

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

Consumer Advocacy Group, Inc. (“CAG”) and Almar Sales Company, Inc. (“Almar”), CAG and Almar enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Almar violated Proposition 65 as set forth in CAG’s February 10, 2017 60-day notice. CAG and Almar are collectively referred to herein as the “Parties.” The effective date of this Settlement 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 previously manufactured, imported, distributed, and/or sold, at various times, Children’s Cosmetic Sets, including but not limited to “My Princess Academy”; NET WT/POIDS NET: 0.72 OZ (21g); Princess Cosmetic Set; CONTAINS/COMPRED: 2 LIP BALMS, 2 NAIL POLISHES, 1 LIP GLOSS WITH COMPACT; NET WT/POIDS NET: LIP BALM: 0.28 OZ; NAIL POLISH: 0.34 FL OZ (10.0 ML); LIP GLOSS: 0.1 OZ (3.0 g) © Copyright Almar

Sales Co. New York, NY 10001; My Princess Academy is a registered trademark of: Almar Sales Co., New York, NY 10001; MADE IN CHINA; 024576986827 referred to throughout as the “Covered Products”). The Covered Products are further limited to those manufactured, imported, distributed, and/or sold by Almar in California only.

1.3 CAG alleges that Covered Products contain Diisononyl Phthalate (“DINP”) and Bis (2ethylhexyl) phthalate (“DEHP”), and that Almar did not provide a Proposition 65 warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.4 On December 20, 2013, the Governor of California added DINP to the list of chemicals known to the State to cause cancer. 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 toxicity and male reproductive toxicity.

1.5 DINP and DEHP are referred to hereafter as the “Listed Chemicals”.

1.6 On or about February 10, 2017, CAG served Almar Sales, Co., Inc.; Almar Sales Company, My Princess LLC, Burlington Coat Factory Warehouse Corporation, Burlington Coat Factory Direct Corporation, 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 allegedly containing the Listed Chemicals and sold in California (the “Notice.”)

1.7 CAG’s Notice alleged that Almar and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes California consumers to the Listed Chemicals.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning Almar’s compliance with Proposition 65 with respect to the alleged Listed Chemicals contained in the Covered Products (the “Dispute”).

1.9 Almar denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. By execution of this Settlement Agreement, Almar does not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any actual or alleged 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 Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and; (a) Almar and its current owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees"); and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to My Princess LLC, Burlington Coat Factory Warehouse Corporation and Burlington Coat Factory Direct Corporation distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any other 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 actual or alleged exposures to the Listed Chemicals, or the alleged failure to warn about exposure to the Listed Chemicals arising only in connection with Covered Products manufactured, imported, sold, shipped, and/or otherwise distributed prior to 60 days after the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered

Products are limited to those manufactured, imported, distributed and/or sold by Almar.

CAG, and 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 with respect to any Covered Products manufactured, imported, distributed, and/or sold up through 60 days 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 Chemicals contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals contained in the Covered Products.

CAG acknowledges that it is familiar with Section 1542 of the California 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 California Civil Code Section 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 Settlement Agreement shall have no force or effect until the full amount of payments set forth in Section 4 of this Settlement Agreement are paid in full.

3.0 Almar's Duties

3.1 Almar agrees, promises, and represents that within sixty (60) days after the Effective Date, Almar shall reformulate any Covered Products that it causes to be manufactured for sale in California to a point where the level of either of the Listed Chemicals in the Covered Products does not exceed 0.1% (1,000 parts per million) by weight, or Almar shall cease importing or selling in California any such Covered Products that do not meet this reformulation standard.

3.2 Almar agrees, promises, and represents that, as of the Effective Date, to the extent it ships for sale in California or sells any Covered Products in its existing inventory in California as of that date, if those products have not been reformulated (to the point where the level of each of DINP and DEHP in the Covered Products does not exceed 0.1% by weight), Almar will provide warnings on such Covered Products 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 product labeling stating that "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 Chemicals in the Covered Products for any Covered Products in existing inventory as of the Effective Date that had not been reformulated and are distributed and/or sold in California by Almar, Releasees or Downstream Releasees after the Effective Date.

3.3 Notwithstanding anything in this Settlement Agreement to the contrary, CAG agrees that Almar's compliance with this Settlement Agreement is compliance with Proposition 65 with respect to the Listed Chemicals in Covered Products for itself, the Releasees and Downstream Releasees, as to Covered Products manufactured, imported, distributed, and/or sold by Almar.

4.0 Payments

4.1 In complete resolution of all claims raised or that could have been raised in the Notice as set forth in Section 2 above, Almar agrees to pay a total of forty-four thousand dollars (\$44,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: Almar shall issue two separate checks for a total amount of twelve thousand dollars (\$12,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health

Hazard Assessment (OEHHA) in the amount of nine thousand, (\$9,000), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of three thousand (\$3,000), representing 25% of the total penalty. OEHHA's check shall be delivered to Office of Environmental Health Hazard Assessment P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 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 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) in the amount of \$9,000. The second 1099 shall be issued in the amount of \$3,000 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs: Thirty-two thousand dollars (\$32,000) of such payment shall be paid to Yeroushalmi & Yeroushalmi, 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, and negotiating and finalizing this Settlement Agreement. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Almar with its Employer Identification

Number.

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 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 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 as to the subject matter hereof.

9.0 Modification of Settlement Agreement

9.1 Any modification to this Settlement Agreement shall be in writing and signed 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, Almar, 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 Sections 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 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 specific product; (b) the specific dates when the product was sold after the Effective Date in California without reformulation or a warning; (c)

the California store or other place at which the product was available for sale to consumers; and (d) any other evidence or support for the allegations in the notice.

11.3 Within 30 days of receiving any Notice sent by CAG pursuant to Section 11.2, Almar shall either: (1) send the store at which the product was available for sale to the public in California a certified letter directing that the offending product be immediately removed from sale in California and returned to Almar for full credit, including shipping costs; or (2) refute the information provided in the Notice sent pursuant to Section 11.2. Should Almar send a certified letter confirming removal of the product from sale in California, and provide a copy of said letter to CAG within 30 days of receipt of a noticed alleged violation under this Settlement Agreement, CAG shall take no further action to enforce the terms of this Settlement Agreement or otherwise prosecute the notice of alleged violation of this Settlement Agreement, and Almar shall have no further obligations to CAG, monetary or otherwise. 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 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 & YEROUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

For Almar:

Jack Ashkenazie
Almar Sales Company, Inc.
320 5th Ave.
NY, NY 10001

With copy to:

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell, a Professional Law Corporation
311 California Street
10th Floor
San Francisco, CA 94104

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 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 Products, 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.

CONSUMER ADVOCACY GROUP, INC.

Dated: 8-24-17

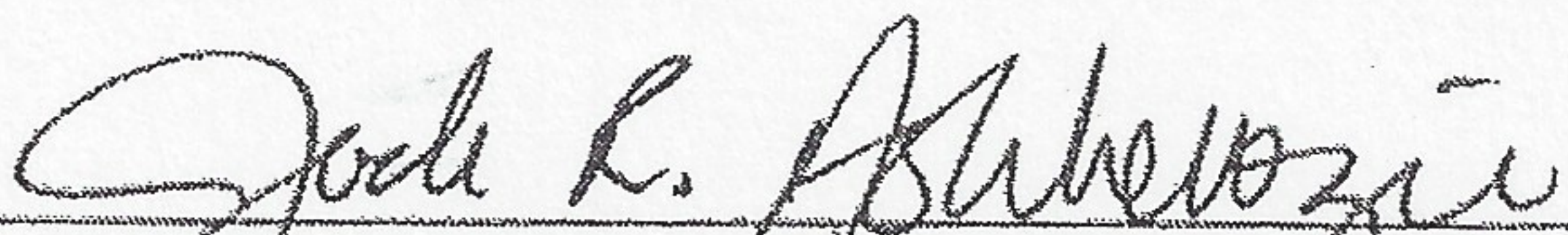
By: 

Printed Name: Michael Sasso

Title: EXECUTIVE DIRECTOR

ALMAR SALES COMPANY, INC.

Dated: August 23, 2017

By: 

Printed Name: JACK Ashkenazi

Title: Exec. V.P.