

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
VOLUME DISTRIBUTORS, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Volume Distributors, Inc. (hereto referred to as “Volume Distributors”), (CAG and Volume Distributors collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged litigation to settle CAG’s allegations that Volume Distributors violated Proposition 65. 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.

1.2 CAG asserts that Volume Distributors previously sold, at various times, Flip Flops including but not limited to (1) “Black Flip Flops with Pink Floral Pattern and White Stripes, Size 6. ‘Perfect Home™ Sandals’. ITEM # CHN-8514, Made In China. Perfect Home Vernon, CA 90058 USA. “Perfect Home is a Trademark of Volume Brands” UPC: 7 49732 08514 4” and (2) “Blue Flip Flops, Size 8. ‘Perfect Home™ Sandals’. ITEM # CHN-8848, Made In China. Perfect



Home Vernon, CA 90058 USA. "Perfect Home is a Trademark of Volume Brands" UPC: 7 49732 08848 0"; (referred to throughout as the "Covered Product(s)"). The Covered Products are limited to those sold by Volume Distributors and only to Covered Products which are sold or distributed with the understanding and intent that they ultimately be resold by any Volume Distributor's customers and downstream purchaser(s) to consumers within the State of California. This Agreement does not apply to or in any manner restrict the sale of any of the Covered Product outside the State of California.

1.3 CAG alleges, and Volume Distributors denies, that Covered Products contain Di-*n*-Butyl Phthalate ("DBP") and Diethyl Hexyl Phthalate ("DEHP") and that Volume Distributors 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 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. 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 Notices of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986 which are further described below.

1.5 DBP and DEHP are referred to hereafter as the "Listed Chemicals".



1.6 CAG asserts that on or about January 5, 2016 CAG served Volume Distributors, 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.

1.7 The Sixty-Day Notice (referred to as "Notice") alleged that Volume Distributors and other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemicals. These allegations have been and continue to be denied by Volume Distributors and the other noticed parties.

1.8 The Parties wish to enter into this Settlement Agreement without admission or acknowledgement of wrongdoing, fault or liability, and only in an effort to avoid the cost of further legal proceeding and to settle disputed claims between the Parties (and other released parties) as set forth below concerning the Parties' and 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. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, violation of law, wrongdoing, fault or liability, 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, liability, fault or liability, by Volume Distributors, or its customers/clients (including without limitation Superior Center Concepts, Inc. dba Superior Grocers) or any of their respective contractors, agents, owners, operators, lenders, investors, insurers, suppliers, manufacturers, shareholders, officers, directors, members, managers, employees, or parents, subsidiaries or affiliated corporations/companies, in any matter, including, without limitation, administrative or judicial proceeding or claim or litigation in any court, agency, or forum.

2.0 Release

This Settlement Agreement is a full, final, and binding release of all claims and a resolution of all matters as between CAG, acting in its individual capacity and on behalf of its officers, directors, shareholders, owners, operators, and all persons and entities related to or affiliated with CAG, on the one hand, and (a) Volume Distributors and any of its respective contractors, agents, owners, operators, lenders, investors, insurers, , members, managers, parents, subsidiaries or affiliated corporations/companies, owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (and all persons and entities related to or affiliated with any such persons and companies) (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 (and including, without limitation Super Center Concepts, Inc. dba Superior Grocers and its affiliates) (collectively referred to as “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 any potential or actual exposing of any persons to the Listed Chemicals and the alleged or actual failure to warn about exposure to the Listed Chemicals arising in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold after the Effective Date. The Covered Products are limited to those sold by Volume Distributors.

CAG, for itself, and to the maximum extent allowed by law, for its past and current agents, representatives, attorneys, successors, and/or assignees, and all persons and entities related to or affiliated with CAG or seeking to make any claim through CAG (collectively, the “CAG Releasing Parties”), hereby fully, finally and forever waives and releases with respect to the Covered Products all known and unknown, actual and potential rights and claim to initiate, institute or participate in, directly or indirectly, any form of claim or legal or administrative action, including, without limitation, all claims and 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 to Covered Products to the extent that such claims relate to or are in any manner related to or arise from Releasees' and/or Downstream Releasees' alleged or actual 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, for itself and on behalf of each and all of the CAG Releasing Parties acknowledges that it is/they are familiar with Section 1542 of the California 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, for itself and on behalf of each and all of the CAG Releasing Parties and their respective successors and assigns/assignees expressly waives and relinquishes any and all rights and benefits which CAG or any of the CAG Releasing Parties may have under, or which may be conferred on it/them by the provisions of the California 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 all of the matters being resolved and released hereunder. 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 Volume Distributors' Duties

3.1 Volume Distributors agrees, promises, and represents that after the Effective Date Volume Distributors shall, to extent that it may continue to sell the Covered Products in the State of California, reformulate all Covered Products manufactured after the Effective Date to a point where the level of either of the Listed Chemicals in the Covered Products do not exceed 0.1% by weight, or Volume Distributors shall cease sale of the Covered Products in the State of California.

3.2 Volume Distributors agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in Volume Distributors' existing inventory (such as it is on the Effective Date) to any company which may sell the Covered Products in the State of California that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65. The Parties agree that product labeling stating that "WARNING: This product contains chemicals known to the State of California to cause cancer, or 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 existing 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 Volume Distributors agrees, to pay a total of forty-six thousand dollars (\$46,000) in full and final satisfaction of all of its obligations under this Agreement. That amount shall be paid by separate checks apportioned as follows:

4.2 Payment to CAG: Fifteen-thousand dollars (\$15,000) shall be paid to

Consumer Advocacy Group, Inc. The check shall be delivered to:

Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide Volume Distributors with CAG's Employer Identification Number.

4.3 Attorneys' Fees and Costs: Thirty thousand dollars (\$30,000) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reimbursement of any and all investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Volume Distributors attention and the prosecution of the claims referenced herein. 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 Volume Distributors with its Employer Identification Number.

4.4 Penalty: Volume Distributors shall issue two separate checks for a total amount of one thousand dollars (\$1,000) 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-



hundred and fifty dollars (\$750), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of two-hundred and fifty dollars (\$250), 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 95812 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the amount of \$250 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 Volume Distributors represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Volume Distributors 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 shall take all other actions necessary to comply with all requirements under



Proposition 65 with regard to the claims referenced herein. The Parties acknowledge and agree that Volume Distributors shall have no reporting requirements in regards to this Settlement Agreement of any kind.

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 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 Volume Distributors 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 Volume Distributors must contain (a) description of the Covered Product, (b) the specific date(s) upon which the Covered Product was discovered to be available for sale after the Effective Date in California without reformulation, (c) the store or other place at which the product was found to remain available for sale to consumers, and (d) other evidence or other support for the allegations in the notice.

11.3 Within 60 days of receiving the notice described in Section 11.2, Volume Distributors shall either (1) send all stores and other places at which the Covered Product was available for sale in the State of California a letter directing that the offending product be immediately removed from inventory and returned to Volume Distributors for full credit, including shipping costs, or (2) refute the



information provided under Section 11.2 to CAG's reasonable satisfaction.

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 Volume Distributors:

Charles Rahban, President
VOLUME DISTRIBUTORS
(323) 980-3670
charlesr@volumedist.com

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 Volume Distributors 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. In the event of a change in Proposition 65 Regulations, Volume Distributors shall fully comply with the updated regulations, and is so obligated

under this Settlement Agreement. The foregoing shall not be construed to void or to lessen Volume Distributor's duties under Section 3 of this Settlement Agreement.

CONSUMER ADVOCACY GROUP, INC.

Dated: 09/30/16

By: 

Printed Name: Michael Marcus



Settlement Agreement Between Consumer Advocacy Group, Inc. and Volume Distributors, Inc.

Title: Director

VOLUME DISTRIBUTORS, INC.

Dated: 9/30/16

By: [Signature]

Printed Name: Charles Rabban

Title: V.P. Purchasing