

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**CONSUMER ADVOCACY GROUP, INC.**  
**AND**  
**MAUI AND SONS**

Consumer Advocacy Group, Inc. (“CAG”) and Maui & Sons, (“Maui and Sons”), enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Maui and Sons violated Proposition 65 as set forth in CAG’s January 20, 2016 60-day notice. CAG and Maui and Sons are collectively referred to herein as the “Parties.” 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 Maui and Sons previously manufactured, imported, distributed, and/or sold, at various times, Flip Flops, including but not limited to, Green Flip Flops Pattern, MAUI and Sons® Designed in California U.S.A., [www.mauiandsons.com](http://www.mauiandsons.com), “Compare at \$15.00 - \$5.99. S MFW32549 C AS – 08 518 75993919 9” UPC 7 451099 000809” (referred to throughout as the “Covered

Products”). The Covered Products are limited to those manufactured, imported, distributed, and/or sold by Maui and Sons.

1.3 CAG alleges that Covered Products contain Di-n-Butyl Phthalate (“DBP”), and that Maui and Sons did not provide a Proposition 65 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. 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 DBP is referred to hereafter as the “Listed Chemical.”

1.6 On or about January 26, 2016, CAG served Maui and Sons and Maui and Sons Corporate 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 allegedly containing the Listed Chemical (the “Notice.”)

1.7 CAG’s Notice alleged that Maui and Sons and the other noticed parties violated Proposition 65 by failing to warn consumers that use of the Covered Products exposes consumers to the Listed Chemical.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning Maui and Sons’

compliance with Proposition 65 with respect to the alleged Listed Chemical contained in the Covered Products (the “Dispute”).

1.9 Maui and Sons denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed, including the Covered Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. 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 actual or alleged 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 Maui and Sons, 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 Maui and Sons 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**

This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and: (a) Maui and Sons 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(s) or claimed violation(s) of Proposition 65 or any other 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 actual or alleged exposures to the Listed Chemical, or the alleged failure to warn about exposure to the Listed Chemical arising in connection with Covered Products manufactured, imported, sold, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those manufactured, imported, distributed and/or sold by Maui and Sons.

CAG, and its 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 (at 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, imported, distributed and/or sold 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 Maui and Sons' Duties**

3.1 Maui and Sons agrees, promises, and represents that within sixty (60) days after the Effective Date, Maui and Sons shall reformulate any Covered Products that it manufactures and/or offers for sale to a point where the level of DBP in the Covered Products does not exceed 0.1% (1000 parts per million) by weight, or Maui and Sons shall cease importing or selling any such Covered Products that do not meet this reformulation standard.

3.2 Maui and Sons agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory as of that date, if those products have not been reformulated to the point where the level of DBP in the Covered Products does not exceed 0.1% by weight, Maui and Sons will provide warnings for such Covered Products that comply with Proposition 65. The warnings shall be provided in such a manner that they are likely to be read or seen 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, 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 existing inventory as of the Effective Date that had not been reformulated and are distributed and/or sold by Maui and Sons, Releasees or Downstream Releasees after the Effective Date.

3.3 Notwithstanding anything in this Settlement Agreement to the contrary, CAG, acting in its individual capacity only, agrees that Maui and Sons'

compliance with this Settlement Agreement is compliance with Proposition 65 with respect to the Listed Chemical in Covered Products for itself, the Releasees and the Downstream Releasees as to Covered Products manufactured, imported, distributed and/or sold by Maui and Sons.

#### **4.0 Payments**

4.1 In complete resolution of all claims raised or that could have been raised in the Notice, Maui and Sons agrees to pay a total of thirty-six thousand dollars (\$36,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: Nine thousand dollars (\$9,000) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide Maui and Sons 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 in complete resolution of any claim for CAG's attorneys' fees, including for all of CAG's investigation fees and costs, attorneys' fees, and all of CAG's other costs incurred as a result of investigating and bringing this matter to Maui and Sons' attention, and for negotiating and finalizing this Settlement Agreement. 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 Maui and Sons with its Employer Identification Number.

4.1.3 Penalty: Maui and Sons shall issue two separate checks for a total amount of one thousand dollars (\$1,000) in complete resolution of any claim for civil penalties pursuant to Health & Safety Code § 25249.12 as follows: (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: 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 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 & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. CAG shall have the sole responsibility for transmitting the OEHHA portion of the civil penalty to OEHHA.

## **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 Maui and Sons represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Maui and Sons 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 as to the subject matter hereof.

**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, Maui and Sons, 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 Maui and Sons 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 Maui and Sons must contain: (a) the name of the specific product; (b) the specific dates when the product was sold after the Effective Date without reformulation or warning; (c) the store or other place at which the product was available for sale to consumers; and (d) any other evidence or support for the allegations in the notice.

11.3 Within 30 days of receiving any notice sent by CAG pursuant to Section 11.2, Maui and Sons shall either: (1) send the store at which the product was available for sale to the public a certified letter directing that the offending

product be immediately removed from sale and returned to Maui and Sons for full credit, including shipping costs; or (2) refute the information provided in the notice sent pursuant to Section 11.2. Should Maui and Sons send a certified letter directing removal of the product from sale in California along with an offer to provide the retailer with full credit for the noticed product and payment for any return shipping, and provide a copy of said letter to CAG within 30 days of receipt of a notice of alleged violation under this Settlement Agreement, CAG shall take no further action to enforce the terms of this Settlement Agreement or otherwise prosecute the notice of alleged violation of this Settlement Agreement, and Maui and Sons shall have no further obligations to CAG, monetary or otherwise. 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 Maui and Sons:

Jim Demet  
Maui and Sons

17383 Sunset Blvd #400  
Pacific Palisades Ca 90272

With copy to:

James Robert Maxwell, Esq.  
ROGERS JOSEPH O'DONNEL, a Professional Law Corporation  
311 California Street  
10<sup>th</sup> Floor  
San Francisco, CA 94104

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**

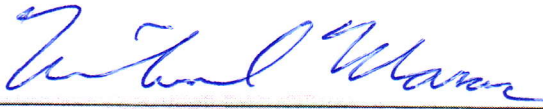
13.1 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**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 Maui and Sons 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: 09/30/16

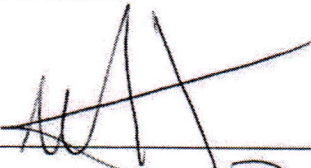
By: 

Printed Name: Michael Marcas

Title: Director

MAUI AND SONS

Dated: 9/30/2016

By: 

Printed Name: Jim Demet

Title: President