

## 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 Jasco Products Company, LLC (“Jasco”), with CAPA and Jasco 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 Jasco 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 Jasco imported, sold, and/or distributed for sale in California, products containing Di-(2-ethylhexyl) phthalate (“DEHP”) and Di-isononyl Phthalate (“DINP”), listed chemicals 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 and DINP from its products, specifically its white phone cords. Jasco denies the allegations.

#### 1.3 Product Description.

The products covered by this Settlement Agreement are phone cords, which are imported, sold and/or distributed for sale in California by Jasco, Staples, Inc. (“Staples”), and/or other retailers that include SKU No. 27640-1 and/or UPC No. 030878276405 (“Covered Products”).

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

On September 19, 2017, CAPA served Jasco, Staples, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Jasco and Staples violated Proposition 65. The Notice alleged that Jasco and Staples failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP and DINP from its import, sale and/or distribution of the Covered Products.

CAPA subsequently provided Jasco with test results in CAPA’s possession concerning its allegations. Jasco 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 Jasco imported, sold or distributed for sale in the state of California the Covered Products, which contained DEHP and DINP without first providing the clear and reasonable exposure warning required by Proposition 65. Jasco denies that the Covered Products contained DEHP and DINP, and denies such a warning is required under Proposition 65 or any otherwise applicable law.

Jasco 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 Jasco 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 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 Jasco’s obligations, responsibilities, and duties hereunder.

1.6 **Effective Date.**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 19, 2018.

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

2.1 **Reformulation Standard.** Commencing 60 days from the Effective Date, and continuing thereafter, and 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 and DINP 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%) DEHP and DINP 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 and/or DINP 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 60 days from the Effective Date. No Proposition 65 warning for DEHP and DINP 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, Jasco shall provide one of the following warning statements: Jasco shall provide the warning affixed to the packaging or labeling using language similar to the warning(s) below:

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

Or

(b) **WARNING:** This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

Or

(c) the text, "**WARNING** Reproductive Harm - www.P65Warnings.ca.gov." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016.

Or

(d) the text, "**WARNING** Cancer and Reproductive Harm - www.P65Warnings.ca.gov." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016.

Notwithstanding the foregoing examples, Jasco shall be required to provide warnings that are in compliance with any regulations that are promulgated by the Office of Environmental Health Hazard Assessment ("OEHHA") and that take effect after the Effective Date of this Agreement. In the event that OEHHA promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Jasco 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, as long as such warning text and methods of transmission comply with OEHHA regulations.

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

Jasco 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. Jasco 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 \$1,500 payment shall be delivered within 10 days of the fully executed Agreement, 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, Jasco shall pay the total amount of \$18,000 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 Jasco, and negotiating a settlement. Jasco shall make the check payable to “Kawahito Law Group APC” and shall deliver payment within 10 days of the fully executed Agreement. 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. Jasco Products, LLC  
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 Jasco 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 Jasco, of any violation of Proposition 65 that was or could have been asserted by CAPA against Jasco and Staples, 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 and DINP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Jasco, Staples, or other retailers (either directly or through the Releasees) in California before the Effective Date.

To that end, the CAPA Releasing Parties, acting on their own behalf only and not 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 and DINP 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 and DINP 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 Jasco and Staples' compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

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

Jasco 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, 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 Products may be served or filed against Jasco or Staples by CAPA, unless CAPA notifies Jasco 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 Jasco 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, Jasco 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.

**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 Jasco: David V. Stewart  
Jasco Products Company LLC  
10 E. Memorial Road  
Oklahoma City, OK 73114

with a copy to: Shelley Hurwitz  
Holland & Knight  
  
400 South Hope Street  
  
8th Floor  
Los Angeles, California 90071

For CAPA: James K. Kawahito



Kawahito Law Group APC  
Attn. CAPA v. Jasco Products, 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. 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.C

**AGREED TO:**

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

*Jasper DeBorja-Doubay*

Date: 2018.01.19  
21:00:12 EST

By: \_\_\_\_\_

Center for Public Awareness, Inc.

**AGREED TO:**

Date: 1/23/2018 \_\_\_\_\_

By: *David Stewart* \_\_\_\_\_

Jasco Products Company, LLC