

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (the “Agreement”) is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC.(“CAPA”) and CREATIVE BRANDS, LLC (“Creative”), with Creative 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, and represents it 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 Creative employs more than ten persons, and CAPA alleges that Creative 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 Creative imported, sold, and/or distributed for sale in California, either directly or through or in conjunction with (a) other parties involved with Creative in creating, developing, manufacturing and preparing the Covered Products for sale or distribution, including but not limited to licensors, manufacturers, suppliers, vendors, or other entities involved with supplying Creative with the Covered Products (the “Instream Parties”), and (b) other entities downstream in the retail channel, including but not limited to wholesalers, customers, retailers, franchisees, cooperative members, and licensees or sub-licensees (collectively the “Downstream Parties”)(the Instream Parties and the Downstream Parties collectively the “Channel Parties”) the Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical listed by the State of California on the Proposition 65 list as causing cancer and reproductive toxicity. CAPA further alleges (a) the reasonably anticipated use of the Covered Products resulted in an exposure of the user to DEHP, and (b) that the exposure was knowing and intentional on the part of Creative and one or more of the Channel Parties. CAPA further alleges Creative and one or more of the Channel Parties were required to provide a Proposition 65 warning before exposing persons to DEHP from the use of the Covered Products, but that they failed to do so.

1.3 Product Description.

The products covered by this Settlement Agreement are the 35-Piece Bell & Howell Roadside Emergency Kits, which include slip joint pliers with a soft grip, which were imported, sold and/or distributed for sale in California by Creative, with the assistance of the Instream Parties, and sold by one or more of the Downstream Parties, in or into California with Product No. BH1043 (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On August 9, 2018, CAPA served Creative, Ross Stores, Inc., and the requisite public enforcement agencies a 60-Day Notice of Violation (“Notice”), identifying the Covered Products and alleging that Creative violated Proposition 65 by importing, selling, and/or distributing for sale in California the Covered Products, the use of which exposed the users in California to DEHP without first providing a clear and reasonable warning.

CAPA subsequently provided Creative with test results in CAPA’s possession concerning its allegations, and specifically the content of DEHP in a sample of the Covered Products. Creative provided CAPA with sales data for the sale of the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting any action that relates to the allegations set forth in the Notice or refers to the Covered Products.

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, without first providing a clear and reasonable warning, Creative imported, manufactured, sold or distributed for sale, either directly or through the Channel Parties, in the state of California, Covered Products which contained DEHP and which through reasonably anticipated use would expose the user to DEHP. Creative denies (1) it ever knowingly and intentionally exposed any person to a Proposition 65 listed substance, including but not limited to DEHP, and (2) that a warning, whether under Proposition 65 or any other applicable law, is required to be given to any person prior to the sale of the Covered Products. Creative further denies the material, factual, and legal allegations contained in the Notice and maintains that, to the best of its knowledge, 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, as the products are either exempt from any Proposition 65 warning requirements or are appropriately labeled in order to comply with Proposition 65 warning requirements. Nothing in this Settlement Agreement shall be construed as an admission by Creative or any Channel Party 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 Creative or any Channel Party of any fact, finding, conclusion, issue of law, or violation of law, which Creative specifically denies. This Section shall not, however, diminish or otherwise affect Creative’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.

Commencing on the Effective Date, and continuing thereafter, Covered Products that Creative imports, manufactures, ships to be sold or offered for sale or purchase in or into California, or sells in California, either directly or through or with the assistance of any Channel Party, shall either be appropriately labeled in order to comply with Proposition 65 warning requirements or shall 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”).

2.2 Existing Products.

With respect to existing Covered Products, meaning those that are already manufactured and currently in Creative’s channels of distribution or in transit, including in possession of Creative (the “Existing Products”), Creative may continue to sell-through all such Existing Products. However, as of March 31, 2019 (the “Warning Date”), Creative shall distribute or sell in or into California any Existing Products unless they contain the warnings set forth in Paragraph 2.3.

2.3 Warning Option.

The sale of any 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 out to consumers, retailers, distributors or any Downstream Parties after the Warning Date. No Proposition 65 warning for DEHP shall be required as to any Covered Products prior to the Warning Date.

2.4 Warning Language.

Commencing on the Warning Date, Creative shall ensure that all unreformulated Covered Products that it ships to any Downstream Party for sale in California include a clear and reasonable warning within the meaning of Proposition 65. 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, 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 it, 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, Creative shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement

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

Creative shall pay a civil penalty of \$1,000, 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. Creative shall issue two separate checks for the penalty payment: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$750, 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 \$250, 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 APC, who shall furnish a W-9 at least five calendar days before payment is due. The checks shall be delivered on or before February 15, 2019, 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 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, and 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 Section 1021.5, for all work performed through the mutual execution of this agreement. More specifically, Creative shall pay the total amount of \$15,500 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Creative, and negotiating a settlement, payable as follows: first payment of \$7,500 to be delivered on or before February 15, 2019; the balance of \$8,000 to be paid in monthly installments of \$1,000 for 8 months, with payment due on the 15th of each month from March 2019 to October 2019. Checks shall be made payable to "Kawahito Law Group APC" 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 Creative with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days prior to payment.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Release of Proposition 65 Claims and Allegations Related to The Covered Products.

CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees (the “CAPA Releasers”), fully and completely releases and exonerates (a) Creative and all of the Channel Parties, and (i) as to each of them, each of their directors, officers, employees, shareholders, members, managers, agents, principals, insurers, accountants, representatives, attorneys, and (ii) as to each of them, their parents, subsidiaries, affiliates, predecessors, successors, assignees, and (b) as to all of the foregoing parties in subpart (a), each of their owners, directors, officers, employees, shareholders, members, managers, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively the “Defense Releasees”), of any actual or alleged violation of Proposition 65 or any other statutory or common law claims, whether known or unknown, that was or could have been asserted by CAPA against any Defense Releasee for any and all claims or rights based on their alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by Creative and/or any Channel Party in California before the Effective Date or the Warning Date, as applicable (collectively the “CAPA Claims”). This release is provided in CAPA’s individual capacity and is not a release on behalf of the public.

5.2 Waiver and Covenant Not to Sue.

CAPA on behalf of itself and the CAPA Releasers, also (a) waives all of its rights to and (b) expressly covenants that it will not, institute or participate in, directly or indirectly, any form of legal action against any of the Defense Releasees, 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 or any other statutory or common law claims, regarding the alleged or actual failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date or the Warning Date, as applicable, by Creative or any Defense Releasees.

5.3 Release of Unknown Claims and Civil Code Section 1542 Waiver Related to the Covered Products.

The CAPA Releasors acknowledge that they are familiar with Section 1542 of the California 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.

The CAPA Releasors expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of California Civil Code Section 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.

5.4 Creative's Release of CAPA.

Creative on behalf of itself, its successors, and/or assigns, releases and waives any and all claims against CAPA, its attorneys and other representatives (the "CAPA Releasees"), for any and all actions taken or statements made by CAPA and its attorneys and other representatives, in the course of investigating the CAPA claims and/or otherwise seeking to enforce Proposition 65 against Creative in this matter with respect to the Covered Products.

6. ENFORCEMENT OF SETTLEMENT AGREEMENT.

6.1 Jurisdiction in Los Angeles County.

In the event of any breach of this Settlement Agreement, the non-breaching Party may file an action in the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 6.2 and 6.3 of this Settlement Agreement, to enforce this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

6.2 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 Creative or any Defense Releasee by CAPA, unless the party seeking enforcement or alleging a violation of this Settlement Agreement notifies the other party of the specific acts alleged to breach this Settlement Agreement (the "Breach Notice") at least 10 days before serving or filing any action or Notice of Violation and the entity receiving the Breach Notice fails to comply with the requirements set forth in Section 6.3 below. Any Breach Notice to Creative must contain (a) description of the Covered Product(s), (b) the specific date(s) upon which the Covered Product(s) were discovered to be available for sale after the Effective Date in California without reformulation, or if applicable, a warning, (c) the store or other place at which the Covered Product(s) were found to remain available for sale to consumers, and (d) other evidence or other support for the allegations in the Breach Notice.

6.3 Cure Opportunity.

Within 5 days of receiving the Breach Notice described in Section 6.2, Creative shall either (1) send all stores and other places at which the Covered Product(s) are available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Creative for full credit, including shipping costs, or (2) refute the information provided under Section 6.2 based on an objectively reasonable standard. Should the Parties be unable to resolve the dispute(s), any Party may seek to enforce this Settlement Agreement as provided in this Section 6

7. 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, unless the unenforceability destroys the essence of the bargain between the Parties such that enforcement would be fundamentally unfair to and result in a miscarriage of justice to one of the Parties.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California without regard to its choice of law provisions. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products in particular, then either Party may provide written notice to the other Party of any actual or asserted change in the law, and Creative shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

9. NOTICE

All correspondence and/or notices 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, to the other Party by the other at the following addresses, and at the same time an e-mail copy of such correspondence or notice shall also be sent to the e-mail address below:

For Creative:

Helen J. Setton, Esq.
Goldberg Weg & Markus PLLC
122 West 27th Street, 11th Floor
New York, NY 10001
E: HSetton@grlawpllc.com

With a copy to:

Thomas N. FitzGibbon, Esq.
Apex Law APC
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
E: tom@apexlaw.com

With a copy to:

Attn: Fred Harari
Creative Brands, LLC
241 37th Street # 443
Brooklyn, NY 11232 E: Fred@creativebrandsllc.com

For CAPA:

James K. Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. Creative Brands, LLC.
222 Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245
E: jkawahito@kawahitolaw.com

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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and each of which shall constitute together one and the same instrument. The counterparts will be binding on each of the Parties, even though the various Parties may have executed separate counterparts. The counterparts may be transmitted to the other Party via facsimile or via electronic mail transfer of an attachment containing an electronic scanned image in PDF format, if such counterpart is sent to all other Parties to this Agreement or their respective counsel. In the event facsimile or electronic counterparts or electronic signatures are used, they shall have the same force and effect as an original signature, as provided in the California Evidence Code.

11. 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).

12. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

13. COSTS AND ATTORNEYS' FEES

Other than as set forth in Paragraph 4 of this Agreement, the Parties waive any right to seek or collect any attorneys' fees or costs from any other Party in connection with the Notice, the settlement and/or this Agreement and each Party shall bear its own costs and attorneys' fees in connection with the negotiation and drafting of this Agreement. In the event that any Party breaches this Agreement, the non-breaching Party shall be entitled to all reasonable attorneys' fees and costs incurred to enforce this Agreement.

14. ENTIRE AGREEMENT AND WAIVER

This Agreement contains the entire agreement between its Parties and supersedes all prior and contemporaneous agreements, arrangements, negotiations and understandings between such Parties, relating to the subject matter of this Agreement. There are no other agreements, understandings, statements, promises or inducements, oral or otherwise, contrary to the terms of this Agreement between the Parties. No representations, warranties, covenants or conditions, express or implied, whether by statute or otherwise, other than as set forth in this Agreement, have been made by any Party to this Agreement. No waiver of any term, provision, or condition of this Agreement, whether written or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

15. REPRESENTATION BY COUNSEL


Each Party is represented by counsel of its choice with regard to the negotiation of this Agreement and the settlement of the CAPA Claims and all matters alleged to be violations of Proposition 65 by CAPA on the part of any Defense Releasee. Each Party is entering into this Agreement deliberately, advisedly, and of its own free will and volition and without pressure or duress of any kind, including with respect to timing or the ability to read or negotiate this Agreement, which is completely negotiable. The Parties confirm that each Party and its counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement. In this Agreement the neuter gender includes the feminine and masculine and the singular includes the plural (and vice versa), and the words "person" and "Party" include corporation, partnership, firm, trust or association wherever the context so requires.

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:
Center for Public Awareness, Inc.


Date: _____

By:  _____
Digitally signed by
Linda DeRose-Droubay
Date: 2019.02.07 13:30:
06 EST

Its: _____

AGREED TO:
Creative Brands, LLC

Date: 2/8/19 _____

By:  _____

Its: _____