

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

M&S ACCESSORY NETWORK CORP.

Consumer Advocacy Group, Inc. ("CAG") and M&S Accessory Network, Corp. ("M&S"), (CAG and M&S collectively referred to as, the "Parties") enter into this agreement ("Settlement Agreement") for the purpose of avoiding prolonged and costly litigation and to settle CAG's allegations that M&S violated the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* ("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 M&S previously sold, at various times, (1) Dashcam Witness with Polymer Suction Cup Mount including but not limited to "Dash Cam Witness"; Gabba Goods G"; "Specifications: 2.34-inch HD LCD Screen, 140 Degree Ultra Wide Lens, Still Photos. Includes: Suction Cup Mount"; "Distributed by: M&S Accessory Network Corp."; "www. GabbaGoods.com"; "Made in China"; UPC 8 13085 02838 4"; (2) Car Mount with Suction Cup including but not limited to "GABBA GOODS;" "SWIVEL 360° CAR MOUNT;" "CAR MOUNT FOR

DASH AND WINDSHIELD;" "DISTRIBUTED BY: M&S ACCESSORY NETWORK CORP.;" "8 13085 02340 2"; (3) Bluetooth Headphones including but not limited to "Electric Iridescent Bluetooth Headphones"; "Compatible with all devices, Bluetooth ® & Non-Bluetooth w/supplied Aux Cable"; "Gabba Goods G ®"; "UPC 8 13085 028216" "Distributed by: M&S Accessory Network Corp. Designed in the U.S.A Made in China"; (4) "Unicorn 3 Piece Gift Set with Plastic Components including but not limited to Gabba Goods;" "Light Up Headphones;" "Bluetooth Speaker;" "Ear Buds with mic;" "Unicorn 3 Piece Gift Set;" "Distributed by: M&S Accessory Network Corp., New York, N.Y. 10001;" "Designed in the U.S.A.;" "Made in China;" "macy's backstage;" "4 92607 16130 5;" "GG-GSUN"(collectively referred to as "Covered Products." Covered Products are limited to those sold by M&S only.

1.3 CAG alleges (a) that the Covered Products contain Di (2-ethylhexyl) phthalate ("DEHP"), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and/or Di Isononyl Phthalate ("DINP" and, together with DEHP, the "Listed Chemicals"), and (b) that M&S did not provide a required warning in compliance with 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 and 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” described further below.

1.5 On December 20, 2013, the Governor of California added DINP to the list of chemicals known to the State to cause cancer. This addition 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” described further below.

1.6 DEHP and DINP are referred to herein as the “Listed Chemicals”.

1.7 On or about December 21, 2018 (Attorney General Notice #2018-02325), CAG served M&S Accessory Network Corp., Gabba goods G, M&S Accessory Network, Inc., Macy’s Inc., Macy’s Backstage, Inc., Macy’s Corporate Services, Inc., Macys.com LLC, Macy’s 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 Chemicals.

1.8 On or about December 21, 2018 (Attorney General Notice #2018-02324), CAG served Macy’s Inc., Macy’s Backstage, Inc., Macy’s New York, Inc., M&S Accessory Network Corp., M&S Accessory Network, Inc., Macy’s 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 Chemicals.

1.9 On or about February 26, 2019 (Attorney General Notice #2019-00410), CAG served M&S Accessory Network Corp., Gabba Goods G ®, Macy's Corporate Services, Inc., Macy's Inc., Macys.com, LLC, Macy's Backstage, Inc., Macy's 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 Chemicals.

1.10 On or about September 23, 2019 (Attorney General Notice #2019-01836), CAG served Macy's, Gabba Goods, M&S Accessory Network, Inc., Gabba Goods G, M&S Accessory Network Corp, Macy's Backstage, Inc., Macys.com, LLC, Macy's Corporate Services, Inc., Macy's 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 containing the Listed Chemicals.

1.11 On or about March 14, 2019 (Attorney General Notice #2019-00534), CAG served M&S Accessory Network Corp., Gabba Goods G ®, Macy's Corporate Services, Inc., Macy's Inc., Macys.com, LLC, Macy's Backstage, Inc., Macy's 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 Chemicals.

1.12 The documents described in Sections 1.7-1.12 of this Settlement Agreement are collectively referred to herein as the "Notices".

1.13 M&S disputes all material allegations in the Notices.

1.14 The Notices further alleged that M&S and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to one or more of the Listed Chemicals.

1.15 The Parties enter into this Settlement Agreement to fully and finally settle and resolve all claims alleged in the Notices and/or concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.16 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 M&S, 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 M&S may have

against one another or any other person or entity 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) M&S, 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 provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and including but not limited to all the entities named in the Notices (collectively, "Downstream Releasees"), on the other hand, of any actual 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 related to their alleged exposure of persons to the Listed Chemicals contained in the Covered Products or any failure by Releasees and/or Downstream Releasees to warn about exposures to the Listed Chemicals contained in the Covered Products, to the extent such exposure and/or failure to warn arose or arises in connection with Covered Products manufactured, shipped, or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. This release is limited to Covered Products that were manufactured, distributed, sold, or offered for sale by M&S.

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 related to any Covered Products distributed 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 Chemicals contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals 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 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.

3.0 M&S Duties

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

3.2 M&S agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products, regardless of color, 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. Acceptable warnings with respect to the Listed Chemical for any Covered Products in existing inventory that had not been reformulated and/or distributed or sold after the effective date are the following:

⚠WARNING: This product can expose you to chemicals including Di(2-ethylhexyl) phthalate (DEHP), 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.

Or

⚠️ WARNING: This product can expose you to chemicals including Diisononyl phthalate ("DINP"), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov

Or

⚠️ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

4.0 Payments

4.1 M&S agrees, to pay a total of ninety-five thousand dollars (\$95,000) by separate checks apportioned as follows:

4.1.1 Penalty: M&S 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: Eighty-five thousand dollars (\$85,000) 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 M&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 M&S 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 M&S represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind M&S 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 Modification of Settlement Agreement

8.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

9.0 Application of Settlement Agreement

9.1 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.

10.0 Enforcement of Settlement Agreement

10.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in Section 10 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.

10.2 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 M&S by CAG, unless the party seeking enforcement or alleging violation notifies the other party 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 the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 of this Settlement Agreement. Any notice to M&S must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (c) the store or other place at which the product was available for sale to consumers, (d) the specific provision of this Settlement Agreement allegedly breached, and (e) any other evidence or other support for the allegations in the notice.

10.2.1. Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon five (5) business days' written notice by CAG to M&S of the alleged breach in accordance with the notification requirements set forth in Section 11.0, of this Settlement Agreement.

10.3 Within 30 days of receiving the notice described in Section 10.2 of this Settlement Agreement, M&S shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to M&S for full credit, including shipping costs, or (2) refute the information provided under

Section 10.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

10.3.1 The Parties shall use reasonably good faith efforts to resolve all disputes related to this Settlement Agreement.

11.0 Notification Requirements

11.1 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 M&S:

Bao M. Vu
STOEL RIVES LLP
Three Embarcadero Center, Suite 1120
San Francisco, CA 94111

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 or its implementing regulations are amended, repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemicals and/or the Covered Products, then M&S' 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: 03/11/20


By: 

Printed Name: Michael Marcus

Title: Director

M&S ACCESSORY NETWORK, CORP.

Dated: 03/04/2020

By: 

Printed Name: JACK Mosseri

Title: President