

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Karen Calacin and Jasco Products Company

This Settlement Agreement is entered into by and between Karen Calacin ("Calacin") and Jasco Products Company. ("Jasco"). Together, Calacin and Jasco are collectively referred to as the "Parties." Calacin is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Jasco is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6, *et seq.* ("Proposition 65").

1.2 General Allegations

Calacin alleges that Jasco has imported, distributed and/or sold in the State of California Cat ethernet cables supplied by Jasco to Office Depot, including, but not limited to, *Cat 6 Ethernet Cables, UPC No. 735854902100*, (the "Product" or "Products") without requisite Proposition 65 warning that the Product contains the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause developmental male reproductive toxicity.

1.3 Notice of Violation(s)

On March 16, 2016, Calacin served the retailers Office Depot, Inc. and Office Club, Inc. and distributor Swinton Avenue Trading Limited, Inc., and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided notice that alleged that the Products were in violation of California Health & Safety Code § 25249.5, for failing to contain warnings that warned consumers and customers that the Products exposed users in

California to DEHP. The Notice was amended on May 9, 2016 to provide notice to Jasco (both the original Notice and the amended Notice are referred to herein collectively as the "Notice"). No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 No Admission

Jasco denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Jasco of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Jasco of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Jasco. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Jasco maintains that it has not knowingly or intentionally manufactured, or caused to be manufactured, the Products for sale in California which are in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 10, 2016.

2. INJUNCTIVE RELIEF

2.1 Commitment to Reformulation of the Products Or Warnings

Commencing on the Effective Date, and continuing thereafter, Jasco shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 2.2 or Products that contain the warning provided for in Section 2.3. For purposes of this Settlement Agreement, "Reformulated Products" are Products that meets the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

“Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to the CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

2.3 Warning Alternative

Commencing on the Effective Date, any Product that Jasco ships, sells or offers for sale in California that does not meet the Reformulation standard set forth in Section 2.2 above, Jasco shall provide a clear and reasonable warning in compliance with this Section. Jasco further agrees that the warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Such warning shall be prominently affixed to or printed on each Product’s label or package or the Product itself. The warning shall include the following statement, unless the Proposition 65 Regulations are amended to require or permit a different warning, in which case Jasco may implement the revised warning contained in the Proposition 65 Regulations:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Jasco shall pay a total of \$2,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §

25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Calacin. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below.

3.1 Civil Penalty

On or before the Effective Date, Jasco shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500; and (b) "Brodsky & Smith, LLC in Trust for Calacin" in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Calacin, pursuant to Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) Copy of Payments to OEHHA. Jasco agrees to provide Calacin's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Calacin, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Jasco agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(i) "Karen Calacin" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Calacin and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Calacin then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation due to Calacin and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Jasco shall reimburse Calacin's counsel for fees

and costs incurred as a result of investigating and bringing this matter to Jasco's attention, and negotiating a settlement. On or before the Effective Date, Jasco shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$25,000 for delivery to the following address:

Evan Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Ste. 510
Bala Cynwyd, PA 19004

5. RELEASE OF ALL CLAIMS

5.1 Release of Jasco, The Office Club, Inc., Office Depot, Inc., Swinton Avenue Trading Limited, Inc, and Downstream Customers and Entities

Calacin acting on her own behalf, releases Jasco Products Company, The Office Club, Inc., Office Depot, Inc., Swinton Avenue Trading Limited, Inc., OfficeMax North America, Inc., OfficeMax Incorporated, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom they directly or indirectly distribute or sell the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemical DEHP that is contained in the Products, and was distributed, sold and/or offered for sale by The Office Club and Office Depot to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against the Releasees for failure to provide warnings for alleged exposures to DEHP contained in the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Calacin, on behalf of herself,

her past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Products.

5.2 Jasco's Release of Calacin

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

5.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Calacin on behalf of herself only, on one hand, and Jasco, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,

WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Calacin and Jasco each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, Jasco shall provide written notice to Calacin of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Jasco:

Shelley Hurwitz, Esquire
Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
T: 213.896.2476

For Calacin:

Evan J. Smith, Esquire.
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
877.534.2590

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

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Calacin agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 7-12-16

Date: 7-11-2016

By: 

Karen Calacin

By: 

Jasco Products Company