

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC. AND  
MAC SPORTS INC.

Consumer Advocacy Group, Inc. (“CAG”) and Mac Sports Inc. (“Mac Sports”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Mac Sports, Bed Bath & Beyond Inc., Bed Bath & Beyond of California, LLC, Harmon Stores, Inc., and Liberty Procurement Co. Inc., referred to herein as “Alleged Violators,” violated Proposition 65 as set forth in CAG’s May 18, 2017 and January 10, 2018 60-day notices as described herein. CAG and Mac Sports 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     Mac Sports previously manufactured, distributed and/or sold at various times Folding Chairs with Polymer Carry/Storage Bags, including but not limited to: “‘Equip Your Space’, Club Chair; 32.6 in W x 27.5 in D x 35.8 in H (82.8 cm x 69.8 cm x 90.9 cm) ‘MADE EXPRESSLY FOR LIBERTY PROCUREMENT’ 650 Liberty Avenue, Union, NJ 07083; MADE IN CHINA; ‘Reusable

carry/storage bag'; 'Foldable for easy storage'; UPC: 444100236394." Folding Chairs with Polymer Carry/Storage Bags manufactured, imported, distributed and/or sold by Mac Sports are referred to herein as "Covered Products".

1.3 CAG alleges that Covered Products contain Bis (2ethylhexyl)phthalate or di(2-ethylhexyl)phthalate ("DEHP") and that Mac Sports did not provide a warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act of 1986 (*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 toxicity and male reproductive toxicity.

1.5 DEHP is referred to hereafter as the "Listed Chemical".

1.6 On or about May 18, 2017, CAG served Bed Bath & Beyond Inc., Bed Bath & Beyond of California, LLC, Harmon Stores, Inc., and Liberty Procurement Co. 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 allegedly containing the Listed Chemical and sold in California (the "May 18, 2017 Notice").

1.7 On or about January 10, 2018, CAG served Bed Bath & Beyond Inc., Bed Bath & Beyond of California, LLC, Harmon Stores, Inc., Mac Sports 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 allegedly containing the Listed Chemical and sold in California (the “January 10, 2018 Notice”).

1.8 The May 18, 2017 Notice and the January 10, 2018 Notice are together referred to herein as the “Notices.”

1.9 CAG’s Notices alleged that Mac Sports and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes California consumers to the Listed Chemical.

1.10 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning Mac Sports’ compliance with Proposition 65 with respect to the alleged Listed Chemical contained in the Covered Products (the “Dispute”).

1.11 Mac Sports denies the material, factual, and legal allegations contained in the Notices. Further, Mac Sports maintains that all of the Covered Products that it has manufactured, imported, sold or distributed for sale in California have been, and are, in compliance with all laws, including but not limited to Proposition 65, and are safe for their intended use. By execution of this Settlement Agreement, neither Mac Sports nor the Alleged Violators 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 or Alleged Violators 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 the Alleged Violators or by Mac Sports, its officers, directors, employees, or parents, subsidiaries or affiliated entities, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Mac Sports 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) Mac Sports and its current owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”); and (b) all entities including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to Bed Bath & Beyond Inc., Bed Bath & Beyond of California, LLC, Harmon Stores, Inc., and Liberty Procurement Co. Inc. and their current owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns

(collectively “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 only 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 Mac Sports.

CAG, and 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 with respect to any Covered Products manufactured, imported, distributed, and/or sold up through the Effective Date, only 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 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, 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 California Civil Code Section 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 Settlement Agreement shall have no force or effect until the full amount of payments set forth in Section 4 of this Settlement Agreement are paid in full.

### **3.0 Mac Sports' Duties**

3.1 Mac Sports agrees, promises, and represents that as of the Effective Date, Mac Sports shall reformulate any Covered Products that it causes to be manufactured for sale in California to a point where the level of the Listed Chemical in the Covered Products does not exceed 0.1% (1,000 parts per million)

by weight, or Mac Sports shall cease importing, distributing for sale in California, or selling in California any such Covered Products that exceed this reformulation standard.

3.2 Mac Sports agrees, promises, and represents that, as of the Effective Date, to the extent it ships for sale in California or sells any Covered Products in its existing inventory as of the Effective Date, if those products have not been reformulated (to the point where the level of each of DEHP in the Covered Products does not exceed 0.1% by weight), Mac Sports will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in a conspicuous and prominent manner that will assure the message is made available and likely to be read, seen, or understood by the consumer prior to or at the time of the sale or purchase. The Parties agree that product labeling stating:

“WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm”

**or**

**⚠ WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**or**

**⚠ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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 in California by Mac Sports, Releasees or Downstream Releasees after the Effective Date.

3.3 Notwithstanding anything in this Settlement Agreement to the contrary, CAG agrees that Mac Sports' compliance with this Settlement Agreement is compliance with Proposition 65 with respect to the Listed Chemical in Covered Products for itself, the Releasees and Downstream Releasees, as to Covered Products manufactured, imported, distributed, and/or sold by Mac Sports.

#### **4.0 Payments**

4.1 In complete resolution of all claims raised or that could have been raised in the Notices, Mac Sports agrees to pay a total of forty-five thousand dollars (\$45,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: Mac Sports shall issue two separate checks for a total amount of thirteen thousand dollars (\$13,000.00) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of nine thousand seven hundred and fifty dollars (\$9,750.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of three thousand two hundred and fifty (\$3,250.00), representing 25% of the total penalty. OEHHA's check shall be delivered to Office of



Environmental Health Hazard Assessment P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check 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 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) in the amount of \$9,750. The second 1099 shall be issued in the amount of \$3,250 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Mac Sports with CAG's Employer Identification Number and a completed Internal Revenue Service Form W-9.

4.1.2 Attorneys' Fees and Costs: Thirty-two thousand dollars (\$32,000) shall be paid to Yeroushalmi & Yeroushalmi, 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 Mac Sports' attention, and 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 & Yeroushalmi shall provide Mac Sports with a completed Internal Revenue Service Form W-9 and its Employer Identification Number so Mac Sports

may issue a 1099 to Yeroushalmi & Yeroushalmi.

**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 Mac Sports represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Mac Sports 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 Effective Date.

**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, Mac Sports, 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 Sections 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 Mac Sports by CAG, unless CAG notifies Mac Sports of the specific acts alleged to breach this Settlement Agreement at least 60 days before serving or filing any action or Notice of Violation and Mac Sports fails to comply with the requirements set forth in Section 11.3 below. Any notice to Mac Sports must contain: (a) the name of the specific product; (b) the specific dates when the product was sold after the Effective Date in California without reformulation or a warning; (c) the California 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, Mac Sports shall either: (1) send the store at which the product was available for sale to the public in California a certified letter directing that the offending product be immediately removed from sale in California and returned to Mac Sports 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  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

### **For Mac Sports:**

Malcolm Weiss  
Hunton & Williams LLP  
550 South Hope Street  
Suite 2000  
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 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 Mac Sports 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: 02/21/18

By: 

Printed Name: Michael Marcus

Title: Director

MAC SPORTS INC.

Dated: 2/20/2018.

By: 

Printed Name: Paul Peng

Title: CEO.