

# **SETTLEMENT AGREEMENT**

## **BETWEEN**

**CONSUMER ADVOCACY GROUP, INC.**

## **AND**

**ALMAR SALES CO., INC.**

Consumer Advocacy Group, Inc. (“CAG”) and Almar Sales Co., Inc. (“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. CAG and Almar are sometimes individually referred to herein as a “Party,” and collectively 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 in California, at various times two handbags, a sequined heart-shaped handbag, EXP 1087/UPC 1 90425 048562, and a barrel-shaped sequin handbag/carrying case, EXP 1088/UPC 1 90425

048579 (referred to throughout as the "Covered Products"). The Covered Products are limited to those distributed for sale by Almar.

**1.3** CAG alleges that the Covered Products contain 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").

**1.4** On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State of California to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State of California to cause developmental male reproductive toxicity. These additions took place more than twenty (20) months before CAG served its two "Sixty-Day Notices of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" which are further described below.

**1.5** DEHP is referred to hereafter as the "Listed Chemical".

**1.6** On or about February 12, 2019, CAG served Almar with a Proposition 65 60-day notice (Attorney General Notice #2019-00344) alleging that Almar and certain other entities including Party City sold a certain sequined heart-shaped handbag in

California, EXP 1087/UPC 1 90425 048562, allegedly containing DEHP without a warning in alleged violation of Proposition 65.

**1.7** On or about April 5, 2019, CAG served Almar with a Proposition 65 60-day notice (Attorney General Notice #2019-00669) alleging that Almar and certain other entities including Party City sold a certain barrel-shaped sequin handbag in California, EXP 1088/UPC 1 90425 048579, allegedly containing DEHP without a warning in alleged violation of Proposition 65.

**1.8** The Sixty-Day Notices described in paragraphs 1.6 and 1.7 (collectively referred to as the “Notices”) allege that Almar and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products can expose persons to the Listed Chemical.

**1.9** On or about October 3, 2019, CAG filed a lawsuit in Marin County Superior Court captioned *Consumer Advocacy Group, Inc. v. Party City Holdings, Inc.*, et al, Case No. CIV 1903787 (the "Action"). By no later than ten days after receipt of all payments outlined in Paragraph 4 of this Settlement Agreement, CAG agrees to file a request for dismissal of the Action without prejudice as to all defendants in exchange for a waiver of costs from all dismissed defendants

**1.10** This Settlement Agreement only applies to the Covered Products.

**1.11** The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65, including all claims addressed in the Notices (the "Dispute"). Almar expressly maintains that all of the products it sells including the Covered Products comply with all laws and are completely safe for their intended use.

**1.12** 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, 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 herein, including without limitation the allegations in the Notices, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Almar may have in any pending or future legal proceeding.

## **2.0 Release**

This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, and: (a) Almar, and its 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, distributors, wholesalers, customers, retailers (including but not limited to Party City Corporation and its affiliates), franchisees, cooperative members, licensors, and licensees (“Downstream Releasees”), 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 actual or alleged exposures of persons to the Listed Chemical and the actual or alleged failure to warn about exposures to the Listed Chemical arising in connection with Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those manufactured, and/or distributed by Almar.

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 and 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 Covered Products manufactured, distributed, and/or sold by Almar up through the Effective Date 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 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 the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

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 them 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 they may lawfully waive such rights or benefits pertaining to the Covered

Products and/or released matters as set forth in this section. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 below are paid in full.

### **3.0 Almar's Duties**

**3.1** Almar maintains that it no longer sells the Covered Products. To the extent that Almar sells the Covered Products again, Almar agrees, promises, and represents that after the Effective Date Almar shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in California to a point where the level of the Listed Chemical in the Covered Products does not exceed 0.1% by weight (1,000 parts per million ("ppm")).

**3.2** Almar agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that have not been reformulated, it 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.

### **4.0 Payments**

**4.1** To resolve all claims alleged in the Notices and this Settlement Agreement, Almar agrees to pay a total of twenty-five thousand dollars (\$25,000) within ten

(10) days of the Effective Date or of Yeroushalmi & Yeroushalmi providing Almar's counsel with completed form W-9s for the settlement payees, whichever is later. The total \$25,000 settlement payment shall be by separate checks apportioned as follows:

**4.1.1** Penalty: Almar shall issue two separate checks for a total amount of two thousand five hundred dollars (\$2,500.00) in complete resolution of any claim for civil penalties as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of one thousand eight hundred and seventy-five dollars (\$1,875.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of six hundred and twenty five dollars (\$625.00), 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, CA 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 \$1,875.00. The second 1099 shall be issued in the amount of \$625.00 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.



**4.1.2** Attorneys' Fees and Costs: twenty two thousand five hundred dollars (\$22,500.00) of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, in complete resolution of any claim for all investigation fees and costs, attorneys' fees, and any other costs or expenses incurred as a result of investigating and bringing this matter to Almar's attention, and negotiating this Settlement Agreement in the public interest. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 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 one and 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.     Joint Preparation**

9.1     The Parties have jointly participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

#### **10.0 Modification of Settlement Agreement**

**10.1** Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

#### **11.0 Application of Settlement Agreement**

**11.1** 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.

#### **12.0 Enforcement of Settlement Agreement**

**12.1** No party shall bring any action to enforce the monetary or other terms of this Settlement Agreement without first providing five (5) days written notice of the alleged violation and engaging in a good faith meet and confer effort to resolve the dispute. In case of any enforcement action, the prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

#### **13.0 Notification Requirements**

**13.1** 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  
9 J 00 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

**For Almar:**

CEO  
  
Almar Sales Co, Inc,  
  
320 5<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
  
New York, NY 10001

**With Copy to:**

J. Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
311 California Street, 10th Fl.  
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.

**14.0 SEVERABILITY**

**14.1** 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.

**15.0 GOVERNING LAW**

**15.1** 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 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: 6/29/21 By: Michael Marcus

Printed Name: Michael Marcus

Title: Director

**ALMAR SALES CO., INC.**

Dated: 6/16/21 By: Allen R. Ashkenazie

Printed Name: Allen R. Ashkenazie

Title: EVP