

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
TOOFER ENTERPRISES, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Toofer Enterprises, Inc. (hereto referred to as “Toofer”), (CAG and Toofer 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 Toofer 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 Toofer previously sold, at various times, (1) Toddler’s black polymeric sandals with painted World Wrestling “WW®” “JOHN CENA®” Design and red plastic tongs, “HNX, SEP 2010, 45836, SIZE: 5/6, ALL MAN MADE MATERIALS, FUZHOU, CHINA.”; (2) Toddler’s beige polymeric sandals with multi-colored painted super hero cartoon character design and red and orange plastic straps with an anime super hero appliqué “NO:2028.”; (3) Children’s purple polymeric sandals with a beaded silver border and intricate multicolored floral and bee cartoon character painted design on the

sole and a translucent plastic purple strap containing an intricate textured geometric design with an orange and clear purple beaded flower appliqué with purple gems (30 “328.”); and (4) Women’s black polymeric flip flops with gold and white painted floral and butterfly design and red, yellow, and white plastic flowers on the plastic black tongs, NO-229, (9/40) (collectively referred to throughout as the “Covered Products”). The Covered Products are limited to those sold by Toofer.

1.3 CAG alleges that Covered Products contain Di (2-ethylhexyl) phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate. CAG also alleges that the Covered Products contain Di-*n*-butyl Phthalate (“DBP”). CAG also alleges that Covered Products contain Lead. CAG alleges that Toofer 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 On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State to cause developmental, female, and 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 On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to cause reproductive toxicity, developmental, female, male, and on October 1, 1992, the Governor added Lead and Lead compounds to the list of chemicals known to the State to cause cancer. 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.

1.7 DEHP, DBP and Lead are referred to hereafter as the “Listed Chemicals”

1.8 On or about December 13, 2013, CAG served, Dollar Max #9 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 Chemicals.

1.9 On or about November 3, 2014 CAG served, Dollar Max #9, Vernon Sales, Inc., and Toofer Enterprises, 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 Chemicals.

1.10 The Sixty-Day Notices above (referred to as the “Notices”) alleged that the Noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products expose persons to the Listed Chemicals.

1.11 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.

1.12 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 Toofer 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, Toofer 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) Toofer, 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 Dollar Max #9, 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 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 by Toofer 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 Toofer.

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 Toofer 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

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 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 until the full amount of the payments set forth in Section 4.0 below are paid in full.

### **3.0 Toofer's Duties**

3.1 Toofer, promises, and represents that within sixty (60) days from the Effective Date Toofer shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in California to a point where the level of DEHP and DBP in the Covered Products does not exceed 0.1% by weight and the level of Lead in the Covered Product does not exceed 100 ppm (parts per million) or shall cease importing or selling any Covered Products.

3.2 Toofer agrees, promises, and represents that, as of the Effective Date, any Covered Products that are in existing inventory, that have not been reformulated, will be destroyed in a fashion that complies with California Health and Safety Standards.

#### 4.0 Payments

4.1 Toofer agrees to pay a total of Fifty-five Thousand dollars (\$55,000.00) by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Forty-five thousand dollars (\$45,000.00) 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 Toofer's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide Toofer with its Employer Identification Number.

4.1.3 Penalty: Toofer 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 and 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 and five hundred dollars (\$2,500.00), representing 25% of the total penalty. Both checks shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 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 &  
Yeroushalmi, 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 Toofer represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Toofer 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, Toofer, 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 Toofer 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 Toofer, 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, Toofer 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 Toofer 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 & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For Toofer:

Anahita Sedaghatfar, Esq.  
LAW OFFICES OF ANAHITA SEDAGHATFAR  
1801 Century Park East, Suite 2400  
Los Angeles, CA 90067

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 Chemicals and/or the Covered Products, then Toofer 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: 12-10-14

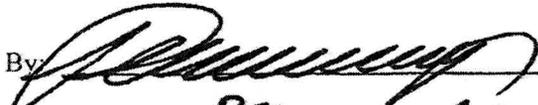
By: 

Printed Name: MICHAEL SOSSAMON

Title: EXECUTIVE DIRECTOR

TOOFER ENTERPRISES, INC.

Dated: 12-08-2014

By: 

Printed Name: PEYMAN MOSSAYI

Title: SECRETARY