

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered by and between Center for Advanced Public Awareness, Inc. (“CAPA”) and Ground Up International (“Ground Up”), with CAPA and Ground Up each individually referred to as a “Party” and collectively as the “Parties.” CAPA is a California nonprofit corporation dedicated to protecting the environment, improving human health, and promoting environmentally sound practices. Ground Up supplied the footwear (flip-flops) referenced in this Settlement Agreement to Wal-Mart Stores, Inc. (“Wal-Mart”), the entity named in CAPA’s September 17, 2017, 60-Day Notice of Violation. As the manufacturer of the products covered by this Settlement Agreement, Ground Up is stepping in to resolve the alleged violations at issue.

#### 1.2 General Allegations

CAPA alleges that Wal-Mart sells vinyl/PVC footwear containing di-butyl phthalate (“DBP”), that is manufactured, sold, distributed for sale, or otherwise supplied to Wal-Mart by Ground Up. DBP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

#### 1.3 Covered Products Defined

For purposes of this Settlement Agreement, “Covered Products” are defined as footwear (flip-flops) that contain DBP and that are sold or distributed for sale in California by Ground Up and those in its supply chain including, but not limited to, Wal-Mart. Covered Products include, but are not limited to, the Red Strap Flip-Flop with Stars and Stripes Image, SKU No. 0842088102234 identified in CAPA’s Notice.

#### 1.4 Notice of Violation

On September 17, 2017, CAPA served Wal-Mart, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Wal-Mart violated Proposition 65 by

failing to warn its customers and consumers in California of the health hazards associated with exposures to DBP from the Covered Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

### **1.5 No Admission**

Ground Up denies the material, factual, and legal allegations contained in the Notice to its customer Wal-Mart, and maintains that all the products it has sold and/or distributed for sale in California, including the Covered Products, comply with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Ground Up 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 Ground Up of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Ground Up. This Section shall not, however, diminish, or otherwise affect Ground Up's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 16, 2018.

## **2. INJUNCTIVE RELIEF**

### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, Ground Up agrees that all Covered Products it sells or distributes for sale in California shall be either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Covered Products bearing one of the clear and reasonable health hazard warnings set forth in Section 2.3.


### **2.2 Reformulated Products Defined**

For purposes of this Settlement Agreement, Reformulated Products are defined as Covered Products containing DBP in a maximum concentration of 1,000 parts per

million (0.1%) in any component analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies to determine DBP content in a solid substance.

### **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for all Covered Products that do not qualify as Reformulated Products, Ground Up agrees that it will only sell or distribute for sale in California Covered Products with a clear and reasonable warning pursuant to this Section 2.3, or Article 6, Title 27 California Code of Regulations §§ 25602 and 25603. Any warning provided for the Covered Products shall be prominently placed with such conspicuousness when 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 understands to which specific Product the warning applies. For purposes of this Settlement Agreement, a warning affixed to the packaging, labeling, or directly on a Product containing one of the following statements shall be clear and reasonable:

 **WARNING:** This product can expose you to chemicals, including DBP, which is 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)

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Ground Up agrees to pay \$3,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by CAPA. Ground Up shall issue its payment in two checks for the following amounts

made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "CAPA c/o Gates Johnson Law, Client Trust Account" in the amount of \$750. CAPA's counsel shall be responsible for delivering OEHHA's portion of the civil penalty payment.

### **3.2 Attorneys' Fees and Costs**

The Parties acknowledge that CAPA and its counsel negotiated the amount of fees and costs to be reimbursed only after reaching an agreement in principle on all other material terms. The Parties negotiated Ground Up's reimbursement of CAPA's fees and costs under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure §1021.5 for all work performed in this matter. Under these legal principles, Ground Up agrees to pay \$21,000 in a single check made payable to "Gates Johnson Law." Ground Up's payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Ground Up and Wal-Mart, and negotiating a settlement in the public interest.

### **3.3 Payment Terms**

All payments due under this Settlement Agreement shall be due within ten (10) days of the Effective Date and delivered to:

Gates Johnson Law  
2822 Moraga Street  
San Francisco, CA 94122

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 CAPA's Release of Ground Up**

This Settlement Agreement is a full, final, and binding resolution between CAPA, and Ground Up of any violation of Proposition 65 that was or could have been asserted by CAPA on its own behalf, or on behalf of its past and current agents, representatives, attorneys, successors, and assignees, against Ground Up or its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Ground Up directly or indirectly distributes or sells the Covered Products, including its downstream distributors,

wholesalers, customers (including, without limitation, Wal-Mart), retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to DBP in Covered Products sold or distributed for sale by Ground Up before the Effective Date, as alleged in the Notice. CAPA agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DBP in Covered Products sold after the Effective Date.

In further consideration of the promises and agreements herein contained, CAPA, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it 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, expenses, investigation fees, expert fees, and attorneys’ fees, arising under Proposition 65 with respect to DBP in Covered Products sold or distributed for sale by Ground Up before the Effective Date, as alleged in the Notice.

#### **4.2 Ground Up’s Release of CAPA**

Ground Up, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against CAPA and its attorneys and other representatives, for any action taken or statement made, whether while investigating claims, seeking to enforce Proposition 65 against it and Wal-Mart in this matter, or with respect to the Covered Products.

### **5. SEVERABILITY**

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

**6. 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. If Proposition 65 is repealed or is otherwise rendered inapplicable by law generally, or as to the Covered Products, then Ground Up may provide written notice to CAPA of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

**7. 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 Ground Up:

Ground Up International  
119 West 40th Street  
New York, NY, 10018

Harlan M. Lazarus, Esq.  
Lazarus and Lazarus, P.C.  
240 Madison Avenue  
New York City, New York 10016

For CAPA:

Center for Advanced Public Awareness, Inc.  
c/o Linda DeRose-Droubay  
180 Promenade Circle, Suite 300  
Sacramento, CA 95834

Gates Johnson Law  
2822 Moraga Street  
San Francisco, CA 94122

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.

8. 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.

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

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

10. MODIFICATION AND ENFORCEMENT


This Settlement Agreement may be modified only by a written agreement of the Parties. The terms of this Settlement Agreement may only be enforced by the Parties.

11. AUTHORIZATION

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

AGREED TO:

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

By:  Digitally signed by  
Linda DeRose-Droubay  
email= linda@capasafe.com  
Date: 2018.06.28 14:53:19  
EDT

Linda DeRose-Droubay, Assoc. Director  
CENTER FOR ADVANCED PUBLIC  
AWARENESS, INC.

AGREED TO:

Date: 7/9/18

By:  \_\_\_\_\_  
GROUND UP INTERNATIONAL

Name: Jack Gindi  
Printed Name

Its: CEO  
Title