

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between **CENTER FOR ENVIRONMENTAL HEALTH** (“CEH”) and **FIRST AID ONLY, INC.** (“FAO”) (collectively, the “Parties”).

RECITALS

A. On August 4, 2009, CEH, a non-profit corporation acting in the public interest, served FAO and the appropriate public enforcement agencies with a 60-day Notice (the “Notice”) alleging that FAO is in violation of Proposition 65 relating to sales of vinyl gloves containing Di (2-ethylhexyl) Phthalate (“DEHP”), which is also known as Bis (2-ethylhexyl) Phthalate.

B. The Notice alleges that FAO manufactures, distributes and/or sells vinyl gloves (the “Products”) that are made of material containing DEHP. The Notice alleges that FAO exposes people who use or otherwise handle the Products to DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive toxicity, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice alleges that FAO’s conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

C. FAO asserts that it does not manufacture the Products, but rather repackages the Products for sale as one of the several components of certain of its first aid kits. FAO further asserts that it had no knowledge that the Products contained DEHP prior to receipt of the Notice and that it took immediate steps to rectify the alleged violations upon receipt of the Notice by adding a Proposition 65 warning to all packages of gloves that thereafter left its production facility.

D. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Products manufactured, distributed and/or sold by FAO.

E. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties’ intent that nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

NOW, THEREFORE, in consideration of the several undertakings hereinafter set forth, **IT IS AGREED** as follows:

SETTLEMENT AGREEMENT AND RELEASE

PAGE 1

F:\f\FIRAI\Prop 65 Matter\SETTLEMENT AGREEMENT AND RELEASE (January 2010 FINAL VERSION).doc

1. RECITALS. The foregoing Recitals are hereby made a part of and are included in this Agreement.

2. COMPLIANCE

2.1 Products Containing Listed Phthalates. As of April 1, 2010, (the “Compliance Date”) FAO shall not distribute, ship or sell any Product into California that contains DEHP, butyl benzyl phthalate (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”) or di-octyl phthalate (“DOP”) in excess of trace amounts. DEHP, BBP, DnHP, DBP, DIDP and DOP are collectively referred to hereinafter as “Listed Phthalates.” For purposes of this Agreement, the term “in excess of trace amounts” means more than 600 parts per million (“ppm”).

2.2 Options for Ensuring Compliance with Section 2.1. In order to ensure compliance with section 2.1 above, FAO shall comply with either Option A or Option B as set forth in subsections 2.2.1 and 2.2.2 below.

2.2.1 Option A - Products From Approved Manufacturers / Distributors. FAO shall not distribute ship or sell any Product unless such Product is purchased from an entity that CEH has verified produces and/or sells only Products that meet the requirements of section 2.1 (hereinafter, an “Approved Manufacturer/Distributor”). Any entity that has entered into a Settlement Agreement with CEH or has entered into a Consent Judgment that has received court approval covering sales of such Products shall be deemed an Approved Manufacturer/Distributor. CEH has provided FAO with a current list of Approved Manufacturers/Distributors and shall from time to time, upon thirty days’ prior written request, provide FAO with an updated list.

2.2.2 Option B - Certification and Testing. FAO’s purchase orders shall require its suppliers to represent and warrant to FAO that the supplier is aware of California Proposition 65 (Calif. Health & Safety Code sections 25249.5 through 25249.13) and its implementing regulations (22 Calif. Code Reg. sections 25000 through 27001) and that any Products sold by the supplier to FAO shall not contain any chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. Should FAO consider purchasing Products from a supplier that is not an Approved Manufacturer/Distributor as provided in subsection 2.2.1, FAO shall first obtain written certification with corroborating test results from such supplier to the effect that neither the Products nor any materials of which the Products are comprised contain Listed Phthalates in concentrations exceeding 600 ppm. The supplier’s testing must have been performed in the United States by an independent laboratory in accordance with both of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the “Test Protocols”). The supplier’s certification and testing results shall accompany and relate to each batch of Products supplied to FAO by the supplier. Upon receiving such certification and test results, FAO shall be free to purchase and distribute

SETTLEMENT AGREEMENT AND RELEASE

PAGE 2

F:\f\FIRAI\Prop 65 Matter\SETTLEMENT AGREEMENT AND RELEASE (January 2010 FINAL VERSION).doc

each batch of the certified and tested Products. Provided, however, FAO shall promptly furnish copies of each certificate and accompanying test results to CEH and, if CEH should ultimately reject the certificate and accompanying test results based on the Test Protocols, FAO shall: (1) reject all Products from that supplier that are still in FAO's inventory; and (2) refuse to accept any further Products from the supplier until and unless it provides a certificate and corroborating test results that are reasonably satisfactory to CEH.

2.3 Compliance Prior to Compliance Date. Prior to the Compliance Date, FAO may continue to distribute, ship or sell Products into California that it acquired otherwise than by following Options A or B above, provided that all individual bags of such Products bear a Proposition 65 warning. Provided further, FAO shall not be required to recall any Products or first aid kits containing Products that were placed into the stream of commerce by FAO prior to it receiving the August 4, 2009 Notice, and sales by third-party sellers of such Products, regardless of when such sales shall occur, shall not be deemed a violation by FAO of this Agreement. Products that have been shipped, sold, or that otherwise are in the stream of commerce prior to the Compliance Date are released from any claims that were raised by CEH in the Notice to the same extent as the claims released as set forth in section 7 below.

2.4 Confirmatory Testing by CEH. CEH may conduct periodic testing of the Products. Any such testing will be conducted by CEH at an independent laboratory, in accordance with the Test Protocols. In the event that CEH's testing of Products shipped after the Compliance Date demonstrates levels of any Listed Phthalates in excess of 600 ppm for one or more Products, CEH shall inform FAO of the test results, including information sufficient to permit FAO to identify the Product(s). FAO shall respond to CEH within twenty (20) days following such notice, providing CEH, at the address listed in section 11 below, with records demonstrating its compliance with either Option A or Option B as set forth in subsections 2.2.1 and 2.2.2 hereinabove. FAO and its suppliers shall have the opportunity to conduct their own independent testing of the Products from the same lot to confirm or deny CEH's tests.

2.5 Stipulated Payments In Lieu of Penalties. In the event that FAO should distribute, ship or sell any Products into California during the term of this Agreement without complying with either Option A or Option B as set forth in subsections 2.2.1 and 2.2.2, FAO shall pay to CEH, in lieu of penalties, a stipulated payment in an amount to be determined in accordance with the following schedule:

First Occurrence:	\$1,250
Second Occurrence:	\$1,500
Third Occurrence:	\$1,750
Thereafter:	\$2,500 per occurrence

For purposes of this Agreement, an "Occurrence" shall consist of a shipment into California of a discreet commercial lot or unit of first aid kits containing Products, not each package of Products

SETTLEMENT AGREEMENT AND RELEASE

PAGE 3

F:\f\FIRAI\Prop 65 Matter\SETTLEMENT AGREEMENT AND RELEASE (January 2010 FINAL VERSION).doc

or each individual first aid kit. Notwithstanding the foregoing, the maximum stipulated payment amount in any calendar year shall be limited to \$5,000.

3. SETTLEMENT PAYMENTS. In consideration of the mutual covenants and releases provided in this Agreement, FAO shall pay a total of fifteen thousand and no/100 dollars (\$15,000) to CEH. This total shall be paid in two separate checks delivered to the address set forth in section 12, within ten (10) business days following execution of this Agreement by both parties, and shall be made payable and allocated as follows:

3.1 Monetary Payment in Lieu of Penalty. FAO shall pay to the order of CEH the sum of five thousand and no/100 dollars (\$5,000) in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

3.2 Attorneys' Fees and Costs. FAO shall pay the sum of ten thousand and no/100 dollars (\$10,000) to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to FAO's attention and negotiating a settlement in the public interest. This payment shall be made payable to the order of Lexington Law Group, LLP.

4. MODIFICATION OF SETTLEMENT AGREEMENT. This Settlement Agreement may be modified by written agreement of the Parties.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT. Any action based on an alleged breach of this Agreement shall be brought in the Superior Court of California in San Francisco County. For purposes of this Agreement alone, the Parties agree that the Superior Court of California in San Francisco County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of San Francisco. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs associated with such action.

6. APPLICATION OF SETTLEMENT AGREEMENT. This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS RELEASED. Except for claims arising under this Agreement, CEH hereby releases and discharges FAO with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to Listed Phthalates in the Products) that was or could have been asserted against FAO, or its parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, retailers, or customers arising from Products

SETTLEMENT AGREEMENT AND RELEASE

PAGE 4

F:\f\FIRAI\Prop 65 Matter\SETTLEMENT AGREEMENT AND RELEASE (January 2010 FINAL VERSION).doc

manufactured, distributed or sold by FAO on or before the Compliance Date. Notwithstanding the foregoing, CEH does not release or discharge any claims it may have against Ammex Corp. or any other entity that supplied the Products to FAO. The Parties agree that compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of exposures to Listed Phthalates from the Products.

8. SEVERABILITY. In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9. SPECIFIC PERFORMANCE. The Parties expressly recognize that FAO's obligations under this Agreement are unique. In the event that FAO is found to be in breach of this Agreement for failure to comply with the provisions of section 2 herein, the Parties agree that it would be extremely impracticable to measure the resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and FAO expressly waives the defense that a remedy in damages will be adequate.

10. GOVERNING LAW. The terms of this Agreement shall be governed by the laws of the State of California.

11. NOTICE. All notices required pursuant to this Agreement and correspondence shall be sent to the following:

For CEH: Mark N. Todzo
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For FAO: Mark Miller, CEO
First Aid Only, Inc.
11101 NE 37th Circle
Vancouver, WA 98682

With a copy to: Charles J. Pruitt
Meyer & Wyse LLP
621 SW Morrison, Suite 1300
Portland, OR 97205-3816

12. EXECUTION AND COUNTERPARTS. This Agreement may be executed in multiple copies, with counterpart signature pages, or with signatures sent by facsimile or in pdf via e-mail, each of which will be considered an original but which together form one Agreement.

SETTLEMENT AGREEMENT AND RELEASE

PAGE 5

F:\f\FIRAI\Prop 65 Matter\SETTLEMENT AGREEMENT AND RELEASE (January 2010 FINAL VERSION).doc

13. **AUTHORIZATION.** Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

14. **TERM.** This Agreement shall remain in effect for three (3) years following its effective date.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement to be effective on the last of the dates set forth adjacent to each of the parties' signatures hereto.

CENTER FOR ENVIRONMENTAL HEALTH

By 
Michael Green, Executive Director

Dated: January 12, 2010

FIRST AID ONLY, INC.

By _____
Mark Miller, CEO

Dated: January __, 2010

13. **AUTHORIZATION.** Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

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CENTER FOR ENVIRONMENTAL HEALTH

By _____
Michael Green, Executive Director

Dated: January __, 2010

FIRST AID ONLY, INC.

By  _____
Mark Miller, CEO

Dated: January 12, 2010