

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**CONSUMER ADVOCACY GROUP, INC.**  
**AND**  
**FOREVER 21, INC.**

Consumer Advocacy Group, Inc. (“CAG”) and Forever 21, Inc. (“FOREVER 21”), (CAG and FOREVER 21 collectively referred to as the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that FOREVER 21 violated Proposition 65 and to avoid prolonged, costly and uncertain litigation. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by both 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 FOREVER 21 is a California-based retailer of fashionable clothing and accessories for men, women and teenage girls.

1.3 FOREVER 21 previously sold, at various times, Sunglasses (referred to throughout as the “Covered Products”). The Covered Products are only limited to those sold by FOREVER 21.

1.4 CAG alleges that Covered Products contain Diethyl Hexyl Phthalate, also known as Bis (2-ethylhexyl) phthalate, (DEHP), and that FOREVER 21 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”)).

1.5 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. 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.

1.6 DEHP is referred to hereafter as the "Listed Chemical."

1.7 On or about April 4, 2013, CAG served FOREVER 21 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" ("Notice"). The Notice alleged that Covered Products sold in California by FOREVER 21 violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to the Listed Chemical.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth herein concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

## 2.0 No Admissions

2.1 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 FOREVER 21, 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 FOREVER 21 may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

### 3.0 Release

3.1 This Settlement Agreement is a full, final, and binding resolution between CAG, on the one hand, and FOREVER 21, and its employees, shareholders, officers, directors, insurers, attorneys, licensors, predecessors, successors, and assigns (collectively "Releasees"), on the other hand, of any violation or claimed violation of Proposition 65 or any statutory or common law claim that has been or could have been asserted against the Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical but arising only in connection with the Covered Products manufactured, distributed and/or sold or offered for sale prior to the Effective Date by FOREVER 21. The Covered Products are only limited to those sold or offered for sale by FOREVER 21. FOREVER 21's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for Releasees for any Covered Products distributed and/or sold or offered for sale by Releasees after the Effective Date.

3.2 CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive and release 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 that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted, only to the extent that such claims relate to Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

3.3 It is intended by the Parties that the releases provided in this Paragraph 3.0 shall prevent CAG from asserting any Claims against Releasees that arise under Proposition 65 or any other statutory or common law, to the extent that such claims relate to Releasees' alleged

exposure of persons to the Listed Chemical or any failure by Releasees to warn about exposures to the Listed Chemical in the Covered Products.

3.4 CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, provide 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 arising under Proposition 65, only to the extent that such claims relate to Releasees' alleged exposure of persons to the Listed Chemical in the Covered Products, and the failure to warn about exposures to the Listed Chemical contained in the Covered Products sold by 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 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.

3.5 CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waive and relinquish any and all rights and benefits which they 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.

#### 4.0 FOREVER 21's Duties

4.1 FOREVER 21 agrees, promises, and represents that as of the Effective Date of this Settlement Agreement, it will only sell or offer for sale Covered Products in California as to which the level of DEHP in the Covered Products does not exceed 0.1% (1,000 parts per million). Forever 21 agrees, promises, and represents that, as of the Effective Date, to

the extent it ships any Covered Products in inventory that have not been reformulated, it will provide warnings 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 a warning stating that "This product contains chemicals known to the State of California to cause cancer, or birth defects, or other reproductive harm" shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in inventory that had not been reformulated and were distributed and/or sold by Releasees after the Effective Date.

## 5.0 Payments

5.1 FOREVER 21 agrees, to pay a total of fifty-two thousand dollars (\$52,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

5.1.1 Payment to CAG: Thirteen thousand dollars (\$13,000.00) 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. By the Effective Date, CAG shall provide FOREVER 21 with CAG's Employer Identification Number.

5.1.2 Attorneys' Fees and Costs: Thirty-eight thousand dollars (\$38,000.00) 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 FOREVER 21's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide FOREVER 21 with its Employer Identification Number.

5.1.3 Penalty: FOREVER 21 shall issue two separate checks for a total amount of one thousand dollars (\$1,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental

Health Hazard Assessment (OEHHA) in the amount of seven hundred and fifty dollars (\$750.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of two hundred and fifty dollars (\$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 OEHHA, 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: Yerousalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

#### 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 and legally bind CAG to this Settlement Agreement.

6.2 FOREVER 21 represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind FOREVER 21 to this Settlement Agreement.

#### 7.0 Report of the Settlement Agreement to the Office of the Attorney General Of California:

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

#### 8.0 Post Execution Conversion to Consent Judgment

8.1 Within twelve (12) months of the execution of this Settlement Agreement, FOREVER 21 may request in writing that CAG draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, CAG and FOREVER 21 agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

9.0 Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, FOREVER 21 agrees to reimburse CAG and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to Section 8 of this Agreement in an amount not to exceed \$25,000.00, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from CAG's counsel for work performed under this section, FOREVER 21 agrees to remit payment to the address provided in Section 4.

#### 10.0 Execution in Counterparts and Facsimile

10.1 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.

#### 11.0 Modification of Settlement Agreement

11.1 Any modification to this Settlement Agreement shall be in writing and signed 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, CAG and the Releasees and Downstream Releasees identified in Section 3 above.

#### 13.0 Enforcement of Settlement Agreement

13.1 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 13.2 and 13.3 of this Settlement Agreement, to 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.

13.2 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 FOREVER 21 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 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 13.3 below. Any notice to FOREVER 21 must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or 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.

13.3 Within 30 days of receiving the notice described in Section 13.2, FOREVER 21 shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to FOREVER 21 for full credit, including shipping costs, or (2) refute the information provided under Section 13.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 13.1.

#### 14.0 Notification Requirements

14.1 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, to the following designees:

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90212

For FOREVER 21:

John J. Allen  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
515 South Figueroa Street, 9th Floor  
Los Angeles, CA 90071-3398

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

#### 15.0 Severability

15.1 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.

#### 16.0 Governing Law

16.1 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 FOREVER 21 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.

CONSUMER ADVOCACY GROUP, INC.

Dated: 10-22-13

By:   
Printed Name: Mabel Sassoon  
Title: executive director

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

FOREVER 21, INC.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSUMER ADVOCACY GROUP, INC.

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

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

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

Title: \_\_\_\_\_

Dated: 11/22/2013

FOREVER 21, INC.

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

Printed Name: YOUNG KWON

Title: V.P. & GENERAL COUNSEL