

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the Center for Advanced Public Awareness (“CAPA”) on the one hand and Zhangzhou Best Clothing Co., Ltd. (“ZHANGZHOU”), with ZHANGZHOU and CAPA 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 CAPA alleges that ZHANGZHOU employs ten or more persons, and CAPA alleges that ZHANGZHOU 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 ZHANGZHOU manufactured, exported, imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical listed by the State of California pursuant to Proposition 65 as known to cause cancer and reproductive toxicity. CAPA further alleges that ZHANGZHOU failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

1.3 Product Description.

The products covered by this Settlement Agreement are Curler Sets, which were manufactured, exported, imported, sold and/or distributed for sale in California by

ZHANGZHOU (such as, for example, UPC No. 430000779222) (“Covered Products”) to Dollar General Corporation.

1.4 60 Day Notice of Violation and Exchange of Information.

On June 4, 2018, CAPA served Dollar General Corporation (“DOLLAR”) and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that DOLLAR and its manufacturers/suppliers violated Proposition 65. The Notice alleged that DOLLAR had failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Products.

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

ZHANGZHOU further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has manufactured, exported, imported and/or sold and 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 ZHANGZHOU 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 ZHANGZHOU of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ZHANGZHOU. This Section shall not, however, diminish or otherwise affect ZHANGZHOU'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 the date the Agreement is fully executed by the Parties.


2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Standard. As of the Effective Date, ZHANGZHOU has indicated that it has discontinued the import, manufacture, shipment or offer for sale of the Covered Products into California. However, to the extent it decides to reintroduce the Covered Products into California in the future, the Covered Products shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP if the Products 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 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 ("Reformulation Standard"). With respect to existing Covered Products, meaning those that are in the channels of distribution with distributors and retailers on or before the Effective Date, those distributors and retailers may continue to sell-through those items whether or not they are Reformulated Products. However, as of the Effective Date, no new Covered Products may be distributed or sold in California by ZHANGZHOU that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3.

2.2 Warning Option. In the event that ZHANGZHOU decides to reintroduce Covered Products in the future that do not meet the Reformulation Standard set forth in Section 2.1 above, they shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that are sold or shipped out by ZHANGZHOU 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.


2.3 Warning Language. Commencing on the Effective Date, ZHANGZHOU shall ensure that any unreformulated Covered Products that it ships to California retailers or for sale in California includes a clear and reasonable warning. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

 **WARNING:** This product can expose you to Di-(2-ethylhexyl) phthalate, which is 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.

OR

 **[California Proposition 65] WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

OR

 **WARNING:** This product can expose you to chemicals including Di-(2-ethylhexyl) phthalate, 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.

The warning shall be prominently displayed 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 the specific Covered Product the warning applies, so as to minimize the risk of consumer confusion. The warning symbol may be printed in black and white if the Covered Product label, sign or shelf tag is not printed in the color yellow. 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, ZHANGZHOU shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without further notice to CAPA or being deemed in breach of this Agreement.

2.4 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.

2.5 Deemed Compliance with Proposition 65. Compliance by ZHANGZHOU with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Covered Products.

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

ZHANGZHOU shall pay a civil penalty of \$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. ZHANGZHOU shall issue a wire transfer to the Kawahito Law Group Client Trust Account for the penalty payment: (a)] \$375, representing 75% of the civil penalty, in Trust for the State of California's Office of Environmental Health Hazard Assessment and (b) and \$125, representing 25% of the initial civil penalty for CAPA. Payment of \$500 shall be due within 10 days of the full execution of this Agreement. Wire Instructions will be provided separately.

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, ZHANGZHOU shall pay the total amount of \$16,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of ZHANGZHOU, and negotiating a settlement. ZHANGZHOU shall make the payment by wire transfer to the Kawahito Law Group Client Trust Account Payment. Wiring Instructions will be provided separately. Payment shall be due within 10 days of the full execution of this Agreement,

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases ZHANGZHOU, DOLLAR, their parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, partners, members, managers, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying ZHANGZHOU with the Covered Products, and each entity to which ZHANGZHOU directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, shareholders, directors, officers, partners, members, managers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively “Releasees”) for any and all claims based on any violation of Proposition 65 and/or the Releasees’ alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, exported, imported, distributed, sold and/or offered for sale by ZHANGZHOU (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Products that were in the stream of commerce prior to the Effective Date. However, as of the Effective Date, no new Products shall be shipped to or distributed in California by ZHANGZHOU that are not Reformulated Products or contain the warnings set forth in Sections 2.2 and 2.3. 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 against ZHANGZHOU and Releasees that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys’ fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, exported, imported, sold, or distributed for sale before the Effective Date by ZHANGZHOU or Releasees.

5.2 ZHANGZHOU's Release of CAPA.

ZHANGZHOU 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 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 § 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 ZHANGZHOU, 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 §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

CAPA and ZHANGZHOU each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, ZHANGZHOU shall provide written notice to CAPA of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected. The Parties further agree that should any agreement by CAPA, or consent judgment, court decision or other relevant determination or decision by a court, the California Office of Environmental Health Hazard Assessment, or the California Attorney General's Office concerning DEHP exposure or other products of the type described in the Notice have a material impact on the terms of this Agreement, those benefits shall be deemed to accrue to ZHANGZHOU and this Settlement Agreement shall be deemed to be amended to provide ZHANGZHOU the benefit thereof.

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 ZHANGZHOU:

H. Kim Sim
Conkle Kremer & Engel PLC
3130 Wilshire Blvd., #500
Santa Monica, CA 90403

with a copy to:

Zhangzhou Best Clothing Co., Ltd. Attn: Jeekem Zheng
Dianzaixu, Xiangcheng
Zhangzhou City 363000
Fujian Province, China

For CAPA:

James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. ZHANGZHOU, LLC
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

with a copy to:

Center for Advanced Public Awareness, Inc.
2342 Shattuck Ave. #347
Berkeley, CA 94704

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

11. MODIFICATION

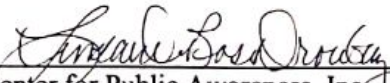
Except as otherwise provided herein, this Settlement Agreement may be modified only by written agreement of the Parties.

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: 04/01/2019

By: 
Center for Public Awareness, Inc

AGREED TO:

Date: 04/02/2019

By: 
Zhangzhou Best Clothing Co., Ltd