

# SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC., EMMA BELL

AND

MARKLYN GROUP INC.

Consumer Advocacy Group, Inc. (“CAG”), Ema Bell (“BELL”) and Marklyn Group Inc. (hereto referred to as “MARKLYN”), (CAG, BELL and MARKLYN collectively referred to as the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s and BELL’s allegations that MARKLYN violated Proposition 65 for the purpose of avoiding prolonged and costly litigation. 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. BELL is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals and improve human health by reducing hazardous substances contained in consumer and industrial products.

1.2 By reporting this Settlement on behalf of BELL, CAG, nor CAG’s counsel, represent BELL to any capacity, and at all times, each Plaintiff had their

own independent counsel.

1.3 MARKLYN previously sold, at various times, various Steering Wheel Covers, including but not limited to, "ALPENA® "Elgenance Wheel Coverz™ MR MC" "STEERING WHEEL COVER", "EASILY CONFORMS TO 14" (37cm) & 15" (39 cm) WHEELS", "PROTECTS HANDS FROM EXTREME HEAT & COLD", "JUST SLIP ON/ NO LACING REQUIRED", "NATURAL WHITE RUBBER NO ODOR", Barcode: '0 84902 10403 5' (referred to throughout as the "Covered Products at Auto Zone"). The Covered Products at Auto Zone are limited to those sold by MARKLYN only.

1.4 CAG alleges that the Covered Products at Auto Zone contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and that MARKLYN 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 MARKLYN previously sold the Alpena® Steering Wheel Cover SWC-BLACK WBUMPSRED STITCH CHR TRIM Part/Piece/Model # 10316, UPC # 0.84902 10316 8 (referred to throughout as the "Covered Product at Pep Boys").

1.6 BELL alleges that the Covered Product at Pep Boys contains DEHP and Lead and that MARKLYN did not provide a required warning in compliance with Proposition 65.

1.7 On February 27, 1987, the State of California officially added Lead as a chemical known to cause developmental toxicity and male and female toxicity.

On October 1, 1992, the State of California officially listed Lead and Lead compounds as chemicals known to cause cancer.

1.8 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 and BELL each served their separate “Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986”, further described below.

1.9 DEHP and Lead are referred to hereafter as the “Listed Chemicals.”

1.10 On or about June 5, 2014, CAG served MARKLYN, AutoZone, Inc., AutoZone Parts, Inc., AutoZone 5430, Marklyn Company Inc., Marklyn Company Inc., dba Alpena 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 Steering Wheel Covers allegedly containing DEHP.

1.11 The CAG Sixty-Day Notice (referred to as the “CAG Notice”) alleged that MARKLYN and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products at Auto Zone exposes persons to DEHP.

1.12 On or about June 23, 2014, BELL served MARKLYN, Alpena Marklyn Co. Inc., Pep Boys-Manny, Moe & Jack of Delaware, Inc., Pep Boys-Manny,

Moe & Jack of CA, Inc., Pep Boys-Manny, Moe & Jack #970, 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 one Steering Wheel Cover allegedly containing both DEHP and Lead.

1.13 The BELL Sixty-Day Notice (referred to as the "BELL Notice") alleged that MARKLYN and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of the Covered Product at Pep Boys exposes persons to Lead and DEHP. On July 16, 2014 BELL withdrew its Notice without prejudice.

1.14 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and all the Covered Products' compliance with Proposition 65 including other Steering Wheel Covers sold by Marklyn at Pep Boys which were not listed in the BELL Notice but which MARKLYN and BELL wish to include within this Settlement Agreement."(the "Dispute").

1.15 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 MARKLYN, 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, BELL or MARKLYN may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

1.16 In addition, this Settlement Agreement has been read, reviewed and approved by BELL's counsel, Brodsky & Smith, LLC

## **2.0 Release**

This Settlement Agreement is a full, final, and binding resolution between CAG and BELL on the one hand, and (a) MARKLYN, 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 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, ("Downstream Releasees"), on the other hand, of any violation or claimed violation of Proposition 65 or any statutory or common law claim that has been or could have been asserted against the Releasees and

Downstream Releasees regarding exposing persons to the Listed Chemicals and the failure to warn about exposure to the Listed Chemicals 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 only limited to those sold by MARKLYN. CAG, BELL, and MARKLYN agree that MARKLYN's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Products for both Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees or Downstream Releasees after the Effective Date. CAG and BELL, their past and current agents, representatives, attorneys, successors, and/or assignees, 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, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemicals contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to

the Listed Chemicals contained in the Covered Products.

CAG and BELL 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

CAG and BELL, their past and current agents, representatives, attorneys, successors, and/or assignees expressly waive and relinquish any and all rights and benefits which it 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 MARKLYN's Duties**

3.1 MARKLYN agrees, promises, and represents that no later than two (2) months after the Effective Date of this Settlement Agreement, it will reformulate the Covered Products to a point where the level of Lead in the Covered Products does not exceed 100 ppm (100 parts per million).

3.2 MARKLYN also agrees, promises, and represents that no later than two (2) months after the Effective Date of this Settlement Agreement, it will reformulate the Covered Products to a point where the level of DEHP in the

Covered Products does not exceed 0.1%.

3.3 MARKLYN agrees, promises, and represents that, as of the Effective Date, to the extent it ships any Covered Products in 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 "This product contains chemicals known to the State of California to cause cancer, or birth defects, or other reproductive harm" and/or "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 Chemicals in the Covered Products for any Covered Products in inventory that had not been reformulated and were distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

#### **4.0 Payments**

4.1 MARKLYN agrees, to pay a total of thirty-four thousand dollars (\$34,000.00) to settle CAG's allegations within ten (10) 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 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 MARKLYN 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 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 MARKLYN'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 MARKLYN with its Employer Identification Number.

4.1.3 Penalty: MARKLYN 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 to Consumer Advocacy Group, Inc. in the amount of Seven Hundred Fifty dollars (\$750.00), representing 25% of the total penalty. 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 \$750.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.2 MARKLYN agrees, to pay a total of six thousand dollars (\$6,000.00) to settle CAG's allegations within ten (10) days of the Effective Date by separate checks apportioned as follows:

Attorneys Fees and Costs: MARKLYN agrees to pay to Brodsky & Smith LLC, 9595 Wilshire Blvd., Suite 900, Beverly Hills, CA 90212 the amount of Four Thousand Eight Hundred Dollars (\$ 4,800) for reasonable investigation fees and costs, attorney's fees and any other costs incurred as a result of investigating and bringing this matter to MARKLYN's attention. The check shall be delivered to: 9595 Wilshire Boulevard, Suite 900, Beverly Hills, California 90212. By the EFFECTIVE DATE, Brodsky & Smith, LLC will provide MARKLYN with its Employment Identification Number.

4.1.3 Penalty: MARKLYN shall issue two separate checks for a total amount of One Thousand Two Hundred Dollars (\$1,200.00) 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 Nine Hundred Dollars

(\$900.00), representing 75% of the total penalty; and (b) one check to Emma Bell in the amount of Three Hundred Dollars (\$300.00), representing 25% of the total penalty. 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 \$900.00. The second 1099 shall be issued in the amount of \$300.00 to Emma Bell and delivered to: Brodsky & Smith, LLC, 9595 Wilshire Boulevard, Suite 900, Beverly Hills, California 90212.

**5.0 Authority to Enter Into Settlement Agreement**

5.1 CAG and BELL represent that their signatories to this Settlement Agreement has full authority to enter into and legally bind CAG and BELL to this Settlement Agreement.

5.2 MARKLYN represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind MARKLYN to this Settlement Agreement.

**6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

6.1 CAG, acting on behalf of itself and not representing BELL in any capacity, shall report this Settlement Agreement to the Attorney General's office within five (5) days of the Parties' execution of this Settlement Agreement. The Parties have agreed that it would be duplicative for BELL to also report this

Settlement Agreement so there will only be one report. As a courtesy, but not in any legal capacity, CAG will provide notice of this report to BELL's counsel, Brodsky & Smith, LLC.

**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, BELL, MARKLYN 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 MARKLYN by CAG or BELL, 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 after the execution of this Agreement 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 MARKLYN must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without the Proposition 65 warning label or 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, MARKLYN 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 MARKLYN 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  
YEROUSHALMI & ASSOCIATES  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For BELL:

Evan J. Smith or Jason Brodsky  
Brodsky & Smith, LLC  
9595 Wilshire Blvd. Suite 900  
Beverly Hills CA 90212

For MARKLYN:

Susan L. Hoeller  
Hoeller Law Firm  
2845 Devonoak Blvd  
Land O Lakes, FL 34638

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,

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 Chemicals and/or the Covered Products, then MARKLYN 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: 8-27-14

By: 

Printed Name: MICHEL SASSOON

Title: EXECUTIVE DIRECTOR

EMMA BELL

Dated: 8/27/14

By: 

Printed Name: Emma Bell

Title: \_\_\_\_\_

MARKLYN GROUP INC.

Dated: 8/28/2014

By: 

Printed Name: CHERYL PHILLIPS

Title: VP OPERATIONS