

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Consumer Protection Group, LLC and Coda Resources, Ltd.**

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC ("CPG"), on the one hand, and Coda Resources, Ltd. dba Cambridge Resources ("Coda"), on the other hand, with CPG and Coda, collectively referred to as "Parties".

#### **1.2 General Allegations**

CPG alleges that Coda manufactured, distributed, and offered for sale battery test clips in the State of California containing Di-(2-ethylhexyl) Phthalate ("DEHP") and Lead, and that such products have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). DEHP and Lead are subject to Proposition 65 warning requirements because they are listed as being known to the State of California to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The products that are covered by this Settlement Agreement are test clips, including but not limited to battery test clips sold under UPC number 664766328794 (the "Subject Products"), which Coda has sold, offered for sale, and / or distributed in California that CPG alleges contain DEHP and Lead.

#### **1.4 Notice of Violation**

On February 8, 2019 (AG No. 2019-00301), CPG served LA Truck & Auto, Inc.; Genuine Parts Company dba NAPA Auto Parts, and Balkamp Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Coda and such public enforcers with notice that Coda was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Subject Product exposed users in California to DEHP and Lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

On March 22, 2019 (AG No. 2019-00569), CPG served an amended 60-Day Notice of Violation to Coda, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, that provided Coda and such public enforcers with notice that Coda was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Subject Product exposed users in California to DEHP and Lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

By execution of this Settlement Agreement, Coda, and each of its respective affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns, and each entity to whom Coda

directly or indirectly distributes or sells the Subject Products, including but not limited to, LA Truck & Auto, Inc., Genuine Parts Company dba NAPA Auto Parts, Balkamp Inc., and all other downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees (collectively, the "Releasees") 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 Releasees 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 Releasees 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 CPG or Coda may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein. Notwithstanding the allegations in the Notices, Releasees maintain that they have not knowingly manufactured, or caused to be manufactured, the Subject Products for sale in California in violation of Proposition 65.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

## **2. INJUNCTIVE RELIEF: WARNING**

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1% (1,000 parts per million), and containing lead in concentrations less than 100 parts per billion (ppb).

### **2.2 Commitment to Reformulate or Warn**

As of the Effective Date, Coda shall not sell or offer the Subject Products for sale in the State of California unless they are Reformulated Products or Coda provides warnings that comply with Proposition 65 law, as laid down in Section 2.4.

### **2.3 Warning**

The Subject Products shall be accompanied by a warning as described in Section 2.4 below as of the Effective Date. The warning requirements set forth in Section 2.4 below shall apply only to the Subject Products that are distributed, marketed, sold, or shipped for sale in the State of California. Coda further agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any of the Subject Products in existing inventory that have not been reformulated, it will provide warnings that comply with Proposition 65 law. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date.

### **2.4 Warning Language**

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. Where required, Coda shall provide Proposition 65 warnings as follows:

⚠ **WARNING:** This product can expose you to chemicals including DEHP, which are 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)

This shall constitute compliance with Proposition 65 with respect to the chemicals in the Subject Products for any Subject Products in existing inventory

3. **PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Coda shall pay a total of Five Thousand Six Hundred Dollars (\$5,600.00) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CPG. CPG's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to CPG and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Coda shall reimburse CPG's counsel for fees and costs incurred as a result of investigating and bringing this matter to Coda's attention. Coda shall pay CPG's counsel Thirty-Four Thousand Four Hundred Dollars (\$34,400.00) for all attorney's fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Seven (7) days after the Effective Date, Coda shall make a total payment of Forty Thousand Dollars (\$40,000.00) for the civil penalties and attorney's fees/costs by wire transfer to Plaintiff's counsel Blackstone Law APC:

Bank: First Republic Bank

Routing No.: 321081669

Account No.: 80006597266

Beneficiary: Blackstone Law APC IOLTA

Other than this payment, each side is to bear its own attorney's fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1 Release of Coda Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4 and 5 above, CPG, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys,

successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Subject Products, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims") against (a) Coda, (b) each of Coda's downstream distributors (including but not limited to LA Truck & Auto, Inc., Genuine Parts Company dba NAPA Auto Parts, and Balkamp Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Coda's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

CPG also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, 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 Coda and the Releasees with regards to the Subject Products. CPG acknowledges that it is familiar with California Civil Code section 1542, 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.

Coda, in its capacity only, and on behalf of itself, 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 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 section shall have no force or effect until the full amount of payments set forth in above Sections 3, 4, and 5 are paid in full by Coda.

**6.2 Coda's Release of Consumer Protection**

Coda waives any and all claims against CPG, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPG, and its' attorneys, and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Subject Products. Coda represents that its' signatory to this Settlement Agreement has full authority to enter into and legally bind Coda to this Settlement Agreement.



**7. GOVERNING LAW**

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 or is otherwise rendered inapplicable by reason of law generally, or as to the Subject Products, then Coda shall have no further obligations pursuant to this Settlement Agreement.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

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For Coda:

Samir J. Abdelnour

Hanson Bridgett LLP

1676 N. California Blvd., Suite 620

Walnut Creek, CA 94596

For CPG:

Jonathan M. Genish, Esq.

Blackstone Law APC

8383 Wilshire Blvd., Suite 745

Beverly Hills, CA 90211

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

CPG agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**

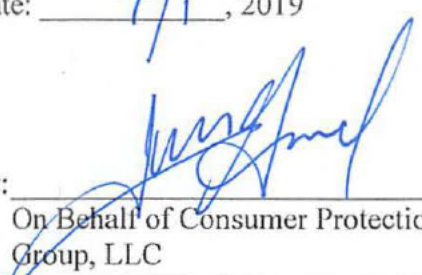
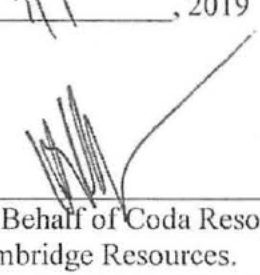
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>7/1</u>, 2019</p> <p>By: </p> <p>On Behalf of Consumer Protection Group, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>7/1</u>, 2019</p> <p>By: </p> <p>On Behalf of Coda Resources, Ltd. dba Cambridge Resources.</p>
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