

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
ROBELY TRADING, INC.

1. INTRODUCTION

1.1 Parties

Consumer Advocacy Group, Inc. ("CAG") and Robely Trading, Inc. (hereto referred to as "Robely"), (CAG and Robely 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 Robely violated the California Safe Drinking Water and Toxic Enforcement Act (Cal. Health & Safety Code § 25249.5, et seq. ("Proposition 65")). 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 Products Description

Robely previously sold, at various times, Sink Suction Cup Caddies including but not limited to "AQ;" "SINK SUCTION CADDY;" "WWW.ROBELY.COM;" "MADE IN CHINA;" "ST-7320-CAD;" "0 66518 29073 9;" (Caddies are collectively referred to throughout as the "Covered Products"). The Covered Products are limited to those sold by Robely only.

1.3 General Allegations

1.3.1 CAG alleges that Covered Products contain Di-n-butyl Phthalate (“DBP”), and that Robely 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”)).

1.3.2 On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State to cause developmental, and 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” which is further described below.

1.3.3 DBP is referred to hereafter as the “Listed Chemical”.

1.4 Notice of Violation

1.4.1 On or about May 14, 2020 (Attorney General Notice # 2020-01227), CAG served, Robely Trading Inc., Robely Corporation, Homegoods, Inc., and The TJX Companies, 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 Chemical.

1.4.2 The Sixty-Day Notices (referred to as “Notices”) alleged that Robely 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.

1.4.3 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").

1.5 No Admission

1.5.1 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 Robely, 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 Robely may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

1.6 Effective Date

1.6.1 The effective date of this Settlement Agreement shall be the date of full execution of this Settlement Agreement by the Parties (the "Effective Date").

2. INJUNCTIVE RELIEF: REFORMULATION/WARNING

2.1 Reformulation Commitment

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

2.2 Proposition 65 Warning Requirements on existing inventory

2.2.1 Robely agrees, promises, and represents that, as of 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 the below warning language stating that:

⚠ WARNING: This product can expose you to chemicals including Di-n-butyl Phthalate ("DBP"), which is known to the State of California to cause developmental and reproductive harm. For more information go to 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.

2.2.2 The same warning shall be posted on any websites where the Covered Products are sold in California. Such warning labels 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 after the Effective Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

3.1.1 Robely agrees, to pay a total of Sixty Thousand dollars (\$60,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

3.1.2 Robely shall issue two separate checks for a total amount of Twelve Thousand dollars (\$12,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of Nine Thousand dollars, (\$9,000), representing 75% of the total penalty; and (b) one check made payable to Consumer Advocacy Group, Inc. in the amount of Three Thousand dollars (\$3,000), 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 \$9,000. The second 1099 shall be issued in the amount

of \$3,000 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

3.2 Attorneys' Fees and Costs

Forty-Eight Thousand dollars (\$48,000) 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 Robely'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 Robely with its Employer Identification Number.

4. APPLICATION OF SETTLEMENT AGREEMENT

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees identified in Section 5 below.

5. CLAIMS COVERED AND RELEASED

Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 3.0, above, upon five (5) days written notice by CAG to Robely of the alleged breach in accordance with the notification requirements set forth in Section 8.0, below. In case of any enforcement action, the prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

5.1 CAG's Release of Robely

5.1.1 This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between CAG, on its own behalf, and Robely of any violation of Proposition 65 that was or could have been asserted by CAG, on its own behalf, on behalf of

its past and current agents, representatives, attorneys, successors and assignees, against Robely and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, ("Releasees"), and each entity to whom Robely directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, downstream wholesalers, customers, retailers,(including but not limited to TJX Companies, Inc. its parents, subsidiaries, and affiliated entities), franchisees, cooperative members and licensees ("Downstream Releasees"), based on the failure to warn about exposures to DBP required under Proposition 65 in the Products manufactured, sold or distributed for sale in California by Robely and/or the Releasees before the Effective Date, as alleged in the Notice. The release is limited to Covered Products sold by Robely, only.

5.1.2 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.

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 3.0 are paid in full.

5.2 Robely's Release of CAG

Robely, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against CAG and its attorneys and other representatives, for any and all actions taken or statements made by CAG and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. SEVERABILITY

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.

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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, then Robely 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.

8. NOTIFICATION REQUIREMENTS

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 Robely Trading, Inc.:
Paul S. Rosenlund
Duane Morris LLP
One Market Plaza, Spear Tower, Suite 2200
San Francisco, CA 94920
psrosenlund@duanemorris.com

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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.

10. REPORT OF THE SETTLEMENT AGREEMENT TO THE OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA

CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

11. MODIFICATION OF SETTLEMENT AGREEMENT

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

12. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by both Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party by virtue of its participation in the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

13. 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 any of the Parties.

14. AUTHORIZATION

CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

Robely represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Robely to this Settlement Agreement.

CONSUMER ADVOCACY GROUP, INC.

Dated: 9/30/22

By: Michael Marcus

Printed Name: Michael Marcus

Title: Director

ROBELY TRADING, INC.

Dated: 09/30/2022

By: 

Printed Name: DANIEL GABAY

Title: DIRECTOR OF SALES AND SOURCING