

SETTLEMENT AGREEMENT AND RELEASE

CA Citizen Protection Group, LLC (“CCPG”) and Mystic Apparel LLC (“MYSTIC”) enter into this Settlement Agreement and Release (this “**Agreement**”). This Agreement is effective on the date on which it is fully executed (“**Effective Date**”). CCPG and MYSTIC are referred to individually as a “**Party**” and collectively as the “**Parties.**” The Parties agree as follows:

1. The “**Matter**” arises out of the Sixty-Day Notice of Intent to Sue for violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, codified under California Health & Safety Code (“**HSC**”) §25249.5, *et seq.* (referred to as “**Proposition 65**”), that CCPG served on MYSTIC, and other alleged violators, on November 27, 2018 (the “**Notice**”). The Notice claims that Proposition 65 warnings are required for alleged Diisononyl Phthalate (“**DINP**”) and **Di-(2-ethylhexyl) Phthalate (“DEHP”)** exposures to a product tested by CCPG. The following product manufactured, distributed and/or sold by MYSTIC is a “**Covered Product**” under this Agreement:

- **Crossbody Bag with Chain Strap (Alien Spaceship Design)**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Matter and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. Nothing in this Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by Mystic, its officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for Mystic, or any direct or indirect customer of Mystic who sold or sells the Products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section 2 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.


3. DINP and DEHP Standards; Warnings.

3.1 On and after the date that is ninety (90) days after the Effective Date, MYSTIC shall not sell in the State of California any Covered Product which does not qualify as a Reformulated Covered Product under Section 3.3, unless such Covered Product complies with the warning requirements of Section 3.2.

3.2 On and after ninety (90) days after the Effective Date, MYSTIC shall provide on the Covered Product (to the extent it does not constitute a Reformulated Covered Product) sold in California, a warning that complies with the requirements of Sections 3.2.1, 3.2.2, or 3.2.3. The warning shall be displayed on the packaging of such Covered Product with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Product.

Respecting the warnings defined in Sections 3.2.1 or 3.2.2, the warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

3.2.1 Option 1.

 **WARNING: This product can expose you to chemicals, including Diisononyl Phthalate (DINP) and Di (2-ethylhexyl) Phthalate (DEHP), which are known to the State of California to cause cancer, and birth defects or other reproductive harm.**

3.2.2 Option 2.

For the Covered Product, the warning may state:

 **WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.**

The pictogram specified in Section 3.2.3 shall be in yellow with a black exclamation mark; *provided however*, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow.

3.2.3 Option 3.

Any warning authorized by any Proposition 65 law or regulation in effect on or after the Effective Date.

3.3 Reformulated Covered Product. A Reformulated Covered Product is one for which the concentration of DINP and DEHP are each less than 0.1% by weight (1,000 parts per million (ppm)) as tested by an approved laboratory and methods in compliance with Section 3.4 below. For a Covered Product that contains (any part of the product/packaging) more than 0.1% by weight (1,000 ppm) DINP and DEHP, MYSTIC shall provide the warnings set forth in Section 3.2.

3.4. Formula, Testing and Quality Control Methodology.

3.4.1 For purposes of this Agreement, exposure levels shall be measured in parts per million (milligrams/kilogram or mg/kg) by generally accepted scientific standards. The testing requirements do not apply to any of the Covered Products for which MYSTIC has provided a warning as specified in Section 3.2.

3.4.2 MYSTIC shall not be required to engage in testing pursuant to this Agreement unless MYSTIC sells into California the Covered Product without a warning. All testing pursuant to this Agreement shall be performed using a laboratory method that complies with any U.S. Environmental Protection Agency (“USEPA”) approved testing method.

3.4.3 Unless warnings are affixed consistent with the requirements of Section 3.2, all testing pursuant to this Agreement shall be performed by an independent third-party laboratory approved by, accredited by, or registered with the United States Food & Drug Administration or USEPA. Testing shall be performed prior to MYSTIC’s “first sale” in California of any Covered Product ordered for production after the Effective Date, and testing shall continue thereafter at least once per year for three (3) consecutive years after the Effective Date (the “**Testing Period**”), after which time, no further testing shall be required unless, after the 3-year period, MYSTIC

changes suppliers for any Covered Product, then MYSTIC shall test the Covered Product at least once after such change is made.

3.5 MYSTIC and the Releasees (as defined in Section 5.1 below) shall have no obligation or liability with respect to the Covered Product that is sold and/or distributed in California after the date of the Notice, except as otherwise set forth in this Agreement.

4. MYSTIC shall pay the total settlement amount of \$21,000 (the “**Settlement Amount**”) within ten (10) days of the Effective Date. MYSTIC shall pay the Settlement Amount payments by check wire transfer, or check made payable to “Khansari Law Corporation – Client Trust Account” on behalf of CCPG, and sent to the address below, or via account wire instructions provided by CCPG’s counsel upon request by Mystic’s counsel:

CA Citizen Protection Group LLC
c/o Khansari Law Corp., APC
11845 W. Olympic Blvd., Suite 1000
Los Angeles, CA 90064

CCPG shall be solely responsible for allocating the payment pursuant to Sections 4.1 and 4.2. Upon request, CCPG shall supply MYSTIC with a completed W9 form. The Settlement Amount shall be allocated as follows:

4.1. \$1,000 shall be considered a “civil penalty”, of which CCPG shall remit seventy-five percent (75%) to the “Safe Drinking Water and Toxic Enforcement Fund” managed by the State of California’s Office of Environmental Health Hazard Assessment. The twenty-five percent (25%) balance shall be remitted to CCPG.

4.2 \$20,000 shall be considered reimbursement of CCPG’s attorneys’ fees and costs related to the Matter.

4.3 Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys’ fees related to this Matter.

5. Binding Effect; Claims Covered and Released.

5.1. CCPG, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively referred to as “**CCPG Releasers**”) fully releases and waives any right to participate (directly or indirectly) in any litigation against (a) MYSTIC, (b) Five Below Merchandising and Five Below Inc. on behalf of itself and its subsidiaries (collectively referred to as “**Five Below**”), (c) each of MYSTIC’s and Five Below’s downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (d) the parent companies of MYSTIC and Five Below; Five Below’s and Mystic’s corporate affiliates and subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively “**Releasees**”), from all claims, actions, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys’ fees, investigator fees, and expert fees), costs, and expenses (collectively referred to as “**Claims**”) that were asserted, or could have been asserted, or could be asserted for any alleged violations of Proposition 65, or any other alleged

violations statutory or common law, arising from alleged exposures to DINP and DEHP in the Covered Product, including any and all claims arising under Proposition 65, or any other statutory or common law claims that were or could have been asserted in respect of any Products sold up to the Effective Date, including without limitation to the extent that such claims relate to Mystic Apparel and/or Releasee's alleged or actual failure to warn about exposures to DEHP in the Products allegedly manufactured, sold, or distributed for sale before the Effective Date by Mystic Apparel or Releasees. CCPG, each on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Mystic Apparel and the Releasees.

5.2. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Product will develop or be discovered. CCPG on behalf of itself and the CCPG Releasees, acknowledges that this Agreement is expressly intended to cover and include all such claims, including all rights of action therefore, and further acknowledges that the Claims released in this Section 5 may include unknown claims, and nevertheless waives California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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.

CCPG acknowledges and understands the significance and consequences of this specific waiver of California Civil Code Section 1542.

5.3. The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65 regarding alleged exposures to DINP and DEHP in the Covered Product.

5.4 It is the Parties position that the commitments it has agreed to herein, and actions to be taken by MYSTIC under this Agreement, confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to MYSTIC or any Releasee's failure to provide a warning concerning exposures to DINP or DEHP with respect to the Covered Product they have respectively manufactured distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California; such private party action would not confer a significant benefit on the general public as to the Covered Product addressed in this Agreement, provided that MYSTIC is in material compliance with this Agreement. This Section does not constitute a release by CCPG under this Agreement.

6. Resolution of Disputes.

6.1 If CCPG alleges that MYSTIC has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, CCPG shall first provide MYSTIC thirty (30)

days' advance written notice of the alleged violation(s). CCPG shall provide testing results, lot numbers, photographs of the Covered Product packaging, and purchase receipts for the Covered Product at issue in the alleged violation, as applicable. The Parties shall meet and confer during such thirty (30) day period in an effort to reach agreement on an appropriate cure for the alleged violation without the need for litigation.

6.2 Notwithstanding the provisions of Section 3, CCPG may not issue any notice under Section 6.1 if the packaging of the Covered Product is marked or labeled with the statement "Not for Sale in California" or substantially similar language, such statement is prominently placed upon such Covered Product's label or other labeling as compared with other words or statements on the label or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If MYSTIC marks or labels a Covered Product with such a statement, MYSTIC shall additionally notify its customers/distributors by letter that the Covered Product shall not be sold in California.

7. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties. Notwithstanding the foregoing, MYSTIC shall be entitled, at its option, to modify any warning that it provides under Section 3.2 to conform with any change in the Proposition 65 warning regulations currently set forth in Title 27 of the California Code of Regulations that may be adopted after the Effective Date. CCPG shall cause this Agreement to be reported to the State of California Attorney General as required and applicable under Proposition 65 statutes, including specifically HSC § 25249.7.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

9. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

10. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

11. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

12. Any legal action to enforce this Agreement or related to this Matter shall be brought in either the County of Alameda or the County of Los Angeles, of the State of California.

13. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

14. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery.

For CCPG:

CA Citizen Protection Group, LLC
c/o Khansari Law Corp., APC
11845 W. Olympic Blvd., Suite 1000
Los Angeles, California 90064
Fax: (424) 248-6689
Email: andre@khansarilaw.com

For MYSTIC:

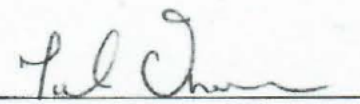
Mystic Apparel LLC
1333 Broadway FL 6
New York NY 10018
ATTN: General Counsel
Email: david@mysticapparel.com

15. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

[Signatures Appear on the Following Page]

DATED: February 16, 2019

CA CITIZEN PROTECTION GROUP, LLC

By: 

Name: Tal Oshana

Title: Manager

DATED: February 15, 2019 MYSTIC APPAREL, LLC

By: 

Name: Charles Mizrahi

Title: President