

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Mark Moorberg ("Moorberg") and Franmara, Inc. ("Franmara"), collectively referred to herein as "Parties". Moorberg is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Franmara is a Corporation, incorporated under the laws of California.

1.2 General Allegations. Moorberg alleges that that Franmara is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11, and that Franmara manufactures, distributes and/or sells totes and shot glasses containing Di(2-ethylhexyl)phthalate ("DEHP") and lead including, but not limited to, the Fortezza Wine Bottle Totes and Franmara Professional Shot Glasses (collectively "Products"). Moorberg also alleges that Franmara violated the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.6, et seq. ("Proposition 65"), by knowingly and intentionally exposing California consumers to DEHP and lead, which Moorberg alleges escapes from Products, leading to human exposures.

1.3 Notice of Violation. Moorberg served Franmara and the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation," dated May 21, 2014, ("Notice") that provided the recipients with notice of the alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers and users in the State of California that Products expose users to DEHP and lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.¹

1.4 No Admission. Franmara denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold in the State of California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an

¹ Pursuant to Proposition 65, DEHP is listed as a chemical known to cause birth defects and other reproductive harm, and lead is listed as a chemical that is known to the State of California to cause birth defects and other reproductive harm. DEHP and lead are subject to the "clear and reasonable warning" requirements of Proposition 65. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8, 25249.10(b).

admission by Franmara of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Franmara of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Franmara. This paragraph shall not, however, diminish or otherwise affect Franmara's obligations, responsibilities, and duties under this Settlement Agreement.

1.5 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 15, 2014.

2. INJUNCTIVE RELIEF

2.1 Reformulation Commitment. Commencing on November 1, 2014, Franmara shall manufacture, import, ship, sell, and distribute for sale in California only wine bottle totes and shot glasses that contain no greater than 1000 ppm of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580 and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining the presence, and measure the quantity of DEHP, and a maximum of 100 parts per million (ppm) lead content in any accessible component (i.e., any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yields a result of no more than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol ("Reformulated Products").

2.2 Current Inventory. Any Products in, or manufactured and en route to, Franmara's inventory as of the Effective Date, that do not qualify as Reformulated Products, or that Franmara has reason to believe may be sold or distributed for sale in California, shall contain a clear and reasonable warning.

2.3 Product Warnings/Labeling. The following warning, as appropriate, when measuring 3" x 5", with no less than 12 point font, affixed to the packaging, labeling, or directly on each Product, shall constitute a clear and reasonable warning, in compliance with paragraph 2.2 of this Settlement Agreement:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm, and lead, a chemical known to the state of California to cause birth defects and other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Franmara shall pay the civil penalties described herein, and each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to Moorberg, as follows:

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Franmara shall make an initial civil penalty payment of \$6,000.00. Franmara shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$4,500.00; and (b) "Mark Moorberg, Client Trust Account" in the amount of \$1,500.00.

3.1.2 Final Civil Penalty. On or before December 15, 2014, Franmara will make a final civil penalty payment of \$10,000.00. Pursuant to California Code of Regulations, title 11, section 3203(c), \$5,000.00 of the final civil penalty payment will be waived if, no later than December 15, 2014, an officer of Franmara certifies in writing to Moorberg's counsel that, as of the date of the certification, and into the future, it shall only manufacture or import for distribution or sale in California or cause to be manufactured or imported for distribution or sale in California, Products that qualify as Reformulated Products. An additional \$5,000.00 of the final civil penalty payment will be waived if, no later than December 1, 2014, an officer of Franmara certifies in writing to Moorberg's counsel that, as of the date of the certification Franmara has complied with the requirements of paragraph 2.2 of this Agreement. The option to make the certifications in compliance with this paragraph 3.1.2 constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Moorberg and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Franmara shall reimburse Moorberg and his counsel \$30,000.00 for the fees and costs incurred in investigating, bringing this matter to the attention of Franmara's management, and negotiating a settlement in the public interest. Within five days of the Effective Date, Franmara shall provide payment in the form of a check made payable to "Moscone Emblidge Sater & Otis LLP in Trust."

3.3 Payment Procedures. Payments are to be delivered according to the following

paragraphs.

3.3.1 Payment Address for Moorberg. All payments to Moorberg and his counsel under this Settlement Agreement are to be delivered to the following address:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

3.3.2 Payment Addresses for OEHHA. All payments to OEHHA under this Settlement Agreement will be delivered directly to OEHHA (memo line: "Prop. 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. Franmara agrees to provide Moorberg's counsel with a copy of each check payable to OEHHA, simultaneous with its penalty payments to Moorberg, to be delivered to the address provided in paragraph 3.3.1.

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg's Release of Franmara. This Settlement Agreement is a full, final, and binding resolution between Moorberg and Franmara of any violation of Proposition 65 that was or could have been asserted by Moorberg, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Franmara, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Franmara directly or

indirectly distributes or sells the Products, including, without limitation, Beverages & More, Inc., its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on unwarned exposures to DEHP and lead in Products manufactured, sold or distributed for sale in California by Releasees prior to the Effective Date. In further consideration of the promises and agreements herein contained, Moorberg, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Franmara, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP and lead from Products manufactured, sold, or distributed for sale in California by Franmara prior to the Effective Date.

4.2 Franmara's Release of Moorberg. Franmara, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, assignees and Releasees, hereby waives any and all claims that it may have against Moorberg and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Moorberg and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it and the Releasees in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Franmara may provide written notice to Moorberg of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to

relieve Franmara or any Releasees from any obligation to comply with any pertinent state or federal law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Franmara:

Bruce Nye, Esq.
Adams Nye Becht, LLP
222 Kearny Street, 7th Fl.
San Francisco, CA 94108

For Moorberg:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. POST-EXECUTION ACTIVITIES

Moorberg agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

10. ENFORCEMENT

This Settlement Agreement is enforceable pursuant to Code of Civil Procedure section 664.6.

11. 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 any and all prior discussions,

negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

12. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 11.13.14

Date: _____

FRANMARA, INC.

By:  _____
Mark Moorberg

By: _____
Name: _____
Title: _____

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The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

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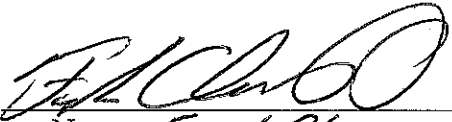
AGREED TO:

Date: _____

Date: 11-18-2014

By: _____
Mark Moorberg

FRANMARA, INC.

By: 
Name: Frank Chiorozzi
Title: President