

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

GROUPE SEB USA

Consumer Advocacy Group, Inc. (“CAG”) and Groupe SEB USA (“SEB”), (CAG and SEB are 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 SEB 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 SEB is alleged to have been responsible for the import and/or distribution of Travel Bag with Plastic Components, including but not limited to “ROWENTA;” “Carry on friendly travel bag;” “8400001621;” “0 14501 16488 8;” “www.rowentausa.com;” “TP1560U5;” “cmmf 8400001635;” “T.J.maxx;” “82-6605-216046-001999-22-2”, and; “COMPARE AT \$30.00;” “\$19.99;” “98;” (referred to throughout as the “Covered Products”) which were allegedly distributed or shipped to customers or clients in the State of California. The Covered Products are limited to those sold by SEB Groupe either directly, or through it’s Downstream Releasees.

1.2 CAG alleges that the Covered Products contain Diisononyl Phthalate (“DINP”), and that SEB 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”).

1.3 On December 20, 2013 the Governor of California added DINP to the list of chemicals known to the State of California 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” which is further described below.

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

1.5 On or about March 3, 2020 (Attorney General Notice #AG2020-00526), CAG served, SEB, Rowenta Werke GmbH; T.J.Maxx; The TJX Companies, Inc.; TJ Maxx of CA, LLC.; The TJX Operating Companies, Inc. (“Recipients of Proposition 65 Notice”) and certain relevant public enforcement agencies with a document 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.

1.6 The Sixty-Day Notice (the “Notice”) alleged that SEB and the Recipients of the Notice violated Proposition 65 by failing to warn consumers in the State of California that use of Covered Products exposes persons to the Listed Chemical. SEB and the Recipients of the Notice deny the allegations contained in the Notice.

1.7 The Parties enter into this Settlement Agreement pursuant to a full, final and binding settlement of any and all claims between the Parties as set forth below

concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute") in order to avoid prolonged litigation.

1.8 This Agreement resolves Released Claims (defined below) that are denied and disputed by SEB. SEB denies the material, factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in the State of California have been and are in compliance with all applicable laws, including but not limited to, Proposition 65. 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 SEB, its officers, directors, employees, shareholders, members, principals, agents, parents, subsidiaries affiliated corporations or entities, the Releasees, or the Downstream 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 CAG or SEB/the Releasees/the Downstream Releasees may have against one another in any other

pending legal proceeding as to allegations unrelated to the Dispute or the Released Claims released herein.

2.0 Releases.

2.1. CAG's Release of SEB, Releasees and Downstream Releasees.

2.1.1. Upon execution of this Settlement Agreement, and for and in consideration of the promises, commitments and undertakings set forth in this Agreement, , CAG and all of its successors, members, assigns and attorneys ("Releasing Parties") hereby release SEB and each of their owners, parents, subsidiaries, affiliated corporations or entities, sister and related companies, employees, representatives, shareholders, members, officers, directors, agents, insurers, attorneys, accountants, principals, predecessors, successors, and assigns (collectively "Releasees"), and (b) all entities, including but not limited to, persons, partnerships, corporations or other entity to whom Releasees directly or indirectly provide, distribute, ship and/or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees and their owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, attorneys, accountants, agents, principals, predecessors, successors and assigns including Rowenta Werke GmbH; T.J.Maxx; The TJX Companies, Inc.; TJ Maxx of CA, LLC.; The TJX Operating Companies, Inc. (collectively "Downstream Releasees"), from and against all actions, causes of action, claims, suits, debts, damages, judgments, liabilities, and demands whatsoever arising from the Notice and the Covered Products and any claims relating to the Listed Chemical in the Covered Products sold on or before the Effective Date including

but not limited to any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, or could have been 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 in connection with the Covered Products manufactured, imported, shipped, and/or otherwise sold/or distributed prior to the Effective Date, even if sold, imported or distributed by Downstream Releasees after the Effective Date (the “Released Claims”). To the extent necessary, Releasees and Downstream Releasees shall be deemed third party beneficiaries of the Settlement Agreement. The Covered Products are limited to those sold by SEB either directly or through the Downstream Releasees.

2.1.2 CAG, its past and current agents, principals, representatives, affiliates, 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), including the claims or allegations contained in the Notice or compromising the Dispute, 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 sold up to the Effective Date against Releasees and/or Downstream Releasees only to the extent that such Released 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. It is intended by the Parties that the releases provided in this Agreement shall prevent CAG from asserting any Released Claims against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law, to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical in the Covered Products or any failure by Releasees and/or Downstream Releasees to warn about alleged exposures to the listed Chemical in the Covered Products.

2.1.3. 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 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, principals, 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 § 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. However, the releases 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 Consideration

3.1 Product Reformulation Commitment.

3.1.1 SEB agrees, promises, and represents that after the Effective Date of this Settlement Agreement SEB shall reformulate any Covered Products manufactured after the Effective Date that are offered for sale in the State of California to a point where the level of DINP in the Covered Products does not exceed 0.1%.

3.2 Warning.


3.2.1 SEB agrees, promises, and represents that after the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that have not been reformulated to the State of California 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 either of the following two warnings shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that remain under SEB's possession and control after the Effective Date, that have not been reformulated and that were distributed and/or sold by SEB, the Releasees or the Downstream Releasees in California after the Effective Date:

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

or

7

Settlement Agreement Between Consumer Advocacy Group, Inc.
And
Groupe SEB USA

 **WARNING:** Cancer www.P65Warnings.ca.gov.

3.2.2. Previously Distributed Covered Products. The Parties agree that that no further notification to SEB, SEB customers, the Releasees or Downstream Releasees is required.

4.0 Payments

4.1 SEB agrees, to pay a total of sixty-four thousand dollars (\$64,000) within fifteen (15) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Civil Payment to OEHHA: SEB shall issue two separate checks for a total amount of twenty-four thousand dollars (\$24,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of eighteen thousand dollars, (\$18,000), representing 75% of the total civil payment to the OEHHA; and (b) one check to Consumer Advocacy Group, Inc. in the amount of six thousand dollars (\$6,000), representing 25% of the total civil payment to the OEHHA. 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: Within one day of the effective date of this agreement CAG shall provide SEB with tax identification numbers for all 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 \$18,000. The second 1099 shall be issued in the amount of \$6,000 to CAG and delivered to Yeroushalmi & Yeroushalmi,

9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs. Forty thousand dollars (\$40,000) 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 SEB'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 SEB 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 and the Releasing Parties to this Settlement Agreement.

5.2 SEB represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind SEB 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, SEB, the Releasees and Downstream Releasees identified in Section 2 above.

11.0 No Assignment or Transfer of Action

12.1 Each Party represents and warrants that: (i) it owns the Released Claims released hereby; (ii) no other person or entity has any interested in such Released Claims; (iii) it has not sold, assigned, conveyed or otherwise transferred any such Released Claim, or any other Released Claim or demand against any person or entity released hereby; and (iv) it has the sole right to settle and release such Released Claims. CAG and each of its counsel, including the undersigned from Yeroushalmi & Yeroushalmi, represent and warrant that they have no knowledge of any Released Claims held by anyone against SEB, the Releasees, or the Downstream Releasees that are not otherwise released hereby.

12.0 Enforcement of Settlement Agreement

12.1 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 SEB, Releasees or Downstream Releasees by CAG unless the Party seeking enforcement or alleging violation notifies the other Party of the specific future acts alleged to breach this Settlement Agreement at least ninety (90) days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to respond within thirty (30) days of receiving the notification. Any notice to SEB, Releasees and/or Downstream Releasees must contain (a) the name of the product, (b) specific dates when the product was distributed or sold by SEB in the State of California after the Effective Date without either reformulation or a Proposition 65 complaint warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice. The Parties shall negotiate in good faith in an attempt to resolve any disputes in relation thereto and will, if necessary, submit all disputes to a mutually agreeable mediator. If the Parties are unable to reach a mutually acceptable resolution, either Party may seek court enforcement of compliance with this Agreement.

12.2 Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon ten (10) days written notice by CAG to SEB of the alleged breach in accordance with the notification requirements set forth in Section 13.0, below. In case of an enforcement action, the prevailing party shall

be entitled to its reasonable attorneys' fees and costs associated with such enforcement.
Otherwise, each party shall bear its own costs and attorney's fees.

13.0 Notification Requirements

13.1 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 and electronic mail, to the following designees:

For CAG:

Reuben Yeroushalmi, Esq.
YEROUSHALMI & YEROUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212
reuben@yeroushalmi.com

For SEB: Groupe SEB
5 Wood Hollow Rd. - 2nd Floor
Parsippany NJ 07054 - USA
smerino@groupeseb.com

With a copy to their counsel:

Kimberly Arouh
Natalie N. Peled
BUCHANAN INGERSOLL & ROONEY LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101
natalie.peled@bipc.com
kimberly.arouh@bipc.com

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 SEB 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.


PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS ARISING OUT OF THE COVERED PRODUCTS CONTAINING THE LISTED CHEMICAL.

CONSUMER ADVOCACY GROUP, INC.

Dated: 09/15/20 By: Michael J. Marcus
Printed Name: Michael Marcus
Title: Director

GROUPE SEB USA

Dated: 09/15/2020

By: 


Printed Name: ARNAUD SALLIOT

Title: EVP Treasury and Finance

APPROVED AS TO FORM AND CONTENT, AND AGREED. WHERE APPLICABLE

YEROUSHALMI and YEROUSHALMI

Dated: 9/15/2020

By: 

Printed Name: Reuben Yeroushalmi

Title: Firm Principal

APPROVED AS TO FORM AND CONTENT

BUCHANAN, INGERSOLL & ROONEY LLP

Dated: 9/15/20

By: 

Printed Name: Kimberly Arouh

Title: Attorney / Shareholder