

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Center for Advanced Public Awareness ("CAPA") and Two's Company, Inc. ("Two's Company") is effective on the date on which it is fully executed ("Effective Date"). CAPA and Two's Company are referred to individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. This Matter arises out of the Notice of Violation of California Health & Safety Code, section 25249.5, *et seq.* (also known as "Proposition 65") that CAPA served on Two's Company on July 19, 2018 (the "Notice") with regard to the following product identified below ("Covered Product"):

- **Vinyl bag sold with Wash Away Makeup Removal Set**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Matter and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing, or liability. This Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following representations, covenants and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

a. Two's Company represents that as of the Effective Date, the Covered Product it sells does not contain more than 1000 parts per million (ppm) of Di(2-ethylhexyl) phthalate ("DEHP").

b. Two's Company further represents that it intends to only sell Covered Products that contain less than 1000 ppm of DEHP.

c. If Two's Company sells any Covered Products in California after the Effective date that contain more than 1000 ppm DEHP, or if any of its distributors sell any Covered products in California that are acquired from Two's Company after the Effective Date that contain more than 1000 ppm DEHP, Two's Company shall provide the following warning on the product, prominently displayed with such conspicuousness as compared with other words, statements, designs or devices on the product, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use:

00153606.1

Initials

SETTLEMENT AGREEMENT AND RELEASE



WARNING: This product can expose you to chemicals including Di(2-ethylhexyl)phthalate ("DEHP"), which is known to the State of California to cause cancer and birth defects or other developmental harm. For more information go to www.P65Warnings.ca.gov.

This provision applies only to Covered Products sold or shipped out by Two's Company 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.

- i. If Two's Company sells Covered Products in California that contain more than 1000 ppm of DEHP as a result of internet or catalog sales, Two's Company will follow all of the procedures set forth for such sales in 27 CCCR section 25602 or any other California regulations relating to the implementation of Proposition 65. Should any of Two's Company's customers, or any retailers who purchase from Two's Company's customers, sell Covered Products in California that contain more than 1000 ppm of DEHP on the internet or in catalogs, Two's Company will provide them written notification concerning the internet sale and catalog sale procedures set forth in these regulations, and will request that they follow such procedures.
- ii. In addition to the warning content set forth above, if Two's Company sells Covered Products in California that contain more than 1000 ppm of DEHP, it may use content in compliance with the regulations set forth in 27 CCR sections 25601 and following, or any other California regulations that may be issued for purposes of the implementation of Proposition 65.

d. From time to time, CAPA may direct a laboratory certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization to test Covered Products not containing the above-required warnings. CAPA will direct the laboratory(ies) conducting such tests to use testing methodology CPSC-CH-C1001-09.4 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance, or any other methodology utilized by federal or state agencies, to determine if the Covered Product sold without warning needs a warning pursuant to this agreement. CAPA may request test results of the same Covered Product from Two's Company. If CAPA makes such a request, it will provide Two's Company with documentation of its purchase of the Covered Product and of its laboratory report. Two's Company shall retain copies of the test data from the date the manufacturer commenced testing and shall provide CAPA its test data related to that Covered Product acquired by and tested for CAPA to within thirty (30) days of receiving a request from CAPA. The requirement to provide test data to CAPA shall cease after three (3) years from the Effective Date.

00153806.1

Initials

SETTLEMENT AGREEMENT AND RELEASE

4. Two's Company shall make a total settlement payment of \$20,500.00 ("Total Settlement Payment") by wire transfer to CAPA's escrow account for which CAPA will give Two's Company the necessary account information within five (5) business days of the Effective Date. The Total Settlement Payment shall be made within fifteen (15) business days of the Effective date and allocated as follows:

a. \$2,500.00 shall be considered a civil penalty pursuant to California Health and Safety Code, section 25249.7, subdivision (b)(1). CAPA shall remit 75% (\$1,875.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code, section 25249.12, subdivision (c). CAPA will retain the remaining 25% (\$625.00) of the civil penalty.

b. \$8,084 shall be considered a reimbursement to CAPA for its costs incurred as a result of bringing this Matter to Two's Company's attention and negotiating a settlement.

c. \$9,916.00 shall be considered reimbursement of attorney fees for Aqua Terra Aeris Law Group.

d. In the event that Two's Company fails to remit the Total Settlement Payment owed under Section 4 of this Settlement Agreement on or before the Due Date, Two's Company shall be deemed to be in material breach of its obligations under this Agreement. CAPA shall provide written notice of the delinquency to Two's Company via electronic mail. If Two's Company fails to deliver the Total Settlement Payment within five (5) days from the written notice, the Total Settlement Payment shall become immediately due and payable and shall accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure, section 685.010. Additionally, Two's Company agrees to pay CAPA's reasonable attorney fees and costs for any efforts to collect the payment due under this Agreement.

5. Two's Company shall file and issue IRS form 1099's to CAPA, to OEHHA and to Aqua Terra Aeris Law Group in conformance with the Internal Revenue Code and Internal Revenue Service regulations. CAPA and Aqua Terra Aeris Law Group represent to Two's Company that the IRS form W9's dated November 8, 2017 that they provided to Two's Company's counsel on April 9, 2018 are current and accurate as of the date this Agreement is executed.

6. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

7. Binding Effect; Claims Covered and Released

This Settlement Agreement and Release is a full, final and binding resolution between

Initials

00153606.1

SETTLEMENT AGREEMENT AND RELEASE

CAPA, its employees, shareholders, officers, directors, attorneys, successors and assigns, on the one hand, and (a) Two's Company, and its owners, parents, subsidiaries, employees, shareholders, officers, directors, attorneys, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, ("Downstream Releasees"), on the other hand, Two's Company's compliance with this Settlement Agreement and Release shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Product for both Releasees and Downstream Releasees for any Covered Product distributed and/or sold by Releasees or Downstream Releasees in California before the Effective Date. CAPA, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action, 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) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under the NOV issued in this matter.

a. The Releasing Parties further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

The Parties acknowledge each it is familiar with Section 1542 of Civil Code, which provides as follows:

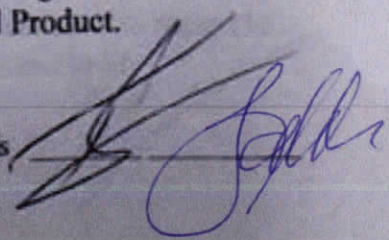
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Parties' past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute of common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

8. Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, except as otherwise provided in this agreement, nor shall it apply to any of Two's Company' sale of products other than the Covered Product.

00153606.1

Initials



SETTLEMENT AGREEMENT AND RELEASE

9. Nothing herein shall be construed as diminishing Two's Company's continuing obligations to comply with Proposition 65. To the extent that failure to comply with this Agreement constitutes a violation of Proposition 65 or other laws, CAPA may seek whatever fines, costs, penalties, or remedies as are provided for law for failure to comply with Proposition 65 or other laws.

10. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via email may also be sent.

FOR CENTER FOR ADVANCED PUBLIC AWARENESS, INC:

Executive Director
Center for Advanced Public Awareness, Inc.
180 Promenade Cir.
Sacramento, CA 95834

With a copy to:
Matthew Maclear
Aqua Terra Aeris Law Group
490 43rd Street, Suite 108
Oakland, CA 94609

FOR TWO'S COMPANY, INC:

Thomas Gottlieb, President
Two's Company, Inc.
500 Saw Mill River Road
Elmsford, NY 10523

With a copy to:

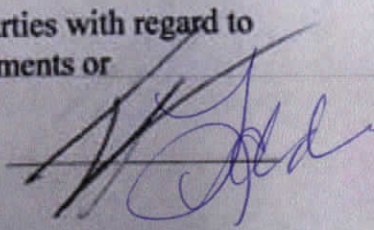
Bruce Nye
Scali Rasmussen
1901 Harrison Street, 14th Floor
Oakland, CA 94612

11. After executing this Agreement, CAPA will submit to the California Attorney General a Report of Settlement. In addition, CAPA will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding this Matter, its settlement, and this Agreement.

12. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or

00153606.1

Initials



SETTLEMENT AGREEMENT AND RELEASE

understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties.

13. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

14. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

15. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

16. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

17. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

18. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. CAPA shall be entitled recover its reasonable attorneys' fees that are necessary and required to enforce the agreement pursuant to California Code of Civil Procedure, section 1021.5.

19. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

///

///

///

00153606.1

Initials



SETTLEMENT AGREEMENT AND RELEASE

20. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: 1/14/19

TWO'S COMPANY, INC.

By: 

Thomas Gottlieb

Title: President

DATED: 2/1/19

CENTER FOR ADVANCED PUBLIC
AWARENESS, INC.

By: 

00153606.1

Initials 

SETTLEMENT AGREEMENT AND RELEASE