

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

TEAM BEANS, LLC DBA FOREVER COLLECTIBLES

Consumer Advocacy Group, Inc. (“CAG”) and Team Beans, LLC dba Forever Collectibles (hereto referred to as “FOREVER COLLECTIBLES”), (CAG and FOREVER COLLECTIBLES collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that FOREVER COLLECTIBLES violated Proposition 65. 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 FOREVER COLLECTIBLES previously sold, at various times, Tote Bags with PVC Components, including but not limited to Clear Tote Bag with Black Lining; “FOCO ®”; “REL0418-00001”; “Forever Collectibles”; “Collegiate Licensed Product”; “UPC 8 87849 32825 6”; “Made in China” (referred to throughout as the “Covered Products”). The Covered Products are limited to those sold by FOREVER COLLECTIBLES.

1.3 CAG alleges that Covered Products contain Di(2-ethylhexyl)phthalate (“DEHP”), and that FOREVER COLLECTIBLES 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 January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the state to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP became fully subject to Proposition 65 warning requirements and discharge prohibitions as to the cancer endpoint.

1.5 On October 24, 2003, the Governor of California added DEHP to the list of chemicals known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65 warning requirements and discharge prohibitions as to the reproductive toxicity endpoint.

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

1.7 On or about July 1, 2020 (Attorney General Notice #AG2020-01670), CAG served FOREVER COLLECTIBLES, Amazon.com, Inc., Amazon.com Services, Inc. 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.

1.8 The Sixty-Day Notice (referred to as “Notice”) alleged that FOREVER COLLECTIBLES 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.

1.9 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 (the “Dispute”).

1.10 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 COLLECTIBLES, its officers, directors, employees, or parents, subsidiaries, affiliated corporations, or downstream retailers 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 COLLECTIBLES 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

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) FOREVER COLLECTIBLES, 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, sell or utilize as an online marketplace or platform for the Covered Products, including but not limited to Amazon.com, Inc. and Amazon.com Services, Inc. and other 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 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 exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to thirty (30) days after

the Effective Date (the “Compliance Date”), even if sold by Releasees or Downstream Releasees after the Compliance 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 with respect to any Covered Products sold up to the Compliance Date, only to the extent that such Claims relate to Releasees’ and/or Downstream Releasees’ alleged exposure of persons in California 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 within California.

2.3 CAG acknowledges that it is familiar with Section 1542 of 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 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 payments set forth in Section 4.0 below are paid in full.

3.0 FOREVER COLLECTIBLES' Duties

3.1 FOREVER COLLECTIBLES agrees, promises, and represents that FOREVER COLLECTIBLES shall reformulate any Covered Products manufactured after the Compliance Date and offered for sale in California to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight.

3.2 FOREVER COLLECTIBLES agrees, promises, and represents that, as of the Compliance Date, to the extent it ships or sells any Covered Products in existing inventory that have not been reformulated within California, it will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in such a conspicuous 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 can expose you to chemicals including Di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause cancer, and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

or

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by Releasees or Downstream Releasees after the Compliance Date.

4.0 Payments

4.1 FOREVER COLLECTIBLES agrees to pay a total of sixty-six thousand dollars (\$66,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: FOREVER COLLECTIBLES shall issue two separate checks for a total amount of twenty-six thousand dollars (\$26,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of nineteen thousand five hundred dollars, (\$19,500), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of six thousand five hundred dollars (\$6,500), 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:

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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 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) in the amount of \$19,500. The second 1099 shall be issued in the amount of \$6,500 to CAG and delivered to Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs: Forty-thousand dollars (\$40,000) 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 COLLECTIBLES's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide FOREVER COLLECTIBLES 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 FOREVER COLLECTIBLES represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind FOREVER COLLECTIBLES to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General of California

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

7.0 Execution in Counterparts and Facsimile

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

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

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

10.0 Application of Settlement Agreement

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 2.1 above.

11.0 Enforcement of Settlement Agreement

Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon five (5) days' written notice by CAG to FOREVER COLLECTIBLES of the alleged breach in accordance with the notification requirements set forth in Section 12.0 below. In case of any enforcement action, the prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

12.0 Notification Requirements

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 FOREVER COLLECTIBLES:

Norm J. Rich
Megan O. Curran
FOLEY & LARDNER LLP
3000 K Street, N.W.
Suite 600
Washington, D.C. 20007-5109

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

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

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 COLLECTIBLES shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

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CONSUMER ADVOCACY GROUP, INC.

Dated: 12/17/20

By: 

Printed Name: Michael Marcus

Title: Director

TEAM BEANS LLC, DBA FOREVER
COLLECTIBLES

Dated: 12/15/2020

By: 

Printed Name: Michael Lewis

Title: President and CEO

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