

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. (“CAPA”) and Century Sourcing Group (“Century”) (individually referred to as a “Party” and collectively as the “Parties.”)

1.2 Introduction and General Allegations.

1.2.1 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.

1.2.2 CAPA alleges that Big Lots Stores, Inc. (“Big Lots”) 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”). Big Lots asserts and represents that it is a retailer and is not the manufacturer of the products covered by this Settlement Agreement. Century acknowledges that it is the importer and distributor of the noticed Gold Fashion Wallet, SKU No. 293 810310670 3 066, hereinafter “Covered Product”.

1.2.3 CAPA alleges that Big Lots sold the Covered Product to California consumers without provision of a Proposition 65 warning, and that the Covered Product contains Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer pursuant to Proposition 65.

1.3 Product Description.

The products covered by this Settlement Agreement are the Gold Fashion Wallets, SKU No. 293 810310670 3 066, which are imported, sold and/or distributed for sale in California by Century and sold at retail in California by Big Lots (“Covered Product”).

1.4 60 Day Notice of Violation and Exchange of Information.

On July 26, 2017, CAPA served Big Lots and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Big Lots violated Proposition 65. The Notice alleged that Big Lots failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Product.

CAPA subsequently provided Big Lots with test results in CAPA’s possession concerning its allegations. Big Lots provided CAPA with sales data related to the Covered Product. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice. Big Lots tendered its defense of the claims to Century, which Century accepted, and identified Century to CAPA as the manufacturer and distributor of the Covered Product.

1.5 No Admission.

Big Lots and Century deny the material factual and legal allegations contained in the Notice and maintain that, to the best of their knowledge, all products that are or have been sold and distributed in California, including the Covered Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Big Lots or Century 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 Big Lots or Century of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Big Lots or Century. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Big Lots and Century maintain that they have not knowingly sold or caused to be sold the Covered Product in California in violation of Proposition 65.

1.6 Effective Date.

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by the parties.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

2.1 **Reformulation Standard.** Commencing ninety (90) days after the effective date, and continuing thereafter, Century agrees to only sell or offer for sale or purchase for sale in or into California, Covered Product which are “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” shall mean Covered Product containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance, or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance (“Reformulation Standard”).

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

2.3 **Clear and Reasonable Warnings**

Commencing ninety (90) days after the Effective Date, Century shall ensure that any unreformulated Covered Product that it ships to California retailers or for sale in California includes clear and reasonable warning. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

⚠ WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

Or

⚠ WARNING: This product can expose you to chemicals including Di-(2-ethylhexyl) phthalate (DEHP), 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.

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. Each warning shall be

provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

Century shall pay a civil penalty of \$2000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CAPA. Century shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$1500, representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.," in the amount of \$500, 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 95814 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who shall furnish a W-9 at least five calendar days before payment is due. The payments shall be delivered within fifteen (15) business days from the Effective Date to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Sepulveda, Blvd. Suite 2222
El Segundo, CA 90245

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine codified at California

Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, Century shall pay the total amount of \$16,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Big Lots, and negotiating a settlement. Two checks payable to “Kawahito Law Group APC” totaling \$16,000 shall be delivered to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. Big Lots
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245

Or by wire transfer to the following account:

Kawahito Law Group APC
Client Trust Account
Account Number: 3250 8882 4857
Routing Number: 122000661/121000358 (paper/electronic transfer); 026009593 (wire)
Bank of America
4754 Admiralty Way
Marina Del Rey, CA 90292

The first payment for fees and costs, in the amount of \$8,000, shall be due within fifteen (15) days of the Effective Date. The second and final payment for fees and costs, in the amount of \$8,000 shall be due within thirty (30) days thereafter. To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide Century with a completed IRS Form W-9 for the Kawahito Law Group APC by no later than the Effective Date.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

This Settlement Agreement is a full, final and binding resolution between CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, and Century and Big Lots, of any violation of Proposition 65 that was or could have been asserted by CAPA against Century and Big Lots, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, vendors, and manufacturers of the Covered Product, (“Releasees”) based on their failure to warn about alleged exposures to DEHP contained in the Covered Product that were manufactured, imported, distributed, sold and/or offered for sale by Century and Big Lots (either directly or through the

Releasees) in California before the Effective Date. This release is provided in CAPA's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it or they may have including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys' fees -- arising with respect to Big Lots' compliance with Proposition 65 with respect to the Covered Product before the Effective Date.

5.2 Century Release of CAPA.

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

5.3 Enforcement of Settlement Agreement.

5.3.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 5.3.2 and 5.3.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

5.3.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Product may be served or filed against Century or its retailers by CAPA, unless CAPA notifies Century of the specific future acts alleged to constitute a breach of this Settlement Agreement at least 90 days before filing any action or upon receiving the notice fails to comply with the requirements set forth in

Section 5.3.3 below. Any notice to Century must (a) identify with specificity the Covered Product including its SKU numbers or other identifying markers; (b) specific date(s) when the item was sold or offered for sale after the Effective Date in California without either reformulation or a Proposition 65 compliant warning; (c) the store or other place at which the product was available for sale; and (d) any other evidence or other support for the allegations.

5.3.3 Within 30 days of receiving the notice described in Section 5.3.2, Century shall either (1) withdraw the Covered Product from sale and remove it from inventory, or (2) provide CAPA with evidence to refute the information provided under Section 5.3.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 5.3.1.

5.4 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 Covered Product will develop or be discovered. CAPA on behalf of itself only, on one hand, and Century, 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.

Each Party acknowledges and understands the significance and consequences of this specific waiver of California Civil Code section 1542.

5.5 Deemed Compliance with Proposition 65

Compliance by Century with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Covered Products.

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and 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 Century: Gabby Habert
 Century Sourcing Group, Inc.
 381 5th Avenue
 4th Floor
 New York, New York 10016

For CAPA: James K. Kawahito
 Kawahito Law Group APC
 Attn. CAPA v. Big Lots
 222 North Sepulveda Blvd., Suite 2222
 El Segundo, CA 90245

with a copy to: Center for Advanced Public Awareness, Inc.
 Attn: Linda Droubay
 100 Promenade Circle, Suite 300
 Sacramento, CA 95834

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (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)

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

11. MODIFICATION

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

12. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: _____


By: _____
Center for Public Awareness, Inc.

Linda DeRose-Droubay
2017.11.16 16:00:31
-05'00'

By: _____
Century Sourcing Group

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AGREED TO:

AGREED TO:

Date: _____

Date: 11/15/17

By: _____
Center for Public Awareness, Inc.

By:  _____
Century Sourcing Group