

# SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

BEST BRANDS CONSUMER PRODUCTS, INC.

Consumer Advocacy Group, Inc. ("CAG"), on the one hand, and Best Brands Consumer Products, Inc. (hereafter referred to as "Best Brands"), on the other hand, hereby enter into this agreement ("Settlement Agreement") for the purpose of avoiding prolonged and costly litigation concerning claims and defenses regarding CAG's allegation that Best Brands violated Proposition 65. CAG and Best Brands are collectively referred to as the "Parties," and individually as a "Party." 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 an experienced private enforcer of Proposition 65, and 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 Best Brands is a relatively small New York business that previously sold, at various times, Suction Hooks and products containing suction hooks, including but not limited to "9 SUCTION HOOKS, "best brands consumer products, inc.®", Barcode: "0 42887 41210 1" (referred to throughout as the

“Covered Products”). The Covered Products are limited to those sold by Best Brands only.

1.3 CAG alleges that the Covered Products contain the listed chemical Di (2-ethylhexyl) phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate and that Best Brands 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 June 5, 2014, CAG served Best Brands, Walgreens 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 Best Brands 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 concerning 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, such being specifically denied by Best Brands who maintains that all of its products, including the Covered Products, are completely safe for use. 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 Best Brands, 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 Best Brands 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

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, and its agents including its attorneys, on the one hand, and (a) Best Brands, 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 the 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 (including without limitation Walgreen and its wholly owned subsidiary Drugstore.com) (the "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 in connection with the Covered Products manufactured, shipped, and/or otherwise distributed by Best Brands up to 60-days after the Effective Date, even if sold by Downstream Releasees after such date. The Covered Products are limited to those sold by Best Brands.

2.2 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 claims that were or could have been asserted in respect of any Covered Products sold by Best Brands up to 60 days after the Effective Date, including without limitation to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged sale of such 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, on behalf of itself and 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 Best Brands' Duties

3.1 Best Brands, promises, and represents that within sixty (60) days from the Effective Date Best Brands shall reformulate any Covered Products manufactured and offered for sale in California to a point where the level of DEHP in the Covered Products does not exceed 0.1% (1000 ppm) or shall cease importing or selling any Covered Products in California that do not meet this requirement.

3.2 Best Brands agrees, promises, and represents that, after the Effective Date, to the extent it ships any Covered Products in existing inventory for sale in 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 such a conspicuous and prominent manner that will assure the warning is likely to be read or seen by the consumer prior to or at the time of purchase. The Parties agree that product labeling stating that "WARNING: This product contains chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm" shall constitute compliance with Proposition 65 with respect to the Listed Chemical for any Covered Products in Best Brands existing inventory that have not been reformulated and which are distributed and/or sold by Best Brands, the Releasees or Downstream Releasees after the Effective Date.

3.3 Notwithstanding anything in this Agreement to the contrary, CAG agrees that Best Brands' compliance with this settlement agreement is compliance with Proposition 65 with respect to the Listed Chemical in Covered Products for both

itself, the Releasees and the Downstream Releasees as to Covered Product supplied by Best Brands only.

#### 4.0 Payments

4.1 Best Brands agrees to pay a total of thirty-four thousand dollars (\$34,000) within ten (10) business days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: Four thousand dollars (\$4,000) shall be paid to Consumer Advocacy Group, Inc. as a payment in lieu of civil penalties. 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 Best Brands with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Twenty-six thousand dollars (\$26,000) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for all reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Best Brands' attention, and negotiating this Settlement Agreement. 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 Best Brands with its Employer Identification

Number.

4.1.3 Penalty: Best Brands shall issue two separate checks for a total amount of four thousand dollars (\$4,000) as penalties pursuant to Health & Safety Code § 25249.12. After a thorough investigation, CAG agrees that this penalty payment fully satisfies the public interest for the alleged exposures to DEHP in Covered Products based on the relevant factors under Proposition 65. The two checks shall be issued as follows: (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), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of one thousand dollars (\$1,000), 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. The second 1099 shall be issued in the amount of \$1,000 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.4 Notwithstanding anything in this Agreement to the contrary, with the reformulation, warning requirements, payment of civil penalties, and payment in lieu of civil penalties under this Settlement Agreement, CAG

and Best Brands agree that there is no further public interest in claims under Proposition 65 concerning alleged DEHP in Covered Products manufactured by Best Brands up to 60 days after the Effective Date whether sold by Best Brands, the Releasees or the Downstream Releasees.

**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 Best Brands represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Best Brands 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 and/or as required by law.

**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, Best Brands, 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 herein. 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 of this settlement agreement related to the Covered Products may be served or filed against Best Brands 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 Best Brands 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 California consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving a notice pursuant to Section 11.2, Best Brands shall either (1) send the California 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 Best Brands for full credit, including shipping costs, or (2) refute the information provided under Section

11.2 Should Best Brands send a letter directing removal of the product from sale in California and provide a copy of said letter to CAG within 30 days of receipt of a notice of alleged violation under this Agreement, CAG shall take no further action to enforce the terms of this Agreement or otherwise prosecute the notice of alleged violation of this agreement, and Best Brands shall have no further obligations to CAG monetary or otherwise. Should the parties otherwise 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 Best Brands:

Jack Albert  
Best Brands Consumer Products, Inc.  
20 West 33<sup>rd</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10001

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 Best Brands 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: 8-22-14

By: 

Printed Name: Matt Sasseon

Title: Executive Director

BEST BRANDS CONSUMER PRODUCTS, INC.

Dated: 8/22/14

By: 

Printed Name: Jack Albert, Jr.

Title: President