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Attorneys Plaintiff the Center for Advanced Public Awareness

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ADVANCED PUBLIC
AWARENESS, in the public interest,

Plaintiff,

vs.

FOR LIFE PRODUCTS, LLC; and DOES 1
through 50, inclusive,

Defendants.

Case Number: CGC-18-566839

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

1 **1. INTRODUCTION**

2 **1.1. Center for Advanced Public Awareness and For Life Products, LLC**

3 This Consent Judgment is entered into by and between plaintiff the Center for Advanced
4 Public Awareness (“CAPA” or “Plaintiff”) and defendant For Life Products, LLC (“FLP” or
5 “Defendant”) with FLP and CAPA each individually referred to as a “Party” and collectively as
6 the “Parties.”

7 **1.2. Plaintiff**

8 CAPA is a not-for-profit corporation duly organized and existing in the State of
9 California, which seeks to promote awareness of exposures to toxic chemicals and to improve
10 human health by reducing or eliminating hazardous substances used in consumer products.

11 **1.3. Defendant**

12 FLP employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4. General Allegations**

16 CAPA alleges that FLP has manufactured, sold, and/or distributed for sale in California,
17 plastic pouches containing Di-isononyl Phthalate (“DINP”), a listed chemical pursuant to
18 Proposition 65 listed by the State of California to cause cancer, and failed to provide the health
19 hazard warning required by Proposition 65 for exposures to DINP. DINP shall be referred to
20 hereinafter as the “Listed Chemical.”

21 **1.5. Product Description**

22 The products covered by this Consent Judgment are the plastic pouches containing wood
23 furniture and floor markers including but not limited to SKU# RJ6WM or UPC #678408053418,
24 which are imported, sold and/or distributed for sale in California by FLP (“Covered Products”).

25 **1.6. Notice of Violation**

26 On September 20, 2017, CAPA served FLP, Orchard Supply Company, LLC, and the
27 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that
28 FLP violated Proposition 65. The Notice alleged that FLP had failed to warn its customers and

1 consumers in California of the health hazards associated with exposures to DINP from its import,
2 sale and/or distribution of the Covered Products. No public enforcer has diligently prosecuted the
3 allegations set forth in the Notice.

4 **1.7. Complaint**

5 On May 29, 2018, Plaintiff, who was and is acting in the interest of the general public in
6 California, filed a complaint (the “Complaint” or “Action”) in the Superior Court in and for the
7 County of San Francisco against FLP and Does 1 through 50, alleging violations of Health &
8 Safety Code §25249.6 based on the alleged exposures to DINP contained in the Covered Products
9 sold by FLP.


10 **1.8. No Admission**

11 The Parties enter into this Consent Judgment as a full and final settlement of all claims
12 that were raised or that could have been raised in the Notice and the Complaint, arising out of the
13 facts and/or conduct alleged therein. FLP denies the material, factual and legal allegations
14 contained in CAPA’s Notice and the Complaint and maintains that all Covered Products that it
15 has sold and distributed in California have been and are in compliance with all applicable laws.
16 Nothing in this Consent Judgment shall be construed as an admission by FLP of any fact,
17 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
18 Judgment constitute or be construed as an admission by FLP of any fact, finding, conclusion,
19 issue of law, or violation of law, such being specifically denied by FLP. However, this section
20 shall not diminish or otherwise affect FLP’s obligations, responsibilities, and duties hereunder.

21 **1.9. Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, Parties stipulate that: 1) this Court has
23 jurisdiction over FLP as to the allegations contained in the Complaint; 2) that venue is proper in
24 the County of San Francisco; and 3) that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

1
2 OR

3  **WARNING:** Cancer– www.P65Warnings.ca.gov

4 The warning shall be preceded by a symbol consisting of a black exclamation point in a
5 yellow equilateral triangle with a bold black outline.

6 In lieu of the foregoing examples, in the event that FLP elects to provide a warning, FLP
7 may provide any warning that is in compliance with any regulations that are promulgated by the
8 Office of Environmental Health Hazard Assessment (“OEHHA”) and that take effect after the
9 Effective Date of this Agreement.

10 **3. MONETARY PAYMENTS**

11 **3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)**

12 FLP shall pay a civil penalty of \$6,000, to be apportioned in accordance with California
13 Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of
14 California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
15 25% of the penalty remitted to CAPA. FLP shall issue two separate checks for the penalty
16 payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of
17 California’s Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in the
18 amount of \$4,500, representing 75% of the civil penalty and (b) one check to “Kawahito Law
19 Group in Trust for CAPA” in the amount of \$1,500, representing 25% of the civil penalty. Two
20 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
21 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to
22 CAPA, who shall furnish a W-9 at least five calendar days before payment is due.

23 The payments shall be delivered to CAPA’s counsel at the following address within ten
24 (10) business days of the Effective Date:

25 James Kawahito, Esq.
26 Kawahito Law Group APC
27 222 N. Sepulveda, Blvd. Suite 2222
28 El Segundo, CA 90245

1 **4. REIMBURSEMENT OF ATTORNEYS’ FEES AND COSTS**

2 The Parties acknowledge that CAPA and its counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 any fee reimbursement issue to be resolved after the material terms of the agreement had been
5 settled. The Parties reached an accord on the compensation due to CAPA and its counsel under
6 general contract principles and the private attorney general doctrine codified at California Code of
7 Civil Procedure § 1021.5, for all work performed through the mutual execution of this Consent
8 Judgment. FLP shall reimburse CAPA and its counsel in the total amount of \$34,000 for fees and
9 costs incurred by CAPA as a result of investigating, bringing this matter to the attention of FLP,
10 drafting the Complaint, litigating this matter, negotiating this Consent Judgment, and preparing
11 the papers and necessary briefing to obtain the Consent Judgment from this Court. FLP shall
12 make the check payable to “Kawahito Law Group APC” and shall deliver payment within ten
13 (10) business days of the Effective Date to:

14 James Kawahito, Esq.
15 Kawahito Law Group APC
16 Attn: CAPA v. For Life Products, Inc.
17 222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245

18 To allow for the issuance of a timely payment to be rendered pursuant to the above,
19 CAPA shall provide FLP with a completed IRS Form W-9 for the Kawahito Law Group APC
20 upon execution of this Consent Judgment by the Parties.

21 **5. RELEASE OF CLAIMS**

22 **5.1. CAPA’s Release of FLP**

23 This Consent Judgment is a full, final and binding resolution between CAPA, on behalf of
24 itself, its past and current agents, representatives, attorneys, successors and/or assignees, and in
25 the interest of the general public (“Releasers”), on the one hand, and FLP, its parent, subsidiaries,
26 affiliated entities that are under common ownership, directors, officers, managers, members,
27 employees, licensors, and each person or entity to whom FLP directly or indirectly distributes or
28 sells the Covered Products, including, but not limited to, Orchard Supply Company, LLC,

1 distributors, wholesalers, customers, retailers, and their parents, all subsidiaries and affiliates
2 thereof, and their respective employees, agents, successors, and assigns of any of them (all
3 collectively “Releasees”), on the other hand, and Releasors waive all rights to institute or
4 participate in (directly or indirectly) any form of legal action, and fully release and discharge
5 Releasees from all actions, causes of action, obligations, costs, expenses, fees (including, but not
6 limited to, attorneys’ fees, expert fees, and investigator fees), penalties, damages, losses, claims,
7 liabilities, and demands, for any alleged violation of Proposition 65 that was asserted in the
8 Complaint or that could have been asserted pursuant to the Notice, including, but not limited to,
9 alleged exposures to DINP or the failure to warn about alleged exposures to DINP contained in
10 the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale
11 by FLP (either directly or through any of the Releasees) in California before the Effective Date.
12 Compliance with the injunctive relief provisions in Section 2 of this Consent Judgment shall be
13 deemed compliance with Proposition 65 as to alleged exposures to DINP in the Covered
14 Products.

15 CAPA, on its own behalf, and its attorneys and other representatives, also provides a
16 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
17 actions, causes of action, obligations, costs, expenses, fees (including, but not limited to,
18 attorneys’ fees, expert fees, and investigator fees), penalties, damages, losses, claims, liabilities,
19 and demands of CAPA, and its attorneys and other representatives, of any nature, character or
20 kind, whether known or unknown, suspected or unsuspected, whether under Proposition 65 or
21 otherwise, arising out of, resulting from, or related directly or indirectly to the Covered Products,
22 including, but not limited to, any claims that were or could have been asserted based on the
23 Notice and/or Complaint relating to the Covered Products imported, manufactured, sold and/or
24 distributed for sale by Releasees in California before the Effective Date.

25 **5.2. FLP’s Release of CAPA**

26 FLP on behalf of itself, its past and current agents, representatives, attorneys, successors,
27 and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been

1 taken or made) by CAPA and its attorneys and other representatives, whether in the course of
2 investigating its claims asserted in this Action or otherwise seeking to enforce Proposition 65
3 against it in this matter with respect to the Covered Products.

4 **5.3. Section 1542 Waiver**

5 It is possible that other claims not known to the Parties, arising out of the facts alleged in
6 the Notice and/or Complaint, and relating to the Covered Products, will develop or be discovered.
7 CAPA on behalf of itself and its attorneys and other representatives only, and FLP on behalf of
8 itself only, acknowledge that this Consent Judgment is expressly intended to cover and include all
9 such claims up through and including the Effective Date, including all rights of action therefor.
10 CAPA and FLP acknowledge that their claims released in Sections 5.1 and 5.2 above may include
11 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
12 unknown claims. California Civil Code section 1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
16 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
17 OR HER SETTLEMENT WITH THE DEBTOR.

18 CAPA on behalf of itself and its attorneys and other representatives only, and FLP on behalf of
19 itself only, acknowledge and understand the significance and consequences of this specific waiver
20 of California Civil Code section 1542.

21 **6. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and
23 shall be null and void if, for any reason, it is not approved and entered by the Court.

24 **7. SEVERABILITY**

25 If, subsequent to the entry of this Consent Judgment, any provisions of this Consent
26 Judgment are deemed by a court to be unenforceable, the validity of the remaining provisions
27 shall not be adversely affected.

28 **8. GOVERNING LAW**

1 The terms of this Consent Judgment shall be governed by the laws of the State of
2 California and apply within the State of California. In the event that Proposition 65 is repealed or
3 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
4 FLP may provide written notice to CAPA of any asserted change in the law, and shall have no
5 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
6 Covered Products are so affected.

7 **9. NOTICES**

8 Unless specified herein, all correspondence and notice required to be provided pursuant to
9 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
10 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
11 or (c) a recognized overnight courier on any Party by the other at the following addresses:

12 For FLP: Ben D. Whitwell
13 Venable LLP
14 2049 Century Park East, Suite 2300
15 Los Angeles, CA 90067
16 bwhitwell@venable.com

17 with a copy to: For Life Products, LLC
18 Attn: Joe McDonnell
19 2301 SW 145th Avenue
20 Miramar, FL 33027

21 For CAPA: James K. Kawahito
22 Kawahito Law Group APC
23 Attn: CAPA v. For Life Products, Inc.
24 222 North Sepulveda Blvd., Suite 2222
25 El Segundo, CA 90245
26 jkawahito@kawahitolaw.com

27 with a copy to: Center for Advanced Public Awareness, Inc.
28 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.

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

5 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
10 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
11 obtaining such approval, CAPA and FLP and their respective counsel agree to mutually employ
12 their best efforts to support the entry of this agreement as a Consent Judgment and obtain
13 approval of the Consent Judgment by the Court in a timely manner. For purposes of this
14 paragraph, best efforts shall include at a minimum, cooperating on the drafting and filing any
15 papers in support of the required motion for judicial approval.

16 **13. MODIFICATION**

17 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
18 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
19 of any Party and entry of a modified consent judgment by the Court.

20 **14. AUTHORIZATION**

21 The undersigned are authorized to stipulate to, enter into, and execute this Consent
22 Judgment on behalf of their respective Parties, and have read, understood, and agree to all of the
23 terms and conditions of this Consent Judgment.

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AGREED TO:

AGREED TO:

Date: _____

Date: 7-18-18

By: _____
Center for Advanced Public Awareness, Inc.

By: Joe McDonnell
For Life Products, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT