

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 MIDWAY INDUSTRIES AMERICA (“Midway”), with CAPA and Midway each 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 Midway 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”).

1.2.3 CAPA alleges that Midway imported, sold, and/or distributed for sale in California, products containing Di-(2-ethylhexyl) phthalate (“DEHP”), a listed chemical pursuant to Proposition 65 as known to the State of California to cause cancer and reproductive harm, and failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its products, specifically its Hello Gorgeous bags. Midway denies the allegations.

1.3 Product Description.

The products covered by this Settlement Agreement are the bags, which are imported, sold and/or distributed for sale in California by Midway, the TJX Companies, Inc (“TJX”), and/or other retailers with SKU No. 27640-1 and/or UPC No. 030878276405 (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On August 1, 2017, CAPA served Midway Industries (“Midway”), TJX, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Midway and TJX violated Proposition 65. The Notice alleged that Midway and TJX failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from their import, sale and/or distribution of the Covered Products.

CAPA subsequently provided Midway with test results in CAPA’s possession concerning its allegations. Midway provided CAPA with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission.

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65. Specifically, CAPA alleges that Midway imported, sold or distributed for sale in the state of California the Covered Products, which contained DEHP without first providing the clear and reasonable exposure warning. Midway denies such a warning is required under Proposition 65 or any otherwise applicable law.

Midway further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Midway of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Midway of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Midway. However, this section shall not diminish or otherwise affect Midway’s obligations, responsibilities, and duties hereunder.

1.6 **Effective Date.**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 31, 2017.

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

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

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 **Warning Option.** Covered Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.4 below. This warning shall only be required as to Covered Products that are sold or shipped out to consumers, retailers, or distributors after the Effective Date. No Proposition 65 warning for DEHP shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.4 **Warning Language.** Where required to meet the criteria set forth in Section 2.3, Midway shall provide the following warning statements in the following circumstances: When sold or distributed directly to a California end user consumer, or when Midway distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California end users or consumers, Midway shall provide the following warning statement with the unit conspicuously on the package:

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

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

Midway shall pay a civil penalty of \$1,500 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. Midway 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 \$1,125 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 \$375, 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, who shall furnish a completed IRS Form W-9 at least five calendar days before payment is due. The \$1500 payment shall be delivered on or before January 5, 2018, 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, Midway shall pay the total amount of \$15,000 for fees and costs incurred by CAPA as a result of investigating the specific claims asserted in the Notice,

bringing this matter to the attention of Midway, and negotiating a settlement. Midway shall make the check payable to “Kawahito Law Group APC” and shall deliver payment on or January 5, 2018. All payments shall be made by cashier’s check or wire transfer to the following address:

Check:

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

Wire Instructions:

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

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide Midway with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days before the payment is due.

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 (collectively “CAPA Releasing Parties”), and Midway and TJX, of any violation of Proposition 65 that was or could have been asserted by CAPA against Midway and TJX, and all of their respective present and former parents, subsidiaries, parents’ subsidiaries, affiliated entities, companies, and divisions, and each of their respective present and former representatives, executives, employees, officers, directors, shareholders, owners, partners, managers, members, principals, agents, predecessors, successors, heirs, administrators, executors, assigns, insurers,

attorneys, and any other person or entity claiming by or through any of them, and each of them, in their capacity as such (the "Releasees") based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Midway, TJX, or other retailer (either directly or through the Releasees) in California before the Effective Date.

To that end, the CAPA Releasing Parties, acting on their own behalf and, to the maximum extent allowable by law, in the public interest, hereby fully and forever release, acquit and discharge the Releasees, from all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the products set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the products set forth in the Notice.

In further consideration of the promises and agreements herein contained, the CAPA Releasing Parties, on their own behalf, 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 Midway and TJX's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

5.2 Midway's Release of CAPA.

Midway 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 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. CAPA on behalf of itself only, on one hand, and Midway, 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.

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

5.4 Enforcement of Settlement Agreement.

Any party may file suit before the Superior Court of the County of Los Angeles 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.

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 Midway: Franco Messina
Midway Industries America
10 West 33rd Street
New York, NY, 10001

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Midway Industries
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

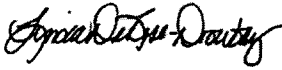
This Settlement Agreement may be modified only by written agreement of the Parties.

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:

Date: _____


By: _____
Linda DeRose-Droubay
2018.01.04 17:26:19
-05'00'
Center for Public Awareness, Inc.

AGREED TO:

Date: January 3, 2018


By: _____
Midway Industries America