

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. (“CAPA”) on the one hand and PONTE VEDRA GIFTS & ACCESSORIES COMPANY, LLC (“PVGA”), with PVGA 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 PVGA employs ten or more persons, and CAPA alleges that PVGA 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 PVGA and GREASE MONKEY INTERNATIONAL, LLC (“GMI”) imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”) and Di-isononyl Phthalate (“DINP”), chemicals pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. CAPA further alleges that PVGA and GMI failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP and DINP from the Covered Products.

1.3 Product Description.

The products covered by this Settlement Agreement are the Grease Monkey USB Charging Cup, which was imported, sold, and/or distributed by PVGA for sale in California with SKU No. 400173298851 (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On April 25, 2018, CAPA served PVGA, GMI, Ross Stores, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that PVGA, GMI, and Ross Stores, Inc., violated Proposition 65. The Notice alleged that PVGA, GMI, and Ross Stores, Inc. had failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP and DINP from their import, sale and/or distribution of the Covered Products.

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

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

2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

2.1 **Reformulation Standard.** Commencing on the Effective Date, and continuing thereafter, Covered Products that PVGA imports, manufactures, ships to be sold or offered for sale or purchase in or into California, or sells in 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 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 and less than or equal to 1,000 parts per million (0.1%) 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 DINP content in a solid substance ("Reformulation Standard"). Existing Covered Products—meaning those that are currently in the stream of commerce or channels of distribution, with GMI, distributors, or retailers, including without limitation Ross Stores, Inc.—may continue to be sold without being reformulated or requiring warnings. However, as of the Effective Date, no new Covered Products may be distributed or sold by PVGA into California or to retailers for sale in California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3

2.2 **Warning Option.** Covered Products that do not meet the Reformulation Standard set forth in Section 2.1 above 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 by PVGA out to consumers, retailers, or distributors after 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.

2.3 **Warning Language.** Commencing on the Effective Date, PVGA 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 chemicals including Di(2-ethylhexyl) phthalate (DEHP) and/or Diisononyl Phthalate (DINP), 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.

OR

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

OR

△ **WARNING:** This product can expose you to chemicals including Diisononyl Phthalate (DINP), 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.

OR

△ **[California Proposition 65] WARNING:** Cancer and Reproductive Harm - 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 Product the warning applies, so as to minimize the risk of consumer confusion. 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, PVGA shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement 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.

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

PVGA 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. PVGA 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 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 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 APC, who shall furnish a W-9 at least five calendar days before payment is due. Payment of the \$1,500 civil penalty shall be due within 10 business days of the full execution of this Settlement Agreement and delivered to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Pacific Coast Hwy. Suite 2222
El Segundo, CA 90245

4. REIMBURSEMENT OF FEES AND COSTS

The Parties have 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 attorneys’ fees payable to CAPA and its counsel in connection with the matters set forth in this Settlement Agreement. More specifically, PVGA shall pay the total amount of \$18,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of PVGA, and negotiating a settlement. PVGA shall make the check payable to “Kawahito Law Group APC.” Payment shall be made

according to the following schedule. Payment of the \$18,000 shall be due within 10 business days of the full execution of this Settlement Agreement and delivered to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Pacific Coast Hwy. Suite 2222
El Segundo, CA 90245

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide PVGA with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days prior to the payment due date.

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 PVGA, GMI, Ross Stores, Inc., and their parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying them with the Covered Products, and each entity to which PVGA or GMI directly or indirectly distribute, ship or sell the Covered Products, including, but not limited to Ross Stores, Inc., their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively "Releasees") from any and all claims, whether known or unknown, suspected or unsuspected, that were or could have been asserted by CAPA against them based on their alleged or actual failure to warn about alleged exposures to DEHP and DINP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by PVGA (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Covered Products that were in the stream of commerce prior to the Effective Date. However, as of the Effective Date, no new Covered Products shall be shipped to or distributed by PVGA in California that are not Reformulated Products or that do not 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 PVGA, GMI, 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 and DINP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by PVGA, GMI, or Releasees.

CAPA acknowledges that 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.

CAPA, its 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 or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

5.2 PVGA's Release of CAPA.

PVGA 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 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.

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 PVGA: Ponte Vedra Gifts and Accessories Company, LLC
c/o Jesse S. McIntyre, P.A.
105 Solana Road, Suite B
Ponte Vedra Beach, FL 32082

with a copy to: Jeffrey Parker
Sheppard Mullin
333 S. Hope St., 43rd Floor
Los Angeles, CA 90071

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Grease Monkey Int'l, 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

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.

13. NO TRANSFER OF CLAIMS

The Parties warrant and represent that they have not (and will not) sell, assign, grant, convey or transfer to any other person, firm, attorney, corporation, or entity, any of the claims, demands, actions, or causes of action described, contemplated and/or released herein.


AGREED TO:

Date: _____

By: _____
Center for Public Awareness, Inc.

AGREED TO:

Date: 1/4/19 _____

By:  _____
Ponte Vedra Gifts and Accessories
Company, LLC

AGREED TO:

Date: _____



Digitally signed by
Linda DeRose-Droubay
Date: 2018.12.23 18:25:
18 EST

By: _____
Center for Public Awareness, Inc.

AGREED TO:

Date: _____

By: _____
Ponte Vedra Gifts and Accessories
Company, LLC