

# 2012 BCSECCOM 424

## Settlement Agreement

### Berkeley Coffee & Tea, Inc. and Sean Tan

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Berkeley Coffee & Tea, Inc (Berkeley), and Sean Tan (Tan) agree as follows:

#### **Agreed Statement of Facts**

##### ***Background***

1. Berkeley was incorporated in Nevada on March 27, 2009. The corporate registered offices are in Nevada and the principal executive offices are in Shanghai, China.
2. Berkeley filed a prospectus with the SEC in January, 2011, for an offering of up to a maximum of \$500,000 US.
3. Berkeley has never filed a prospectus in British Columbia and is an OTC reporting issuer (as defined in Multilateral Instrument 51-105 – *Issuers Quoted in the U.S. Over-the-Counter Markets*) in British Columbia.
4. Sean Tan is a resident of British Columbia. Tan is the President, Chief Executive Officer and a director of Berkeley.

##### ***Illegal Distribution***

5. On April 1, 2011, Berkeley distributed shares to 59 persons, for total proceeds of \$484,590 (US \$500,000). 44 investors were from BC, 11 from Alberta, 2 from Hong Kong and one from the US.
6. Another individual was responsible for soliciting 45 of the 59 investors in the distribution of Berkeley shares.
7. Every investor was provided with a copy of the prospectus and subscription agreement filed with the SEC.
8. On May 6, 2011, Berkeley filed a Report of Exempt Distribution with the Commission, claiming an exemption under section 2.5 (the family, friends and close business associates exemption) of National Instrument 45-106 – *Prospectus and Registration Exemptions*. Most of the investors did not qualify for the exemption.

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9. Berkeley and Tan distributed securities without having filed a prospectus, contrary to section 61 of the Act.
10. Tan, as the sole director of Berkeley at the time of the distributions, authorized, permitted or acquiesced in Berkeley's contraventions of section 61 of the Act, and therefore contravened the same provisions under section 168.2 of the Act.

### *Mitigating Factors*

11. Berkeley and Tan have cooperated fully with Commission.
12. Berkeley and Tan have no prior regulatory history with the Commission.

### *Public Interest*

13. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

### *Undertaking*

14. Tan undertakes to pay \$10,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.

### **Order**

- ¶ 2 The Executive Director will issue an order (the Order) that:
1. under section 161(1)(a) of the Act, that Berkeley and Tan comply fully with the Act, the Securities Rules, and any applicable regulations;
  2. under section 161(1)(d)(i) and (ii) of the Act, Tan is prohibited from becoming or acting as a director or officer of any issuer until the later of:
    - (a) three years from the date of the Order; and
    - (b) the date Tan has successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers,

except that Tan may remain a director and officer of Berkeley and its wholly owned subsidiary, DTS8 Holdings Co., Ltd.

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3. under section 161(1)(d)(v) of the Act, Tan is prohibited from engaging in investor relations activities until the later of:
  - (a) three years from the date of the Order; and
  - (b) the date Tan has successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers.

except that Tan may engage in investor relations activities in respect of Berkeley and its wholly owned subsidiary, DTS8 Holdings Co., Ltd.

4. under section 172 of the Act, any future capital raising activities by Berkeley in British Columbia must be done through an exempt market dealer or registrant.

### **Consent to Regulatory Orders**

- ¶ 3 Berkeley and Tan consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 2 above.

### **Waiver**

- ¶ 4 Berkeley and Tan waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review, or appeal related to, in connection with, or incidental to this settlement.

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### Counterpart

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 November 9, 2012

¶ 7 Sean Tan  
**Berkeley Coffee and Tea Inc.**  
(Signing Authority)

Connie Zhao )  
Witness Signature )  
Connie Zhao )  
Witness Name (please print) )  
2976 E. 7<sup>th</sup> Avenue )  
)  
Vancouver, B.C. )  
Address )  
Insurance Agent )  
Occupation )

¶ 8 Sean Tan  
**Sean Tan**

Connie Zhao )  
Witness Signature )  
Connie Zhao )  
Witness Name (please print) )  
2976 E. 7<sup>th</sup> Avenue )  
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Vancouver, B.C. )  
Address )  
Insurance Agent )  
Occupation )

¶ 9 November 13th, 2012

Paul Bourque

¶ 10 Paul C. Bourque, Q.C.  
Executive Director