

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of:)	
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BESTAR, INC.)	CPSC Docket No.: 25-C0001
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”), and 16 C.F.R. § 1118.20, Bestar, Inc. (“Bestar”), and the United States Consumer Product Safety Commission (“Commission” or “CPSC”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Bestar is a corporation, organized and existing under the laws of the province of Québec, Canada, with its principal place of business in Lac-Mégantic, Québec, Canada. Bestar also maintains a manufacturing facility in Jamestown, NY and distribution center in Erie, PA.

STAFF CHARGES

4. Between June 2014 and March 2022, Bestar manufactured and distributed in the United States approximately 129,000 wall beds (the “Subject Products”).

5. The Subject Products are “consumer products” that were “manufactur[ed]” and “distribut[ed] in commerce,” as those terms are defined or used in Sections 3(a)(5), (7), and (10) of the CPSA, 15 U.S.C. § 2052(a)(5), (7), and (10). Bestar is a “manufacturer” and “distributor” of the Subject Products, as such terms are defined in Sections 3(a)(8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(8) and (11).

Violation of CPSA Section 19(a)(4)

6. The Subject Products contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury because the wall beds can detach from the wall and fall onto those nearby, posing a serious impact and crush hazard.

7. Beginning in September 2014 and continuing through 2022, Bestar received numerous reports that the Subject Products had detached from the wall. By 2016, Bestar had received notice of two incidents in which consumers were injured by a falling Subject Product. Bestar engaged with CPSC and Health Canada in response to these two incidents, but did not inform regulators of the additional five incidents it had become aware of by that time.

8. In 2018, a Subject Product detached and fell on top of a consumer, causing injuries which required immediate hospitalization and eventually led to her death later that year, constituting grievous bodily injury, as defined in 16 C.F.R. §1115.12(d).

9. During the relevant timeframe, Bestar continued to accumulate incident information, and by the time Bestar filed its Section 15(b) Full Report with the Commission

under 15 U.S.C. §2064(b), Bestar was aware of at least 35 incidents, including 1 fatality and 15 injuries, some of which were serious.

10. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Bestar did not immediately report to the Commission.

11. The Commission and Bestar jointly announced a recall of the Subject Products on April 7, 2022.

Failure to Timely Report

12. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, Bestar did not notify the Commission immediately of such defect or risk, as required by Sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of Section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

13. Because the information in Bestar's possession about the Subject Products constituted actual and presumed knowledge, Bestar knowingly violated Section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in Section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

14. Pursuant to Section 20 of the CPSA, 15 U.S.C. § 2069, Bestar is subject to civil penalties for its knowing violation of Section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF BESTAR

15. This Agreement does not constitute an admission by Bestar to the allegations set forth in paragraphs 4 through 14, including allegations that Bestar violated any statute or regulation, or knowingly violated the CPSA or CPSIA.

16. At all times, Bestar acted in good faith.

17. Bestar has received no substantiated claims that the Subject Products have fallen or injured consumers when the beds were properly assembled and anchored to the wall.

18. Bestar asserts that the Subject Products do not contain any defect, let alone a defect that could create a substantial product hazard or an unreasonable risk of serious injury or death.

19. Bestar asserts that it timely submitted a report after the 2018 incident in accordance with Section 15(b) of the CPSA, and its implementing regulations, following a reasonable investigation which indicated that despite robust instructions and warnings, the Subject Products may pose a risk of injury if improperly installed.

AGREEMENT OF THE PARTIES

20. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and Bestar.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Bestar or a determination by the Commission that Bestar violated the CPSA.

22. In settlement of staff's allegations, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Bestar shall pay a civil penalty in the amount of sixteen million, twenty-five thousand dollars (\$16,025,000)

(“Total Civil Penalty Amount”). In reliance on the accuracy, truthfulness, and completeness of Bestar’s representations and the documentation referenced below in paragraph 23, the Commission agrees to suspend all but four million dollars (\$4,000,000) of the Total Civil Penalty Amount (“\$4,000,000 Payment”), on the terms and conditions set forth in this Agreement. The \$4,000,000 Payment shall be paid in six total installments. The first installment, one million dollars (\$1,000,000), shall be paid within thirty (30) calendar days after Bestar receives service of the Commission’s Final Order accepting the Agreement. The remaining three million dollars (\$3,000,000) shall be paid in installments annually on the following schedule: five hundred thousand dollars (\$500,000) one (1) year from the date of final acceptance; five hundred thousand dollars (\$500,000) two (2) years from the date of final acceptance; five hundred thousand dollars (\$500,000) three (3) years from the date of final acceptance; five hundred thousand dollars (\$500,000) four (4) years from the date of final acceptance; one million dollars (\$1,000,000) five (5) years from the date of final acceptance. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Bestar under this Agreement. Failure to make any payment by the dates specified in this paragraph shall constitute “Default,” making the Total Civil Penalty Amount, plus any accrued and unpaid interest minus any penalty amounts paid by Bestar, immediately due and payable.

23. The Commission’s agreement to suspend part of the Total Civil Penalty Amount is expressly premised upon Bestar’s representations that the following financial documents, communications, and representations provided by Bestar do not contain any untrue statement of

a material fact or omit any material fact necessary in order to make the statement therein, true, accurate, and not misleading:

- (i) the sworn Affidavit of Luc Mongeau (attached as Exhibit A to the Agreement) signed on October 17, 2024; and
- (ii) the Audited Financial Statements, documentation on the industry outlook and Bestar's decline in sales, and the Credit Forbearance Letter of Bestar, submitted to Commission counsel Serena Anand on June 19, 2024 and September 26, 2024 (collectively, "Bestar's Representations").

24. If Bestar failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in Bestar's Representations, or if Bestar fails to make a payment ordered pursuant to this agreement within the agreed upon time frame, the suspension of the Total Civil Penalty Amount shall be lifted, and the entire \$16,025,000 Total Civil Penalty Amount shall become immediately due and payable.

25. The Commission or the United States may seek enforcement for any breach of, or any failure to comply with, any provision of this Agreement and Order in United States District Court, to seek relief including, but not limited to, lifting the suspension of the Total Civil Penalty Amount and collecting amounts due.

26. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Bestar to the United States, and interest shall accrue and be paid by Bestar at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Bestar shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at

its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Bestar agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Bestar shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

27. After staff receives this Agreement executed on behalf of Bestar, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

28. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Bestar, and (ii) the date of issuance of the Final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

29. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Bestar and (2) the date of issuance of the Final Order, for good and valuable consideration, Bestar hereby expressly and irrevocably

waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

- (i) an administrative or judicial hearing;
- (ii) judicial review or other challenge or contest of the Commission's actions;
- (iii) a determination by the Commission of whether Bestar failed to comply with the CPSA and the underlying regulations;
- (iv) a statement of findings of fact and conclusions of law; and
- (v) any claims under the Equal Access to Justice Act.

30. Bestar shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by Bestar, which shall contain the following elements:

- (i) written standards, policies and procedures concerning products sold by Bestar in the United States, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
- (ii) procedures and systems for tracking and reviewing claims, including warranty claims and reports for safety concerns, and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- (iii) procedures requiring that information required to be disclosed by Bestar to the Commission is recorded, processed, and reported in accordance with applicable law;

- (iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;
- (v) procedures requiring that immediate disclosure is made to Bestar's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Bestar's ability to record, process and report to the Commission in accordance with applicable law;
- (vi) mechanisms to effectively communicate to all applicable Bestar employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;
- (vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (viii) Bestar's senior management responsibility for CPSA compliance including the implementation of steps to ensure that incident and injury data is reviewed and analyzed for purposes of CPSA Section 15(b) reporting;
- (ix) for at least three (3) years, an annual internal audit of the effectiveness of policies, procedures, systems, and training related to CPSA compliance that evaluates opportunities for improvement, deficiencies or weaknesses, and the Firm's overall culture of compliance; and
- (x) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

31. Bestar shall submit a report under CPSA Section 16(b), sworn to under penalty of perjury:

- (i) describing in detail its compliance program and internal controls and the actions Bestar has taken to comply with each subparagraph of paragraph 30;
- (ii) affirming that during the reporting period Bestar has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (i) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 30, or describing in detail any non-compliance with any such subparagraph; and
- (iii) identifying the results of the annual internal audit referenced in paragraph 30(ix) and any changes or modifications made during the reporting period to the Bestar's compliance program or internal controls to ensure compliance with the terms of the CPSA and, in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance and Field Operations, Division of Enforcement and Litigation, for a period of three (3) years beginning 12 months after the Commission's Final Order of acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter. Without limitation, Bestar acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA.

32. Notwithstanding and in addition to the above, Bestar shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. Bestar shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate Bestar's compliance with the terms of the Agreement.

33. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

34. Bestar represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of Bestar, enforceable against Bestar in accordance with its terms.

35. The signatories represent that they are duly authorized to execute this Agreement.

36. The Agreement is governed by the laws of the United States.

37. The Agreement and the Order shall apply to, and be binding upon, Bestar and each of successors, transferees, and assigns; and a violation of the Agreement or Order may subject Bestar, and each of successors, transferees, and assigns, to appropriate legal action.

38. The Agreement, any attachments, and the Order constitute the complete agreement between the parties on the subject matter contained therein.

39. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and

the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.


40. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

41. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Bestar agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

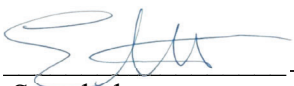
(Signatures on next page)

BESTAR, INC.

Dated: October 17, 2024

By:  _____
Luc Mongeau
Bestar, Inc.
President

Dated: October 17, 2024

By:  _____
Erik Swanholt
Foley & Lardner LLP
Counsel to Bestar, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary B. Murphy, Director
Gregory M. Reyes, Supervisory Attorney

Dated: October 18, 2024

By:  _____
Serena Anand, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____))
In the Matter of:))
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BESTAR, INC.) CPSC Docket No.: 25-C0001
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ORDER

Upon consideration of the Settlement Agreement entered into between Bestar, Inc. (“Bestar”) and the U.S. Consumer Product Safety Commission (“Commission” or “CPSC”), and the Commission having jurisdiction over the subject matter and over Bestar it appearing that the Settlement Agreement is in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and provisional Order issued on the 12th day of November, 2024.

BY ORDER OF THE COMMISSION:

ALBERTA MILLS Digitally signed by ALBERTA MILLS
Date: 2024.11.12 16:09:48 -05'00'

Alberta E. Mills, Secretary
U.S. Consumer Product Safety Commission

AFFIDAVIT OF LUC MONGEAU, PRESIDENT OF BESTAR, INC.

I, the undersigned, swear and affirm that I am employed by Bestar, Inc. (“Bestar”), that I hold the position indicated below, and, by reason of my position, I am authorized and qualified to make the following statements. All capitalized terms not defined in this affidavit shall have the meanings given to them in the Settlement Agreement between Bestar and the U.S. Consumer Product Safety Commission (“CPSC”) dated the same date, of which this affidavit is a part:

1. I have reviewed Bestar’s financial statements and other documents identified in paragraph 23 of the Settlement Agreement, and they are complete, accurate and current, and fairly represent the financial conditions of Bestar as of the dates, and for the periods, indicated therein.
2. To my knowledge and belief, Bestar has provided all available documents and information responsive to the CPSC’s requests.
3. To my knowledge and belief, the information provided by Bestar to the CPSC does not, as of the date of the Settlement Agreement, and did not, at the time provided to the CPSC, contain any untrue statement of a material fact or omit any material fact necessary in order to make the statement therein, in light of the circumstances under which they were made, not misleading.
4. Bestar has insufficient cash or other liquid assets to satisfy a civil penalty payment in excess of \$4,000,000. Bestar is wholly owned by shareholders who will not infuse additional capital into the company, and who are under no obligation to do so.
5. As of December 31, 2023, Bestar breached certain loan covenants based on its financial ratios and was in Default under the terms of its Credit Agreement. Bestar has provided copies of the Tolerance Letter entered into between Bestar and its lenders to CPSC staff. As a result of this breach, Bestar has been unable to obtain additional funding from its

existing lenders and was operating under a “Tolerance Period” while in Default. Since then, Bestar has been cooperating with its lenders to continue operations while it works toward a long-term solution for its dire financial condition.

6. Bestar has attempted to obtain funding from unaffiliated third-parties but has been unable to secure such funding. To my knowledge, Bestar has provided copies of these documents and communications to CPSC staff.
7. Any civil penalty payment by Bestar in excess of \$4,000,000, would cause Bestar significant financial hardship and compel Bestar to cease operations as an ongoing business.

I declare under penalty of perjury that the foregoing is true and correct to my knowledge and belief. I understand that any intentional false statement in this declaration may be a criminal offense under 18 U.S.C. § 1001.

Executed on October 17, 2024

Signed by: 

Luc Mongeau

President, Bestar, Inc.