

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

FRANKLIN FINANCIAL MANAGEMENT, LLC dba UPDATE INTERNATIONAL

Consumer Advocacy Group, Inc. (“CAG”), on the one hand, and Franklin Financial Management, LLC dba Update International (collectively, "Franklin Financial"), on the other hand, enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Franklin Financial Management, Inc. dba Update International violated Proposition 65. CAG and Franklin Financial may be referred to individually as “Party” or collectively as “Parties.” The effective date of this Settlement Agreement shall be the date upon which it is fully executed by both CAG and Franklin Financial (the “Effective Date”).

WHEREAS, on or about May 12, 2014, CAG filed a civil action in the Los Angeles County Superior Court (BC545398) naming Franklin Financial Management, Inc. dba Update International as a defendant.

WHEREAS, Franklin Financial Management, Inc. dba Update International became a wholly owned subsidiary of Franklin Financial Holdings, Inc.

WHEREAS, on or about October 10, 2014, Franklin Financial Management, Inc. dba Update International converted into a California limited liability company with the name “Franklin Financial Management, LLC.”

WHEREAS, on or about October 16, 2014, Franklin Financial Holdings, Inc. sold

all the issued and outstanding membership interests of Franklin Financial Management, LLC.

WHEREAS, on or about March 23, 2015, CAG dismissed the action as to Franklin Financial Management, Inc. dba Update International only.

NOW, THEREFORE, in consideration of the promises made herein, the adequacy of which is hereby acknowledged, and subject to review and objection by the Attorney General, the Parties hereby agree as follows:

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 CAG alleges that Franklin Financial Management, Inc. dba Update International previously provided, manufactured, shipped, sold and/or otherwise distributed, at various times, Rectangle Fry Basket Press with Green Coated Plastic Handle, including but not limited to Rectangle Fry Basket Press with Green Coated Plastic Handle (FB-PRS) and Rectangle Fry Basket Press with Green Coated Plastic Handle, Item 170015 (“Covered Products”), which contain Di (2-ethylhexyl) phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate and that Franklin Financial Management, Inc. dba Update International did not provide required warnings 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 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.

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

1.5 The Covered Products are limited to those provided, manufactured, shipped, sold and/or otherwise distributed by Franklin Financial or Franklin Financial Management, Inc. dba Update International...

1.6 On or about October 31, 2013 CAG served Update International 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.

1.7 The Sixty-Day Notices (referred to as the “Notices”) alleged that Update International 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.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties concerning the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.9 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 Franklin Financial, their respective officers, directors, employees, shareholders, members, or parents, subsidiaries, predecessors, 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 the Parties may have against one another in any pending legal proceeding or Proposition 65 matter as to allegations unrelated to the Dispute, Covered Products, or claims released herein.

2.0 Release

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and (a) Franklin Financial, and its respective owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members(including, but not limited to, Crown Brands, LLC), officers, directors, insurers, attorneys, predecessors (including, but not limited to, Franklin Financial Management, Inc. and Update

International), successors, and assigns, and Franklin Financial Holdings, Inc. (collectively “Releasees”) and (b) all entities to whom Releasees directly or indirectly provided, distributed, or sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees, and Concord Equipment Co. (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding Covered Products provided, manufactured, shipped, sold and/or otherwise distributed through the Effective Date, even if sold by Downstream Releasees after the Effective Date.

2.2 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 provided, manufactured, shipped, sold and/or otherwise distributed by the Releasees through the Effective Date, even if sold by Downstream Releasees after the Effective Date, including without limitation 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/or 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 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, 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 the payments set forth in Section 4.0 below is paid in full.

3.0 Franklin Financial's Duties

3.1 Subject to Section 3.2, Franklin Financial promises and represents that within sixty (60) days from the Effective Date Covered Products will not be provided, manufactured, shipped, sold and/or otherwise distributed in California

by Franklin Financial unless the Covered Products are reformulated to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight or 1000 parts per million.

3.2 Franklin Financial individually agrees, promises, and represents that, as of the Effective Date, to the extent any Covered Products in Franklin Financial's existing inventory that have not been reformulated to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight or 1000 parts per million are provided, shipped, sold and/or otherwise distributed in California by Franklin Financial, Franklin Financial will provide warnings for such Covered Products that comply with Proposition 65. The warnings shall be provided in such a conspicuous and prominent manner that they 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 Covered Products labeling stating: "WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm" shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products in existing inventory that had not been reformulated and are provided, shipped, sold and/or otherwise distributed by Releasees or Downstream Releasees after the Effective Date in California.

4.0 Payments

4.1 Because of extensive settlement negotiations and extensive discovery, the payments will be as follows. Franklin Financial agrees to pay a total of third-

eight thousand dollars (\$38,000.00) within thirty (30) days of the Effective Date by separate checks apportioned as follows:

4.1.2 Attorneys' Fees and Costs: Thirty-two thousand dollars (\$32,000.00) 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 Franklin Financial's attention. The check shall be delivered by Franklin Financial to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide Franklin Financial Management, LLC dba Update International with its Employer Identification Number.

4.1.3 Penalty: Franklin Financial shall issue two separate checks for a total amount of six-thousand (\$6,000.00) 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 four-thousand five hundred dollars (\$4,500.00) representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of one-thousand five hundred (\$1,500.00), representing 25% of the total penalty. Both checks shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 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 95184 (EIN: 68-0284486) in the amount of \$4,500.00. The second 1099 shall be issued in the amount of \$1,500.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, 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 and legally bind CAG to this Settlement Agreement.

5.2 Franklin Financial represents that its respective signatory to this Settlement Agreement has full authority to enter into and legally bind it 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 Party or Parties to be bound.

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, 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.

11.2 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 unless the Party notifies the other Party of its specific act(s) alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notice(s) of Violation and the Party fails to comply with the requirements set forth in Section 11.3 below. Any notice concerning Covered Products alleged not to comply with Section 3.0 must contain (a) the name of the Covered Products, (b) specific dates when the Covered Products were sold after

the Effective Date in California without reformulation or a warning, (c) the store or other place at which the Covered Products were available for sale to consumers, (d) the alleged breach of the Settlement Agreement, and (e) any other evidence or other support for the allegations in the notice.

11.3 Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 11.1, subject to the following: within 30 days of receiving the notice described in Section 11.2 concerning Covered Products alleged not to comply with Section 3.0, Franklin Financial shall either (1) send the store or other place at which the Covered Products were available for sale to the public a letter directing that the offending Covered Products be immediately removed from inventory and returned for full credit, including shipping costs, or (2) refute the information provided under Section 11.2. CAG shall not seek relief under Section 11.1 if Franklin Financial sends a letter as detailed in this section 11.3.

12.0 Notification Requirements

12.1 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, Esq.
YEROUSHALMI & YEROUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

For Franklin Financial Management, Inc.:

Mark A. Love
SELMAN BREITMAN LLP
6 Hutton Centre Drive, Suite 1100
Santa Ana, CA 92707

For Franklin Financial Management, LLC dba Update International:

John R. Valencia
WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP
400 Capitol Mall, Twenty-Second Floor
Sacramento, California 95814

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 (or any portion of any provision) of this Settlement Agreement are held by a court to be unenforceable, the validity of the balance of such provision and the remaining provisions shall not be adversely affected thereby.

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 amended, repealed, preempted or is otherwise rendered inapplicable, Franklin Financial shall provide written notice to CAG of any asserted change in the law, and Franklin Financial 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 Fees and Costs

15.1 Except as otherwise provided at Section 4, each Party hereto shall bear its own costs and expenses, including, without limitation, attorneys' fees, incurred in connection with this Settlement Agreement and the transactions contemplated hereby.

CONSUMER ADVOCACY GROUP, INC.

Dated: 9-16-15


By: 

Printed Name: MICHEL SASSOON

Title: EXECUTIVE DIRECTOR

FRANKLIN FINANCIAL MANAGEMENT, LLC dba
UPDATE INTERNATIONAL

Dated: 9/16/2015

By: 

Printed Name: MARTIN D. WILSON

Title: CFO