

# SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

INTERNATIONAL COFFEE & TEA, LLC

Consumer Advocacy Group, Inc. (“CAG”), on behalf of itself and suing in the public interest pursuant to Health and Safety Code section 25249.7, subdivision (d) and International Coffee & Tea, LLC (“Coffee Bean”) enter into this agreement (“Settlement Agreement”) to settle the case entitled *Consumer Advocacy Group, Inc. v. International Coffee & Tea, LLC, et al.*, filed on December 18, 2008, and pending in the Superior Court of California for the County of Los Angeles, Case No. BC404051 (the “Lawsuit”), with respect to Coffee Bean, as follows:

## **1.0 Introduction**

1.1 CAG and Coffee Bean (“Parties”) enter into this Settlement Agreement to settle disputed claims between the Parties as set forth hereafter.

1.2 The Lawsuit alleges violations of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code §25249.5, *et seq.*) (“Proposition 65”). Coffee Bean denies the material allegations of the Lawsuit, and denies liability for the cause of action alleged in the complaint, and in connection with the Lawsuit.

1.3 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, including, but not limited to, any admission concerning the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. 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 Coffee Bean, its officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the cause of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or

impair any right, remedy, argument, or defense that CAG and Coffee Bean may have against one another in any other pending or future legal proceeding.

## **2.0 Release**

2.1 Upon court approval of the settlement between the Parties, entry of a Consent Judgment adopting the terms of this Settlement Agreement, and execution of the obligations under this Settlement Agreement, CAG fully releases and forever discharges Coffee Bean, its related affiliates, its customers (as it relates only to the product(s) which is subject of the Lawsuit), predecessors, successors, and assigns and all officers, directors, and employees of any of the released entities (collectively, "Released Parties") from all known and unknown rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out of the facts and claims alleged in the Lawsuit. Without limiting the foregoing, the Parties intend the scope of this release to cover all Claims Covered (as defined in Section 3 below) as to the Released Parties put in controversy by the Lawsuit.

2.2 CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG acknowledges that the claims released in section 2.1 above may include unknown claims and waives Section 1542 as to any such unknown claims. 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.

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

## **3.0 Claims Covered**

3.1 This Settlement Agreement is a final and binding resolution between CAG and the Released Parties of the following claims and causes of action:

All Proposition 65 claims that were or could have been asserted in the Lawsuit arising from allegations that the Released Parties exposed, knowingly and intentionally, its customers, employees, business invitees, vendors, visitors, and

other members of the public to tobacco smoke and its constituent chemicals,<sup>1,2</sup> chemicals designated by the State to cause cancer and/or reproductive toxicity, at its The Coffee Bean and Teal Leaf® stores throughout California that have an outdoor seating area adjacent to the store, wherein the smoking of tobacco and tobacco products is not expressly prohibited, without first giving clear and reasonable warning of such to persons exposed up to the effective date of this Settlement Agreement.

#### **4.0 Defendant's Duties**

4.1 Coffee Bean agrees, promises, represents, and warrants that within 120 days from the date of approval of this Settlement Agreement, to ban smoking at 60% of its stores with outdoor areas under its ownership or control in less urbanized and suburban areas (67 locations) and to post warnings at the remaining 40% of its stores (39 locations primarily in Los Angeles and Hollywood).

At those 67 locations where smoking will be banned, Coffee Bean agrees, subject to landlord approval, to post a placard stating "NO SMOKING" on the wall of each patio at each of these locations within 120 days from the date of approval of this Settlement Agreement.

As to the 39 store locations where warnings are to be posted, provided Coffee Bean is able to obtain landlord approval, Coffee Bean agrees to post a reasonable number of (but in no event more than three (3) signs per location) Proposition 65-compliant warnings reasonably visible by an average customer within 120 days of the date of approval of this Settlement Agreement. These warnings shall state:

"WARNING: This area contains tobacco smoke, which is a chemical known to the State of California to cause cancer, birth defects or other reproductive harm."

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<sup>1</sup> Constituent Chemicals known to the State to cause cancer found at *Cal. Code Regs. 27 § 27001(b)*: 1, 1 - Dimethylhydrazine (UDMH); 1,3-Butadiene; 1-Naphthylamine; 2-Naphthylamine; 2-Nitropropane; 4-Aminobiphenyl (4-amino-diphenyl); 7H-Dibenzo[c,g]carbazole; Acetaldehyde; Acetamide; Acrylonitrile; Aniline; Arsenic (inorganic arsenic compounds); Benz[a]anthracene; Benzene; Benzo[a]pyrene; Benzo[b]fluoranthene; Benzo[j]fluoranthene; Benzo[k]fluoranthene; Cadmium; Captan; Chromium (hexavalent compounds); Chrysene; Dibenz[a,h]acridine; Dibenz[a,h]anthracene; Dibenz[a,j]acridine; Dibenzo[a,e]pyrene; Dibenzo[a,h]pyrene; Dibenzo[a,i]pyrene; Dibenzo[a,l]pyrene; Dichlorodiphenyltrichloroethane (DDT); Formaldehyde (gas); Hydrazine; Lead and lead compounds; Nickel and certain nickel compounds; N-Nitrosodiethanolamine; N-Nitrosodiethylamine; N-Nitrosodi-n-butylamine; N-Nitrosomethylethylamine; N-Nitrosomorpholine; N-Nitrosopiperidine; N-Nitrosopyrrolidine; ortho-Anisidine; ortho-Toluidine; Urethane (Ethyl carbamate)

<sup>2</sup> Constituent chemicals known to the State to cause reproductive toxicity found at *Cal. Code Regs. 27 § 27001(c)*: Carbon disulfide; Carbon monoxide; 1,3-Butadiene; Benzene; Cadmium; Lead; Nicotine; Urethane;

All warnings or smoking ban placards are to be placed in areas where they will be conspicuously displayed such that they will be likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

If Coffee Bean is unable to obtain landlord approval despite its commercially reasonable efforts it will not be obligated to enforce the requirements of section 4.1 at the respective locations for which approval was denied.

4.2 Coffee Bean agrees to make five of its locations (listed below) smoke-free on or before March 1, 2009, by banning smoking and placing a placard, subject to landlord approval, stating "NO SMOKING" on the wall of each patio at each of these locations. These five locations are to be considered within the 67 locations at which smoking will be banned. These stores are located at:

1. 950 Westwood Boulevard, Westwood, California 90024
2. 1500 Westwood Boulevard, Los Angeles, California 90024
3. 10401 Santa Monica Boulevard, Los Angeles, California 90025
4. 8793 Beverly Boulevard, West Hollywood, California 90048
5. 300 South La Cienega Boulevard, Los Angeles, California 90048

## **5.0 Payments**

5.1 Payment in Lieu of Civil Penalties. Within fifteen days of the approval of the settlement, Coffee Bean shall pay CAG, incorporated for the purpose of furthering environmental causes, \$12,000.00. Payment shall be to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and purposes related to environmental protection, worker health and safety, or reduction of human exposure to hazardous substances (including administrative and product testing costs arising from such projects), as CAG may choose. CAG shall provide its address and federal tax identification number to Coffee Bean prior to such payment.

5.2 Payment to Yeroushalmi & Associates. Coffee Bean shall pay CAG \$38,000.00 for its attorney fees and costs incurred in this matter. The check shall be to "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the payment of attorney fees and costs, and that the payment and any application or distribution of such payment will not violate any agreement between CAG and its attorneys. CAG releases and agrees to hold harmless the Released Parties with regard to any issue concerning the allocation or distribution of the amount paid under this section. Yeroushalmi & Associates shall provide its

address and federal tax identification number to Coffee Bean prior to such payment.

5.3 Timing of Payments. The payments described above shall be made in full to their respective recipients within fifteen (15) business days of the Court-ordered approval of this Settlement Agreement.

## **6.0 Authority to Enter Into Settlement Agreement**

6.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. Coffee Bean represents that its signatory to this Settlement Agreement has full authority to enter into this Settlement Agreement on behalf of Coffee Bean.

## **7.0 Attorney General Review**

7.1 Consistent with section 3003(a) of Title 11 of the California Code of Regulations, CAG shall submit this Settlement Agreement to the Attorney General's Office for review within five days of the Parties' execution of this Settlement Agreement.

7.2 Following submittal to the Attorney General, the Parties shall proceed as set forth in this Settlement Agreement.

## **8.0 Execution in Counterparts and Facsimile**

8.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or electronic signature shall be as valid as the original.

## **9.0 Entry of Judgment Pursuant to Settlement Agreement Required**

9.1 CAG shall submit this Settlement Agreement to the Court for consideration as required by Health and Safety Code section 25249.7, subdivision (f)(4). CAG will provide the Court with the necessary information to allow the Court to make the findings required by Health and Safety Code section 25249.7, subdivision (f)(4)(A)-(C).

9.2 The Parties obligations pursuant to this Settlement Agreement are contingent on the Court's entry of the Consent Judgment and approval of this Settlement Agreement. If the Court does not enter the Consent Judgment and

approve this Settlement Agreement, the Settlement Agreement is not enforceable against the Parties.

**10.0 Entire Agreement**

10.1 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.

**11.0 Modification of Settlement Agreement**

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

**12.0 Application of Settlement Agreement**

12.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Released Parties identified in Section 2.1 above.

**13.0 Notification Requirements**

13.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:  
Reuben Yeroushalmi  
Yeroushalmi & Associates  
3700 Wilshire Blvd.  
Suite 480  
Los Angeles, CA 90010  
Fax: 213.382.3430

For Coffee Bean:  
Cori Lynn Connell, Esq.  
The Coffee Bean & Tea Leaf  
1945 So. La Cienega Blvd.  
Los Angeles CA 90034

With copy to:  
Mark E. Elliott, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
725 S Figueroa St., St #2800  
Fax: (213) 629-1033

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

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CONSUMER ADVOCACY GROUP, INC.

Dated: \_\_\_\_\_

By:   
INTERNATIONAL COFFEE & TEA, LLC

As to form only:

*Its: Chief Administrative  
Officer*

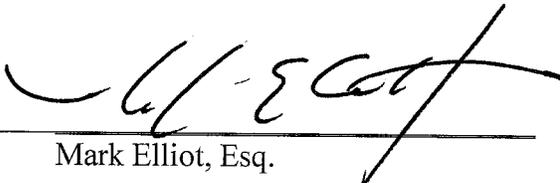
YEROUSHALMI & ASSOCIATES

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Reuben Yeroushalmi

PILLSBURY WINTHROP SHAW PITTMAN

Dated: 2/20/09

By:   
Mark Elliot, Esq.

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

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CONSUMER ADVOCACY GROUP, INC.

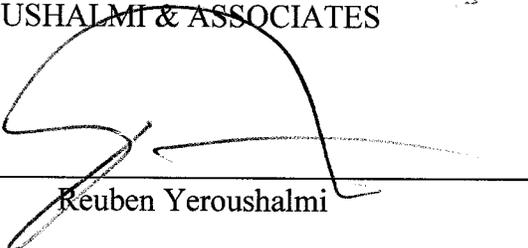
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
INTERNATIONAL COFFEE & TEA, LLC

As to form only:

YEROUSHALMI & ASSOCIATES

Dated: 07/30/09

By:   
Reuben Yeroushalmi

PILLSBURY WINTHROP SHAW PITTMAN

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Elliot, Esq.

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

Dated: 07/29/09 By: *L. J. Marans, Pres*  
CONSUMER ADVOCACY GROUP, INC.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
INTERNATIONAL COFFEE & TEA, LLC

As to form only:

YEROUSHALMI & ASSOCIATES

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Reuben Yeroushalmi

PILLSBURY WINTHROP SHAW PITTMAN

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Mark Elliot, Esq.