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FILED

Superior Court of California
County of San Francisco

SEP 12 2019

CLERK OF THE COURT

BY: Russell H. Humpal
Deputy Clerk

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12 **CENTER FOR ADVANCED PUBLIC**
13 **AWARENESS, INC., in the public interest,**

14 **Plaintiff,**

15 **vs.**

16 **MADE FOR RETAIL, INC., a Minnesota**
17 **Corporation; and DOES 1 through 50,**
18 **inclusive,**

19 **Defendants.**

Case Number: CGC-19-575495

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

**Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health and Safety Code § 25249.5 et
seq.)**

Date: September 12, 2019

Time: 9:30 a.m.

Dept.: 302

Judge: Honorable Ethan P. Schulman

Reservation No.: 07230912-11

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[PROPOSED] JUDGMENT

1 Plaintiff Center for Advanced Public Awareness, Inc., and defendant Made for Retail, Inc.
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a stipulated judgment ("Consent judgment"), and
4 following this Court's issuance of an order approving their Proposition 65 settlement and Consent
5 Judgment, and for good cause being shown,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
8 judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto
9 as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of
10 the Consent Judgment under Code of Civil Procedure section 664.6.

11
12 **IT IS SO ORDERED.**

13
14 Dated: Sept. 12, 2019
15



HONORABLE JUDGE OF THE SUPERIOR
COURT

ETHAN P. SCHULMAN

EXHIBIT 1

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF SAN FRANCISCO**

9 **CENTER FOR ADVANCED PUBLIC**
10 **AWARENESS, in the public interest.**

11 **Plaintiff,**

12 **vs,**

13 **MADE FOR RETAIL, INC., a Minnesota**
14 **Corporation; and DOES 1 through 50,**
15 **inclusive,**

16 **Defendants.**

Case Number: CGC-19-575495

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

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1. INTRODUCTION

1.1. Center for Advanced Public Awareness and Made for Retail, Inc.

This Consent Judgment is entered into by and between plaintiff the Center for Advanced Public Awareness ("CAPA" or "Plaintiff") and defendant Made for Retail, Inc. ("Made for Retail") with Made for Retail and CAPA each individually referred to as a "Party" and collectively as the "Parties."

1.2. Plaintiff

CAPA is a not-for profit corporation duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.3. Defendant

Plaintiff alleges Made for Retail employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.4. General Allegations

CAPA alleges that Made for Retail has manufactured, sold, and/or distributed for sale in California, certain products described more specifically below containing Di-(2-ethylhexyl) phthalate ("DEHP"), a chemical listed by the State of California under Proposition 65, without providing a required Proposition 65 warning. DEHP shall be referred to hereinafter as the "Listed Chemical."

1.5. Product Description

The products covered by this Consent Judgment are the Made for Retail Flasks, which are imported, sold and/or distributed for sale in California by Made for Retail with UPC No: 810655083576 and SKU# 234020385 ("Covered Products").

1.6. Notice of Violation

On October 15, 2018, CAPA served Made for Retail, Target Corporation ("Target") and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging

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2 that Made for Retail violated Proposition 65. The Notice alleged that Made for Retail failed to
3 warn its customers and consumers in California that the Covered Products contain DEHP.

4 **1.7. Complaint**

5 On April 25, 2019, Plaintiff, who was and is acting in the interest of the general public in
6 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
7 County of San Francisco against Made for Retail and Does 1 through 50, alleging violations of
8 Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in the
9 Covered Products sold by Made for Retail.

10 **1.8. No Admission**

11 The Parties enter into this Settlement Agreement as a full and final settlement of all claims
12 that were raised or that could have been raised in the Notice, arising out of the facts and/or
13 conduct alleged therein. Made for Retail denies the material, factual and legal allegations
14 contained in CAPA's Notice and the Complaint and maintains that all Covered Products that
15 they have sold and distributed in California have been and are in compliance with all applicable
16 laws, and are completely safe for their intended use. Nothing in this Consent Judgment shall be
17 construed as an admission by Made for Retail of any fact, finding, conclusion, issue of law, or
18 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
19 an admission by Made for Retail of any fact, finding, conclusion, issue of law, or violation of
20 law, such being specifically denied by Made for Retail. However, this section shall not diminish
21 or otherwise affect Made for Retail's obligations, responsibilities, and duties hereunder.

22 **1.9. Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has
24 jurisdiction over Made for Retail as to the allegations contained in the Complaint; (2) that venue
25 is proper in the County of San Francisco; and (3) that this Court has jurisdiction to enter and
26 enforce the provisions of this Consent Judgment.

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2 **1.10. Effective Date**

3 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
4 which the Court approves this Consent Judgment, which shall include any unopposed tentative
5 ruling granting approval of this Consent Judgment.

6 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

7 **2.1. Reformulation Standard and Schedule**

8 Commencing on the Effective Date, and continuing thereafter, Covered Products that are
9 imported, manufactured and/or sold or offered for sale or purchase for sale in or into California,
10 shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning
11 requirements with respect to DEHP if they meet the standard of "Reformulated Products."
12 "Reformulated Products" shall mean Covered Products with accessible components containing
13 less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when
14 analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C,
15 CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the
16 purpose of determining DEHP content in a solid substance.

17 **2.2. Warning Option**

18 Covered Products that do not meet the warning exemption standard set forth in Section 2.1
19 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall
20 only be required as to Covered Products that Defendant manufactures, sells or ships to
21 consumers, retailers, or distributors located in California after 60 days from the Effective Date.
22 No Proposition 65 warning for DEHP shall be required as to any Covered Products that are
23 already in the stream of commerce as of the Effective Date.

24 **2.3. Warning Language**

25 Commencing on the Effective Date, Made for Retail shall ensure that any unreformulated
26 Covered Products that it ships to California retailers or for sale in California includes a clear and
27 reasonable warning. The warning shall be affixed to the packaging or labeling using language
28 similar to the warnings below:

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3 **Δ WARNING:** This product can expose you to chemicals including Di-(2-ethylhexyl),
4 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.

5 OR

6 **Δ [California Proposition 65] WARNING:** Cancer and Reproductive Harm -
 www.P65Warnings.ca.gov.

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8 The warning shall be prominently displayed with such conspicuousness as compared with
9 other words, statements, designs, or devices as to render it likely to be read and understood by an
10 ordinary individual under customary conditions before purchase or use. Each warning shall be
11 provided in a manner such that the consumer or user is reasonably likely to understand to which
12 the specific Product the warning applies, so as to minimize the risk of consumer confusion. In the
13 event that the Office of Environmental Health Hazard Assessment promulgates one or more
14 regulations requiring or permitting warning text and/or methods of transmission different than
15 those set forth above, Made for Retail shall be entitled to use, at its discretion, such other warning
16 text and/or methods of transmission without being deemed in breach of this Agreement.

16 **2.4. Accessible Component**

17 The term "Accessible Component" shall mean any component of the Covered Product that
18 could be touched by a person during reasonably foreseeable use.

19 **3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

20 Made for Retail shall pay a civil penalty of \$3,000, to be apportioned in accordance with
21 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
22 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
23 remaining 25% of the penalty remitted to CAPA. Made for Retail shall issue two separate checks
24 for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the
25 State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA")
26 in the amount of \$2,250, representing 75% of the initial civil penalty and (b) one check to
27 "Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.," in the amount
28 of \$750, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the
 above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA

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2 95814 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who
3 shall furnish a W2 at least five calendar days before payment is due.

4 The payments shall be delivered CAPA's counsel at the following address within ten days
5 of the Effective Date of this Consent:

6 James Kawahito, Esq.
7 Kawahito Law Group APC
8 222 N. Pacific Coast Hwy., Suite 2222
9 El Segundo, CA 90245

4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS

10 The Parties acknowledge that CAPA and its counsel offered to resolve this dispute
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
12 any fee reimbursement issue to be resolved after the material terms of the agreement had been
13 settled. The parties reached an accord on the compensation due to CAPA and its counsel under
14 general contract principles and the private attorney general doctrine codified at California Code of
15 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
16 Consent Judgment. Made for Retail shall reimburse CAPA and its counsel in the total amount of
17 \$27,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to
18 the attention of Made for Retail, negotiating this Consent Judgment, drafting the Complaint, and
19 preparing the papers necessary briefing to obtain the Consent Judgment from this Court. Made
20 for Retail shall make the check payable to "Kawahito Law Group APC" and shall deliver
21 payment within ten days of the Effective Date to:

22 James Kawahito, Esq.
23 Kawahito Law Group APC
24 Attn: CAPA v. Made for Retail
25 222 N. Pacific Coast Hwy., Suite 2222
26 El Segundo, CA 90245

27 To allow for the issuance of a timely payment to be rendered pursuant to the above,
28 CAPA shall provide Made for Retail with a completed IRS Form W-9 for the Kawahito Law
Group APC upon request.

5. RELEASE OF CLAIMS

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2 **5.1. CAPA's Release of Made for Retail**

3 This Consent Judgment is a full, final and binding resolution between CAPA, on behalf of
4 itself and the public interest, and its past and current agents, representatives, attorneys, successors
5 and/or assignees (the "Releasors"), on the one hand, and Made for Retail, its respective parents,
6 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
7 licensors, licensees, and each entity to whom Made for Retail directly or indirectly distributes or
8 sells the Covered Products, including but not limited to downstream retailers (including but not
9 limited to Target), distributors, wholesalers, customers, marketplace hosts, franchisers,
10 cooperative members, licensors, licensees, and the successors and assigns of any of them
11 ("Releasees"), on the other hand, of any violation of Proposition 65 that was or could have been
12 asserted by CAPA against Made for Retail or the Releasees based on the alleged failure to warn
13 about alleged exposures to DEHP contained in the Covered Products that were manufactured,
14 imported, distributed, sold and/or offered for sale by Made for Retail (either directly or through
15 any of the Releasees) in California before the Effective Date. Compliance with the terms of this
16 Consent Judgment constitutes compliance with Proposition 65 by Made for Retail with respect to
17 the alleged or actual failure to warn about exposures to DEHP from Covered Products
18 manufactured, imported, sold or distributed for sale by Made for Retail after the Effective Date.
19 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
20 by Defendant with respect to the alleged or actual failure to warn about exposures to DEHP from
21 Covered Products manufactured, imported, sold or distributed for sale by Made for Retail after
22 the Effective Date.

23 **5.2. Made for Retail's Release of CAPA**

24 Made for Retail on behalf of itself, its past and current agents, representatives, attorneys,
25 successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and
26 other representatives, for any and all actions taken or statements made (or those that could have
27 been taken or made) by CAPA and its attorneys and other representatives, whether in the course
28 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
 with respect to the Covered Products.

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6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court.

7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any provisions of this Consent Judgment are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. GOVERNING LAW

The terms of this Consent Judgment 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 Products, then Made for Retail may provide Plaintiff with written notice of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected.

9. NOTICES

Unless specified herein, all correspondence and notice required to be provided pursuant to this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email, sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

- | | |
|----------------------|---|
| For Made for Retail: | Garth Ward
Lewis Brisbois
701 B. Street, Suite 1900
San Diego, CA 92101 |
| For CAPA: | Center for Advanced Public Awareness, Inc.
2342 Shattuck Ave. #347
Berkeley, CA 94704 |
| with a copy to: | James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Made for Retail
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245 |

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2 jkawahito@kawahitolaw.com

3 Any Party may, from time to time, specify in writing to the other a change of address to
4 which all notices and other communications shall be sent.

5 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

6 This Consent Judgment may be executed in counterparts and by facsimile or portable
7 document format (PDF) signature, each of which shall be deemed an original, and all of which,
8 when taken together, shall constitute one and the same document.

9 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

10 CAPA and his attorneys agree to comply with the reporting form requirements referenced
11 in California Health and Safety Code Section 25249.7(f).

12 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

13 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
14 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
15 obtaining such approval, CAPA and Made for Retail and their respective counsel agree to
16 mutually employ their best efforts to support the entry of this agreement as a Consent Judgment
17 and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of
18 this paragraph, best efforts shall include at a minimum, cooperating on the drafting and filing any
19 papers in support of the required motion for judicial approval.

20 **13. MODIFICATION**

21 This Consent Judgment may be modified only: (1) by written agreement of the parties and
22 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
23 of any party and entry of a modified consent judgment by the Court. The Attorney General shall
24 be served with notice of any proposed modification to this Consent Judgment at least fifteen days
25 in advance of its consideration by the Court.

26 **14. AUTHORIZATION**

27 The undersigned are authorized to stipulate to, enter into, and execute this Consent
28 Judgment on behalf of their respective parties, and have read, understood, and agree to all of the
terms and conditions of this Consent Judgment.

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AGREED TO:

AGREED TO:

Date: _____

Date: 7/17/19

By: _____
Center for Public Awareness, Inc.

By:  _____
Made for Retail, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

Date: 07/16/2019

Date: _____

By: 
Center for Public Awareness, Inc.

By: _____
Made for Retail, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT