

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
GILSTER-MARY LEE CORPORATION

Consumer Advocacy Group, Inc. (“CAG”) and Gilster-Mary Lee Corporation (hereto referred to as “GILSTER”), (CAG and GILSTER 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 GILSTER 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. GILSTER previously sold, at various times, breakfast cereals including but not limited to 1) “Clover Valley®” Bite Size Frosted Shredded Wheat Cereal (Net Wt 18 oz 510g) ‘Excellent Source of 7 Vitamin & Minerals’ Distributed by Dolgencorp, LLC E0026 “UPC 0 76924 56919 0”, 2) “Clover Valley®” Crispy Rice Cereal (Net Wt 12 oz 340g) ‘Excellent Source of 9 Vitamin & Minerals’ Distributed by Dolgencorp, LLC, Made In U.S.A. E0027 “UPC 0 76924 56922 0” and 3) “Clover Valley®” “Honey Nut Toasted Oats Sweetened Oat Cereal With

Real Honey and Almonds Excellent Source of 9 Vitamins & Minerals” “Net Wt. 12.25 oz 347(g)” “Distributed by Dolgencorp, LLC 100 Mission Ridge Goodlettsville, TN 37072” “UPC: 0 76924 56924 4” (collectively referred to throughout as the “Covered Products”).

1.2 CAG alleges the that Covered Products contain Lead and that GILSTER 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”)).

1.3 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.

1.4 Lead is referred to hereafter as the “Listed Chemical”.

1.5 On or about May 5, 2015, CAG served, Dollar General Market, Dolgencorp, LLC, Dolgencorp California, LLC, Dollar General Corporation, Clover Valley 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 the Covered Products containing the Listed Chemical.

1.6 On or about June 22, 2015, CAG served, Dollar General Market, Dolgencorp, LLC, Dolgencorp California, LLC, Dollar General Corporation, Clover Valley, Gilster-Mary Lee Corp. 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 the Covered Products containing the Listed Chemical.

1.7 On or about August 21, 2015, CAG served, Dollar General Market, Dolgencorp, LLC, Dolgencorp California, LLC, Dollar General Corporation, Clover Valley, Gilster-Mary Lee Corp. 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 the Covered Product containing the Listed Chemical.

1.8 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 exposed persons to the Listed Chemical.

1.9 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.

1.10 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 GILSTER 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, GILSTER 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) GILSTER, 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 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 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 by GILSTER or its Releasees prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

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 with respect to any Covered Products manufactured, distributed or sold by GILSTER 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 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.

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 payments set forth in Section 4.0 below are paid in full.

3.0 GILSTER's Duties

3.1 GILSTER, promises, and represents that within sixty (60) days from the Effective Date GILSTER shall reformulate any Covered Product manufactured after the Effective Date and offered for sale in California to a point where the level of Lead in the Covered Product does not exceed 35 ppb (parts per billion), if after sixty (60) days GILSTER is unable to reformulate the Covered Products, it shall not offer for sale in California any Covered Product without first providing a compliant Proposition 65 Warning. 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

“WARNING: 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 Chemical in the Covered Product for any Covered Product purchased and sold after the Effective Date that GILSTER is unable to reformulate to have less than 35 ppb of Lead.

3.2 GILSTER agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that exceeds 35 ppb of the Listed Chemical, it will provide warnings on such Covered Products that comply with Proposition 65, or shall cease importing or selling any Covered Products. 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 “WARNING: 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 Chemical in the Covered Products for any Covered Products in GILSTER’s existing inventory as of the Effective Date.

4.0 Payments

4.1 GILSTER agrees to pay a total of Sixty-five thousand dollars (\$65,000.00) by separate checks apportioned as follows:

4.1.1 Payment to CAG: Eight thousand Five hundred dollars (\$8,500.00) 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 GILSTER with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Forty-eight thousand dollars (\$48,000.00) 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 GILSTER'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 GILSTER with its Employer Identification Number.

4.1.3 Penalty: GILSTER shall issue two separate checks for a total amount of Eight thousand Five hundred dollars (\$8,500.00) 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 Six thousand Three hundred Seventy-five dollars (\$6,375.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of Two thousand One hundred Twenty-five dollars (\$2,125.00), 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 \$6,375.00. The second 1099 shall be issued in the amount of \$2,125.00 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 GILSTER represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind GILSTER 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 Non-Disparagement

7.1 The Parties and their attorneys agree to refrain from taking action or making statements, written, oral or through any form of social media, which disparage or defame the goodwill or reputation of the other Party.

8.0 Execution in Counterparts and Facsimile

8.1 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.

9.0 Entire Agreement

9.1 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.

10.0 Modification of Settlement Agreement

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

11.0 Application of Settlement Agreement

11.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG, GILSTER, and the Releasees and Downstream Releasees identified in Section 2 above.

12.0 Enforcement of Settlement Agreement

12.1 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 12.2 and 12.3 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.

12.2 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 GILSTER, the Releasees, or the Downstream Releasees 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 12.3 below. Any notice to GILSTER, 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.

12.3 Within 30 days of receiving the notice described in Section 12.2, GILSTER 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 GILSTER for full credit, including shipping costs; (2) refute the information provided under Section 12.2, or (3) immediately provide clear and reasonable warnings on the product(s) in compliance with the terms of this Agreement. Should the parties be unable to resolve the dispute, any party may seek relief under Section 12.1.

13.0 Notification Requirements

13.1 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 Consumer Advocacy Group, Inc.:

Reuben Yeroushalmi, Esq.
YEROUSHALMI & YEROUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

For Gilster-Mary Lee Corporation:

Thomas Lee, Esq.
Bryan Cave LLP
Mission St., 25th Floor
San Francisco, CA 94105

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 GILSTER 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: 12-30-15

By: 

Printed Name: Michael Passon

Title: Regional Director

GILSTER-MARY LEE CORPORATION

Dated: December 30, 2015

By: 

Printed Name: Thomas B. Welge

Title: VP Tech Sales & General Counsel