

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ADVANCE AUTO INNOVATIONS, LLC.

Consumer Advocacy Group, Inc. (“CAG”) and Advance Auto Innovations, LLC<sup>1</sup> (referred to as “Advance Auto”), (CAG and Advance Auto 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 Advance Auto 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 Chemical and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products. Advance Auto previously sold, at various times products described in CAG’s May 25, 2016 Notice of Intent to Sue, as “Dent Pullers, with Polymer Grips” (“Dent Pullers”) containing DEHP, including but not limited to the “AutoCraft™ DENT PULLER”; “DESABOLLADOR”; “Part # AC687”; “Instructions: Drill or punch hole in the center of the dent. Screw the dent puller directly into the hold. Grasp the dent puller tightly with one hand, slam the other hand against the handle with

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<sup>1</sup> For purposes of this settlement, Advance Auto Innovations, LLC shall include its owners, parents, subsidiaries, affiliates, sister and related companies.

all your weight. Pull dent out to the acceptable contour.”, (Instructions listed in both English and Spanish); Distributed By / Distribuio Por: Autocraft 5008 Airport Road, Roanoke, VA 24012; “Made in China”; UPC: 7 621640 247056 (referred to throughout as “Covered Products.”) (“Dent Puller”) The “Covered Products,” herein are defined as all Dent Pullers sold by Advance Auto.

1.2 CAG alleges that Covered Products contain Bis(2-ethylhexyl) phthalate (“DEHP”), and that Advance Auto 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 Chemical 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.

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

1.5 On or about May 25, 2016 CAG served Autocraft, Advance Auto Innovations, LLC., Advance Auto Parts, Inc., CarQuest Auto Parts, CarQuest of Van Nuys, CarQuest Corporation, CarQuest Auto Parts, Inc.-California and General Parts International, Inc. dba CarQuest Auto Parts, 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 (“Notice”)

1.6 The Sixty-Day Notice referred to in paragraphs 1.5 (referred to as the “Notice”) alleged that the 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 Advance Auto or any of their respective past or present 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 Advance Auto 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) Advance Auto and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) those entities to whom Releasees have directly or indirectly provided, distributed, or sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, 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, delivered, 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 Dent Pullers manufactured, distributed or sold by Advance Auto.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees (collectively CAG Releasers) hereby waive and release with respect to the Covered Products all claims and 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), whether known or unknown, (collectively "Claims"), that CAG Releasors have or may have 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 prior to the Effective Date, to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged violation of California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* including but not limited to 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 Releasors acknowledge that they are 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 Releasors expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them 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.

2.1 Within fourteen (14) days after the Effective Date, CAG will dismiss, without prejudice, the instant action filed by CAG, as to Defendant's Releasees and Downstream Releasees, in the matter entitled *Consumer Advocacy Group, Inc. v. CarQuest Auto Parts, et al.*, LASC Case No. BC648183.

**3.0 Advance Auto's Duties**

3.1 Advance Auto agrees, promises, and represents that as of the Effective Date, Advance Auto shall reformulate any Covered Products manufactured by or for Advance Auto and sold into the State of California to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight, or Advance Auto shall cease importing, selling, or otherwise distributing any Covered Products that do not meet this reformulation standard.

3.2 Advance Auto agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells into the State of California any Covered Products in existing inventory as of that date, it will provide warnings on such Covered Products that comply with Proposition 65. 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 a Chemical 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 only those Covered Products in existing inventory on the Effective Date 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 Advance Auto agrees, to pay a total of fifty-five thousand dollars (\$55,000) within ten (10) days of the Effective Date, by separate checks apportioned as follows:

4.2 Attorneys' Fees and Costs: \$52,000 of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG’s attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other necessary and reasonable costs incurred as a result of investigating and bringing this matter to Advance Auto’s attention. The check shall be delivered addressed to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Advance Auto with its Employer Identification Number.

4.3 Penalty: Advance Auto shall issue two separate checks for a total amount of three thousand dollars (\$3,000.00) 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 two-

thousand two-hundred and fifty dollars (\$2,250.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of seven hundred and fifty dollars (\$750.00), representing 25% of the total penalty. OEHHA's check shall be delivered and addressed to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, PO Box 4010, Sacramento, California 95812-4010. CAG's check shall be made payable to CAG and delivered addressed to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, as attorneys for CAG, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate Form 1099's shall be issued for the above payments: The first Form 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486) in the amount \$2,250.00. The second Form 1099 shall be issued in the amount of \$750.00 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 Advance Auto represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Advance Auto to this Settlement Agreement.

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**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, the CAG Releasors, and the Releasees and Downstream Releasees identified in Section 2 above.

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**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 Advance Auto by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the acts alleged to breach this Settlement Agreement at least 30 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 Advance Auto must contain (a) information identifying the product, (b) dates when the product was sold after the Effective Date in California without reformulation or warning as set forth in section 3, (c) identification of at least one entity, store, or other place where the product was made 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, Advance Auto shall either (1) send all stores and other places at or through which the product was made available for sale a letter directing that the offending product be immediately removed from inventory and returned to Advance Auto for full credit, including shipping costs, or (2) refute, to CAG's satisfaction, 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 Advance Auto:

President  
Advance Auto Innovations, LLC  
5008 Airport Road  
Roanoke, VA 24012  
with a copy to:

Roger Cerda, Esq.  
ALSTON & BIRD LLP  
333 South Hope Street  
16th Floor  
Los Angeles, CA, 90071

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. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or specifically as to the Listed Chemical, then Advance Auto 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: 02/26/18

By: Michael Marcus

Printed Name: Michael Marcus

Title: Director

ADVANCE AUTO INNOVATIONS, LLC.

Dated: 2/16/18

By: Tammy M. Finley

Printed Name: Tammy M. Finley

Title: EVP, General Counsel & Corporate Secretary