

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
MYX, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Myx, Inc. (“Myx”), enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Myx violated Proposition 65 as set forth in CAG’s August 8, 2016, 60-day notice. CAG and Myx 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 Myx previously manufactured, imported, distributed, and/or sold, at various times, Photo Albums, including but not limited to, “Max Studio Home”; Photo album with blue, plastic, cover; “Made in China”; “Marshalls 1281-054888351-00799-02-06”; “Acid Free/Archival Safe”; “8174-7400-533947-FLS58”, the “Covered Products”. The Covered Products are limited to those manufactured, imported, distributed, and/or sold by Myx.

1.3 CAG alleges that Covered Products contain Bis(2-ethylhexyl) Phthalate (“DEHP”), and that Myx did not provide a 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 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. Both of these additions took place more than twenty (20) months before CAG served this Notice. 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 DEHP is referred to hereafter as the “Listed Chemical,”

1.6 On or about August 8, 2016, CAG served Myx, Inc.; The TJX Companies, Inc.; Marshalls of MA, Inc.; and Marmaxx Operating Corp., and certain relevant public entities 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 and sold in California (the “Notice”).

1.7 The Notice alleged that Myx and the other noticed parties violated Proposition 65 by failing to warn consumers in California 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 Myx's compliance with Proposition 65 with respect to the Listed Chemical contained in the Covered Products (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 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 Myx, 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 Myx 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) Myx 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 provided, distributed, or sold the Covered Products, including but not limited to The TJX Companies, Inc. and all of its wholly owned subsidiaries, 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 the Covered Products manufactured, imported, sold, shipped, and/or otherwise distributed prior to the Effective Date. The Covered Products are limited to those manufactured, imported, distributed and/or sold by Myx.

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 with respect to the Covered Products manufactured, imported, distributed and/or 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 and 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 Myx' Duties

3.1 Myx agrees, promises, and represents that as of the Effective Date, Myx shall reformulate all Covered Products that it manufactures, distributes, or sells, to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight, or Myx shall cease manufacturing, distributing, or selling any Covered Products that do not meet this reformulation standard.

3.2 Myx agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in its existing inventory upon the Effective Date, if those products have not been reformulated in accordance with the reformulation standard set forth in section 3.1, Myx will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in such a conspicuous and prominent manner that they are likely to be seen and read by the consumer prior to or at the time of the sale or purchase. In their respective capacities, 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 only those Covered Products in existing inventory on the Effective Date that had not been reformulated and are distributed and/or sold by Myx or, Releasees after the Effective Date.

4.0 Payments

4.1 In complete resolution of all claims raised or that might have arisen from the Notice, Myx agrees to pay a total of Forty-two thousand dollars (\$42,000)

within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: Thirteen thousand dollars (\$13,000) 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 Myx with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Twenty-eight thousand dollars (\$28,000) of such payment shall be paid to Yeroushalmi & Associates in complete resolution of claims for CAG's attorneys' fees, including for all of CAG's reasonable investigation fees and costs, attorneys' fees, and other costs incurred in investigating this matter, bringing it to Myx' attention, and negotiating and finalizing this settlement. 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 Myx with its Employer Identification Number.

4.1.3 Penalty: Myx shall issue two separate checks for a total amount of one thousand dollars (\$1000) in complete resolution of 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 Myx represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Myx 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, Myx, 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 unless: (a) the party seeking enforcement or alleging violation notifies the other party of the acts alleged to breach this Settlement Agreement at least 60 days before serving or filing any action, and (b) the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to Myx must contain: (a) information identifying the product; (b) dates when the Covered Product was sold after the Effective Date without reformulation or warning; (c) the retailer or other entity through which the products were available for sale to consumers; and (d) 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, Myx shall either: (1) send all stores at which the product is or was available for sale to the public a certified letter directing that all units of the offending product be immediately removed from sale and returned to Myx for full credit, including shipping costs; or (2) refute the information provided in the notice sent pursuant to 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 Myx:

Steve R. Pargman
Myx, Inc.
339 Verda Norte
Palm Springs, CA 92262

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.

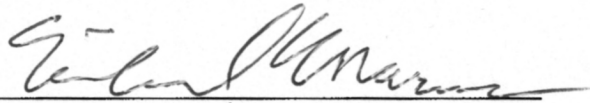
14.0 GOVERNING LAW

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 Myx 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, Myx 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 Myx's duties under Section 3 of this Settlement Agreement.

CONSUMER ADVOCACY GROUP, INC.

Dated: 09/22/16

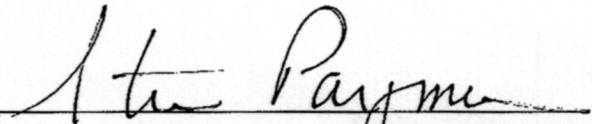
By: 

Printed Name: Michael Marcus

Title: Director

MYX, INC.

Dated: 9/21/2016

By: 

Printed Name: STEVE PARGMAN

Title: Pres.