

## 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 TAVY ENTERPRISES, LLC ("Tavy") (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 Tavy acknowledges that it is the distributor of the noticed Tile Mallets, SKU No. 373830, hereinafter "Covered Product(s)." Tavy is a vendor for Lowe's Home Center LLC ("Lowe's"), which sells the Covered Products. CAPA alleges that Lowe's employs ten or more persons. CAPA further alleges that Lowe's 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"). Tavy, who asserts that it does not employ ten or more persons, enters into this agreement on its own behalf and as an indemnitor of Lowe's as a result of Tavy's contractual obligation to defend and indemnify Lowe's as the vendor and distributor of the Covered Product.

1.2.3 CAPA alleges that the Covered Products were sold to California consumers without provision of a Proposition 65 warning, and that the Covered Products contain Diisodecyl phthalate ("DIDP") and Diisononyl phthalate ("DINP"), chemicals known to the State of California to cause cancer and reproductive harm pursuant to Proposition 65.

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**1.3 Product Description.**

The products covered by this Settlement Agreement are the Tile Mallets, which are manufactured in the state of California and imported and/or distributed for sale in California by Tavy in California.

**1.4 60 Day Notice of Violation and Exchange of Information.**

On August 7, 2017, CAPA served Tavy, Lowe's, and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Tavy and Lowe's had violated Proposition 65. The Notice alleged that Tavy and Lowe's failed to warn their customers and consumers in California of the health hazards associated with exposures to DIDP and DINP from their import, sale and/or distribution of the Covered Product.

CAPA subsequently provided Tavy with test results in CAPA's possession concerning its allegations. Tavy 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.**

Tavy 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 Covered Product, have been and are in compliance with all laws and/or that the Covered Products do not require a warning under Proposition 65 or any other applicable law. Nothing in this Settlement Agreement shall be construed as an admission by Tavy 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 Tavy of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Tavy. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Tavy maintains that it has 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 on the Effective Date, and continuing thereafter, Tavy agrees to only sell or offer for sale or purchase for sale in or into California, Covered Products which are "Reformulated Products" and/or a Covered Product that contains clear and reasonable warnings as addressed in Section 2.3 herein. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Covered Products containing less than or equal to 1,000 parts per million (0.1%) of DINP or DIDP 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 DINP and DIDP 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 on the Effective Date, Tavy shall ensure that any Covered Products that do not meet the Reformulation Standard that it ships to California retailers or for sale in California include clear and reasonable warnings. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

**⚠ WARNING:** This product can expose you to chemicals including Diisononyl phthalate ("DINP"), which is [are] known to the State of California to cause cancer, and Diisodecyl phthalate ("DIDP"), which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://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, Tavy 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)**

Tavy, pursuant to its contractual indemnity agreement with Lowe's and in order to resolve CAPA's claims against Lowe's, 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. Tavy 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 APC, who shall furnish a W-9 at least five calendar days before payment is due. The payments shall be delivered within fifteen (15) 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, Tavy, pursuant to its contractual indemnity agreement with Lowe's and in order to resolve CAPA's claims against Lowe's, shall pay the total amount of \$15,250 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Tavy and Lowe's, and negotiating a settlement. The check payable to "Kawahito Law Group APC" totaling \$15,250 shall be delivered to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
Attn. CAPA v. Tavy Enterprises, LLC  
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

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days before payment is due. The payments shall be delivered within fifteen (15) days from the Effective Date to the following address:

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## **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 Tavy, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, of any violation of Proposition 65 that was or could have been asserted by CAPA against Tavy and Lowe's, their respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, vendors, distributors and manufacturers of the Covered Product, ("Releasees") based on their failure to warn about alleged exposures to DINP and DIDP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Tavy and Lowe's (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 Tavy and Lowe's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

### **5.2 Tavy's Release of CAPA.**

Tavy 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 Enforcement of Settlement Agreement.**

5.3.1 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.

**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 Tavy, pursuant to its contractual indemnity agreement with Lowe's and in order to resolve CAPA's claims against Lowe's, 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. Other than the representations and warranties made herein, each of the PARTIES acknowledge that, if the facts with respect to which this Agreement are executed are found hereafter to be different from the facts in that connection now believed by them to be true, each expressly accepts and assumes the risk of such possible differences in facts, and agrees that this Agreement shall be, and shall remain, effective, notwithstanding such differences in facts.

**5.5 Deemed Compliance with Proposition 65**

Compliance by Tavy, pursuant to its contractual indemnity agreement with Lowe's and in order to resolve CAPA's claims against Lowe's, with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP and DIDP 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 Tavy: Jeffrey J. Maguire  
TAVY Enterprises, LLC  
225 Oakland Rd., Suite 401  
South Windson, CT 06074

With A Copy To: Danielle K. Little, Esq.  
Estelle & Kennedy APLC  
400 N. Mountain Avenue, Suite 101  
Upland, CA 91786



For CAPA: James K. Kawahito  
Kawahito Law Group APC  
Attn. CAPA v. Tavy Enterprises, LLC  
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. MUTUAL AND KNOWING RELEASE**

This mutual release and Agreement is being entered into in good faith by all Parties and was negotiated through arm's length bargaining, and all Parties have had full and adequate opportunity to consult with their respective attorneys. The Parties agree and acknowledge that he, she or it has read and fully understand this Agreement, and he, she or it voluntarily, knowingly and without any coercion signs this Agreement to finally settle and resolve all mutual disputes between the Parties, that said voluntary and knowing signing is based upon his, her or it's informed judgment and that such signing is in exchange for consideration that is above anything that the Parties and signators of this Agreement are entitled, and that he, she or it has had ample and sufficient time to consult with their attorney of choice, and that he, she or it has

discussed at length with their attorney of choice, whether to agree to the terms of this Agreement and that he, she or it do not need any additional time within which to review and consider this Agreement and hereby voluntarily, willingly and after reflective consideration, knowingly enters into this Agreement. Each of the Parties acknowledge, represent and warrant that they each have been fully advised as to the effect of this Agreement and that this Agreement is deemed to be drafted mutually by the Parties.

**13. BINDING AGREEMENT**

The terms of this release and Agreement are contractual and not a mere recital.

**14. AUTHORIZATION**


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Settlement Agreement. The PARTIES represent and warrant that they have the right, power, legal capacity, and authority to enter into and perform the obligations under this Agreement, and that the persons executing this Settlement Agreement have such right, power, legal capacity, and authority to do so and, further, that no further approval or consent of any person or entity is necessary for them to enter into and perform such obligations.

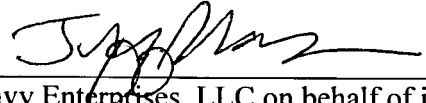
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 2/13/18

By:  Date: 2018.02.08  
15:21:13 EST  
Center for Public Awareness, Inc.

By:   
Tavy Enterprises, LLC on behalf of itself  
and as indemnitor of Lowe's Home Center LLC