

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
H.I.S. JUVENILES, INC.

Consumer Advocacy Group, Inc. (“CAG”) and H.I.S. Juveniles, Inc. (hereto referred to as “H.I.S. Juveniles”), (CAG and H.I.S. Juveniles 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 H.I.S. Juveniles 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. H.I.S. Juveniles previously sold, at various times, Mirrors with plastic suction cups including but not limited to Nûby™ “Baby View Mirror”; Packaged in a transparent shell with a white, orange, red, and teal cardboard label. Luv n’ care©, Ltd. 3030 Aurora Avenue, Monroe, Louisiana 71201 U.S.A. www.nuby.com, 1-800-LUVNCARE (U.S.A. only); “Nûby™ is a registered trademark of Luv n’ care© and is under license by HIS Juveniles, Inc.”; “Manufactured by H.I.S. Juveniles, Inc.”; SKU# 400138703284; UPC: 8 75376 00626 6; (referred to

throughout as the “Covered Product(s)”). The Covered Products are limited to those supplied by H.I.S. Juveniles.

1.2 CAG alleges that Covered Products contain Bis(2-ethylhexyl) phthalate (“DEHP”), and that H.I.S. Juveniles 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 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.

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

1.5 On or about April 12, 2016 CAG served Nuby, Inc.; Admar International, Inc.; H.I.S. Juveniles, Inc.; Ross Stores, Inc.; Ross Dress For Less, Inc.; and Luv n’ care, Ltd. (“Noticed Defendants”); 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 Chemical.

1.6 The Sixty-Day Notice (referred to as “Notice”) alleged that H.I.S. Juveniles and the other noticed parties violated Proposition 65 by failing to warn

consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.7 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.8 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 H.I.S. Juveniles, 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 H.I.S. Juveniles 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) H.I.S. Juveniles 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 Noticed Defendants and 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, licensors and licensees (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 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 prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those supplied by H.I.S. Juveniles.

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 sold up to the Effective Date, 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 H.I.S. Juveniles's Duties

After the Effective Date, Defendant shall not sell, offer for sale in California, or ship for sale in California any Covered Products unless Defendant has either (1) reformulated the Covered Products to a point where the level of DEHP does not exceed more than 0.1% by weight or 1,000 ppm (parts per million) (“Reformulation Standard”), Defendants shall test annually two random samples from two different lots of the Covered Products sold or offered for sale in California to ensure the level of DEHP does not exceed 0.1% by weight or 1,000 ppm (such testing shall be performed in the United States by an accredited laboratory, and utilize U.S. Environmental Protection Agency (“EPA”) test preparation method 3550C and test method EPA 8270C, and Defendant shall provide written certification that the results of this testing meet the reformulation standard above for only the first shipment of Covered Products that Defendant sells or offers for sale in California); or (2) provided a Proposition 65 compliant warning on the Covered Products. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The Parties agree that product labeling stating that:

WARNING: This product contains a chemical 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 DEHP in the Covered Products distributed and/or sold by the Defendant after the Effective Date.

4.0 Payments

4.1 H.I.S. Juveniles agrees, to pay a total of thirty-eight thousand dollars (\$38,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.2 Payment to CAG: Eleven-thousand dollars (\$11,000) 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 H.I.S. Juveniles with CAG's Employer Identification Number.

4.3 Attorneys' Fees and Costs: Twenty-six thousand dollars (\$26,000) 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 H.I.S. Juveniles 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 H.I.S. Juveniles with its Employer Identification Number.

4.4 Penalty: H.I.S. Juveniles 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 H.I.S. Juveniles represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind H.I.S. Juveniles 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 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 H.I.S. Juveniles 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 H.I.S. Juveniles 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 meeting the requirements of Section 3.0 of this Agreement, (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 30 days of receiving the notice described in Section 11.2, H.I.S. Juveniles shall either (1) send all stores and other places at which the Covered Product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to H.I.S. Juveniles for full credit, including shipping costs, or (2) refute the information provided under Section 11.2 (*e.g.*, by demonstrating that the Covered Product in question

falls within the Release in Section 2.0 of this Agreement). 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 H.I.S. Juveniles:

Laura M. Duncan
MARTEN LAW PLLC
555 Montgomery Street
Suite 820
San Francisco, CA 94111

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.

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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: 09/28/16

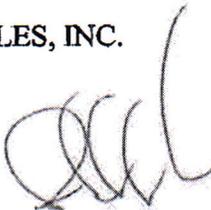
By: 

Printed Name: Michael Marcus

Title: Director

H.I.S. JUVENILES, INC.

Dated: 9-27-16

By: 

Printed Name: Amos Hamad

Title: President