

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
NEWARK CORPORATION DBA NEWARK ELEMENT 14

Consumer Advocacy Group, Inc. (“CAG”) and Newark Corporation dba Newark Element 14 (hereto referred to as “Newark”), (CAG and Newark 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 Newark 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.

1.2 Newark previously sold, at various times, the “DURATOOL Compact Multimeter”, “Model 72-7940”, UPC:640522697090 (referred to throughout as the “Covered Products”). The Covered Products are limited to only those sold or distributed by Newark, its affiliates, or its subsidiaries.

1.3 CAG alleges that Covered Products contain Di Isononyl Phthalate (“DINP”), and that Newark 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”)).

1.4 On December 20, 2013, the Governor of California added DINP to the list of chemicals known to the State to cause Cancer. 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 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after the addition of DINP to the list of chemicals known to the State to cause cancer DINP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.6 DINP is referred to hereafter as the “Listed Chemical”.

1.7 On or about April 13, 2018 (Attorney General Notice #2018-00559), CAG served, A.R. Creations Inc.; Duratool; Fry's Electronics, Inc.; Fry's Electronics, Store #5, 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.

1.8 On or about August 10, 2018 (Attorney General Notice # 2018-01401), CAG served, Newark Element 14 (a dba of Newark Corporation), A.R. Creations Inc.; Duratool; Fry's Electronics, Inc.; Fry's Electronics, Store #5, 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.

1.9 The Sixty-Day Notices (referred to as “Notices”) alleged that Newark 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.

1.10 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").

1.11 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 Newark, 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 Newark 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 & Dismissal**

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity and (a) Newark, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, agents, 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, Fry's Electronics, Inc., Fry's Electronics, Inc.'s affiliates, and all

other distributors, wholesalers, customers, resellers, retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”), 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 sold by Newark.

2.2 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, 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.

2.3 CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT

TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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.


2.4 Within five court days of the Effective Date, CAG will dismiss, without prejudice, its Fourth Cause of Action, and all allegations related to the Covered Products, in the case styled Consumer Advocacy Group v. Fry's Electronics, Inc. et al, Case No. RG18916512 (Alameda County Sup. Ct.).

### **3.0 Newark's Duties**


3.1 Newark agrees, promises, and represents that after the Effective Date Newark shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in California to a point where the level of DINP in the Covered Products does not exceed 0.1%.

3.2 Newark agrees, promises, and represents that, as of one month from the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that have not been reformulated, 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 can expose you to chemicals including Di Isononyl Phthalate ("DINP"), which is known to the State of California to cause cancer For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

 **WARNING:** Cancer. [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 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 Newark agrees, to pay a total of Seventy thousand dollars (\$70,000) within ten (10) business days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: Newark shall issue two separate checks for a total amount of ten thousand dollars (\$10,000) 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 thousand five hundred dollars, (\$7,500), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of two thousand five hundred dollars (\$2,500), 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 \$7,500. The second 1099 shall be issued in the amount of \$2,500 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs: Sixty thousand dollars (\$60,000) of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Newark's 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 & Yeroushalmi shall provide Newark with its Employer Identification Number.

## **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 Newark represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Newark 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 CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon five (5) days written notice by CAG to Newark of the alleged breach in accordance with the notification requirements set forth in Section 12.0, below.

**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

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For Newark:  
Greg Sperla  
DLA Piper LLP (US)  
400 Capitol Mall, Suite 2400  
Sacramento, California

With a copy to:

Newark Corporation  
Attn: Legal Department  
300 S. Riverside Plaza, suite 2200  
Chicago, IL 60606

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 Newark 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: 10/29/19

By: 

Printed Name: Michael Marcus

Title: Director

NEWARK CORPORATION DBA NEWARK  
ELEMENT 14

Dated: 10/31/19

By: 

Printed Name: Christopher P Breslin

Title: President