

# SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ASIA PACIFIC TRADING COMPANY, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Asia Pacific Trading Company, Inc. (referred to as “Asia Pacific Trading”), (CAG and Asia Pacific Trading are collectively referred to as the “Parties” and individually as a “Party”) enter into this agreement (“Settlement Agreement”) to settle claims by CAG. 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. 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 Asia Pacific Trading has sold or distributed Eyewear (collectively referred to as the “Covered Products”), including but not limited to sunglasses and the “Heart Frame Sunglasses with Brown Lenses and Gold Metal Frame, “100% Eye protection UV 400 Against UVA & UVB”, “STYLE APSUN1107GLD.” The Covered Products are limited to those supplied by Asia Pacific Trading only and do not included any sunglasses supplied by an unrelated company.

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 that Asia Pacific Trading 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”)).

1.4 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 March 27, 2014 , CAG served Charlotte Russe, Inc., Charlotte Russe Holding, Inc., Charlotte Russe Store # 358 (collectively, the “Noticed Entities”), 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” (“Notice”) regarding the Covered Products containing the Listed Chemical.

1.7 The Notice alleges that the Noticed Entities violated Proposition 65 by failing to warn consumers in California that use of the 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 allegations of the Notice and the Covered Products at issue in the Notice.

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 constitute 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. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or be admitted as evidence 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 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 Asia Pacific Trading may have against one another in any other pending legal proceeding as to allegations unrelated to the Notice or claims released herein.

**2. Release**

This Settlement Agreement is a full, final, and binding resolution between CAG, on the one hand, and (a) Asia Pacific Trading and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) the Noticed Entities and 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, and their respective owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, owners, officers, directors, , insurers, attorneys, predecessors, successors, and assigns (collectively referred to as “Downstream Releasees”), on the other hand, of any alleged violations 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 any exposures to the Listed Chemical or the failure to warn about any exposures to the Listed Chemical in the Covered Product manufactured, shipped, sold, and/or otherwise distributed by Releasees prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Parties agree that Asia Pacific Trading's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for both Releasees and Downstream Releasees for any Covered Products manufactured, distributed and/or sold by Releasees or Downstream Releasees on and after the Effective Date.

CAG, on behalf of itself and 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 concerning alleged exposures to, or failure to warn of, any DEHP in the Covered Products manufactured, distributed, or sold prior to the Effective Date.

CAG, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, additionally provides a general release herein of all Claims of any nature, character or kind, known or unknown, suspected or unsuspected, against any Releasee and/or Downstream Releasee arising under Proposition 65, or any other statutory

or common law, only to the extent that such Claims relate to Asia Pacific Trading's alleged exposure of persons to the Listed Chemical contained in the Covered Products or failure to warn of exposures to the Listed Chemical in the Covered Products manufactured, distributed, or sold prior to the Effective Date. 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 if the full amount of payments set forth in Section 4.0 below are not timely paid in full.

**3. Asia Pacific Trading's Duties**

3.1 Asia Pacific Trading promises and represents that any Covered Product manufactured more than sixty (60) days from the Effective Date that Asia Pacific Trading thereafter ships to California, distributes in California, or sells in California will contain less than 0.1 percent DEHP (1000 parts per million) of DEHP by weight.

**4. Payments**

4.1 Asia Pacific Trading agrees to pay a total of Thirty-two thousand dollars (\$32,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Twenty-six thousand dollars

(\$26,000.00) 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 Asia Pacific 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 Asia Pacific Trading with its Employer Identification Number.

4.1.2 Penalty: Asia Pacific Trading shall issue two separate checks for a total amount of Six thousand dollars (\$6,000.00) 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 Four thousand Five hundred dollars (\$4,500.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of One thousand Five hundred dollars (\$1,500.00), 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 \$4,500.00. The second 1099 shall be issued in the amount of \$1,500.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

**5. 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 Asia Pacific Trading represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Asia Pacific Trading to this Settlement Agreement.

**6. 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. 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. 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. Modification of Settlement Agreement**

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

**10. 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. 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 Product may be served or filed against Asia Pacific Trading or Downstream Releasee 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 Asia Pacific Trading 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, Asia Pacific Trading 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 Asia Pacific Trading 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. 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 Asia Pacific Trading:

Sarah Esmaili  
Arnold & Porter LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111

Any Party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

**13. 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. 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 Asia Pacific 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: 5-1-2015

By: 

Printed Name: Michel Sassoon

Title: EXECUTIVE DIRECTOR

ASIA PACIFIC TRADING COMPANY,  
INC.

Dated: 5/1/2015

By: 

Printed Name: Grace Shen

Title: merchandising manager