

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
ALMAR SALES CO., INC.

Consumer Advocacy Group, Inc., on behalf of itself ("CAG"), and Almar Sales Co., Inc. ("ALMAR") (collectively, the "Parties") enter into this agreement ("Settlement Agreement") to settle CAG's allegations that ALMAR violated Proposition 65 for the purpose of avoiding prolonged and costly litigation. The effective date of this 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** ALMAR sold the product "**EXPRESSIONS® Key Chain Purse**" (referred to throughout as the "Covered Product").
- 1.3** CAG alleges that the Covered Product contains Lead and that ALMAR 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")). On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity, developmental, female, male, and on October 1, 1992, the Governor added lead and lead components to the list of chemicals known to the State to cause cancer. Both 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.”

1.4 CAG alleges that the Covered Product contains **Di (2-ethylhexyl) phthalate (DEHP)**, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and that ALMAR 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”)). 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 male reproductive toxicity. Both 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.” Lead and lead compound, and DEHP are referred to hereafter as the “Listed Chemicals.”

1.5 On or about June 15, 2011, CAG served ALMAR 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” (“Notice”). The Notice alleged that ALMAR violated Proposition 65 by failing to warn consumers in California that use of the Covered Product exposes persons to Lead and Lead Compounds.

1.6 On or about August 26, 2011, CAG served ALMAR 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”

("Notice"). The Notice alleged that ALMAR violated Proposition 65 by failing to warn consumers in California that use of the Covered Product exposes persons to DEHP.

1.7 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Covered Product's compliance with Proposition 65 (the "Dispute").

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

**2.0 Release**

This Agreement is a full, final, and binding resolution between CAG, acting on behalf of itself, and ALMAR, its owners, subsidiaries, affiliates, sister and related companies, employees, shareholders, directors, insurers, attorneys, successors, and assigns ("Releasees"), and all entities

to whom they directly or indirectly distribute or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Releasees") of any violation 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 the failure to warn about exposure to the Listed Chemicals arising in connection with Covered Product manufactured and/or shipped prior to the Effective Date even if sold by Downstream Releasees after the Effective Date. ALMAR's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Product for both Releasees and Downstream Releasees for Covered Product distributed and/or sold by ALMAR after the Effective Date.

CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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 Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemicals, or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals, contained in the Covered Products.

It is intended by the Parties that the releases provided in this Paragraph 2.0 shall prevent CAG from asserting any 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 Chemicals or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals in the Covered Product.

CAG also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, 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 Releasees and Downstream Releasees arising under Proposition 65, only to the extent that such claims relate to Releasees' alleged exposure of persons to the Listed Chemicals in the Covered Product, and the failure to warn about exposures to the Listed Chemicals contained in the Covered Product sold by Releasees and/or Downstream Releasees through the Effective Date of this Settlement Agreement. CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

CAG, 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 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.

**3.0 ALMAR's Duties**

3.1 ALMAR agrees, promises, and represents that upon execution of this Settlement Agreement, they will cease sale of the Covered Product in California, unless the Covered Product is reformulated to a point where the Covered Product contains less than 100 ppm of Lead AND less than 0.1% DEHP.

**4.0 Payments**

4.1 Within ten business (10) days after the Effective Date, ALMAR shall pay a total of thirty-four thousand dollars (\$34,000) by separate checks apportioned as follows:

4.1.1 Payment to CAG: five thousand dollars (\$5,000.00) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. CAG shall provide its address and federal tax identification number to ALMAR prior to such payment.

4.1.2 Attorneys' Fees and Costs: twenty-eight thousand dollars (\$28,000.00) of such payment shall be paid to Yeroushalmi & Associates, 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 ALMAR's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California

90212. Yeroushalmi & Associates shall provide its address and federal tax identification number to ALMAR prior to such payment.

**4.1.3 Penalty:** ALMAR shall issue two separate checks for a total amount of one thousand dollars (\$1,000.00) as penalties pursuant to Health & Safety Code § 25192: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHHA) in the amount of \$750.00, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750.00. The second 1099 shall be issued in the amount of \$250.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

**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 this Settlement Agreement on behalf of CAG and to bind legally CAG.

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

**6.0 Report to Attorney General**

**6.1** Consistent with section 3003, subdivision (a) of Title 11 of the California Code of Regulations, 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 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 and the Releasees and Downstream Releasees identified in Section 2 above.

**11.0 Enforcement of Settlement Agreement**

11.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, 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.

11.2 No action to enforce this Settlement Agreement may be commenced, and no notice of violation related to the Covered Product may be served or filed against ALMAR

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 90 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 11.3 below. Any notice to ALMAR must contain (a) the name of the product, (b) specific dates when the product was sold in California without a Proposition 65 compliant 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.

11.3 Within 30 days of receiving the notice described in Section 11.2, ALMAR shall either (1) withdraw the product for sale to the public, (2) refute the information provided under Section 11.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

**12.0 Notification Requirements**

12.1 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  
9100 Wilshire Boulevard, Suite 610 E  
Beverly Hills, CA 90212  
Fax: 310.623.1930

For ALMAR:

Ken Levine  
Senior V.P./ CFO  
Almar Sales Company  
320 Fifth Avenue

3rd Floor  
New York, N.Y. 10001  
Fax: 212.564.1097

Any party may change its designee(s) for purposes of notification by providing 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 Chemicals and/or the Covered Product, then ALMAR 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.

**15.0 COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

CONSUMER ADVOCACY GROUP, INC.

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

By:   
Lyn Marcus, President

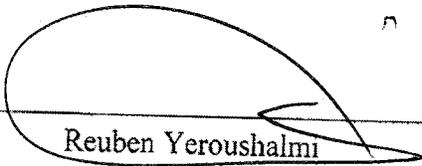
ALMAR SALES CO., INC.

Dated: Feb. 27, 2012

By:   
Name: Kenneth Levine  
Title: CFO

AS TO FORM ONLY:

Dated: 2/27/12

By:   
Reuben Yeroushalmi  
Attorneys for  
Consumer Advocacy Group, Inc.

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attorneys for,  
ALMAR SALES CO., INC.