in California any Covered Products manufactured after the Effective Date and such Covered Products have not been reformulated to a point where the level of DEHP does not exceed 0.1%, then HDS Trading shall pay another \$5,000 to CAG in order for HDS Trading to continue reformulation efforts for up to one year from the Effective Date. If, by one year from the Effective Date, Covered Products manufactured after the Effective Date have not been reformulated to a point where the level of DEHP does not exceed 0.1%, then HDS Trading shall cease sales in California of any such Covered Products that have not been reformulated to contain less than 0.1% DEHP.

#### **4.0 Payments**

4.1 HDS Trading agrees, to pay a total of thirty-four thousand dollars (\$34,000.00) within fifteen (15) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: Three thousand dollars (\$3,000.00) shall be made payable to Consumer Advocacy Group, Inc. The check shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide HDS Trading with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Twenty-eight thousand dollars

(\$28,000.00) of such payment shall be made payable 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 HDS Trading'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 HDS Trading with Yeroushalmi & Associates' Employer Identification Number.

4.1.3 Penalty: HDS Trading shall issue two separate checks for a total amount of Three thousand dollars (\$3,000.00) 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 Two Thousand Two Hundred Fifty dollars (\$2,250.00), representing 75% of the total penalty; and (b) one check made payable to Consumer Advocacy Group, Inc. in the amount of Seven Hundred Fifty dollars (\$750), 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 and Yeroushalmi & Associates shall deliver the check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) . 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 \$2,250.00. The second 1099 shall be issued in the amount of \$750 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 HDS Trading represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind HDS Trading 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 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 by either Party, and no notice of violation related to the Covered Products may be served or filed against HDS Trading by CAG, unless the Party seeking enforcement or alleging violation notifies the other Party of the specific

acts alleged to breach this Settlement Agreement or notice of violation related to the Covered Products at least ninety (90) days before serving or filing any enforcement action or notice of violation and the entity receiving such notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to HDS Trading must contain (a) the name of the Covered Product, (b) specific dates when the Covered Product was sold after the Effective Date in California without reformulation or warning as provided in this Settlement Agreement, (c) the store or other place at which the Covered Product was available for sale to consumers, (d) the specific part(s) alleged to violate the reformulation provision of Section 3.0, and (e) any other evidence or other support for the allegations in the notice.

11.3 Within thirty (30) days of receiving the notice described in Section 11.2, HDS Trading shall either (1) send the store or other place at which the Covered Product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to HDS Trading, 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, California 90212

For HDS Trading:

Fred Guindi  
Vice President  
HDS Trading Corp.  
1305 Jersey Avenue  
North Brunswick, New Jersey 08902

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 HDS Trading 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: 5-21-14

By: 

Printed Name: Michel Sassoon

Title: Executive director

HDS TRADING CORP.

Dated: 6/12/14

By: 

Printed Name: Fred Gundi

Title: VP