

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. ("CAPA") and FOREVER 21, INC. ("Forever 21"), with Forever 21 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 Forever 21 employs ten or more persons, and CAPA alleges that Forever 21 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 Forever 21 imported, sold, and/or distributed for sale in California headphones and earbuds containing Di-(2-ethylhexyl) phthalate ("DEHP"), which are chemicals pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity, and CAPA alleges that Forever 21 failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its earbuds and headphones, specifically the Unicorn Earbuds and the Audiophone Headphones.

1.3 Product Description.

The products covered by this Settlement Agreement are earbuds and headphones including without limitation the Unicorn Earbuds and Audiophone Headphones, which were imported, sold and/or distributed for sale in California by Forever 21 with UPC Nos. 00200980011 and 00149086011 ("Covered Products").

1.4 **60 Day Notices of Violation and Exchange of Information.**

On July 16, 2018 and August 16, 2018, CAPA served Forever 21, and the requisite public enforcement agencies with two 60-Day Notices of Violation ("Notices"), related to the Covered Products, alleging that Forever 21 violated Proposition 65. The Notices alleged that Forever 21 had failed to warn their 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.

CAPA subsequently provided Forever 21 with test results in CAPA's possession concerning its allegations. Forever 21 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 Notices.

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 (the "Dispute"). Specifically, CAPA alleges that Forever 21 imported, manufactured, 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, and Forever 21 denies that such a warning is required under Proposition 65 or any otherwise applicable law.

Forever 21 denies the material, factual, and legal allegations contained in the Notices 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 Forever 21 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 Forever 21 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Forever 21. This Section shall not, however, diminish or otherwise affect Forever 21 '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 January 15, 2019.

2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

2.1 **Reformulation Standard.**

Forever 21 agrees to only import, manufacture and/or sell or offer for sale or purchase for sale in or into California, Covered Products which are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Covered Products, including on any accessible component of any Covered Product, 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, or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance ("Reformulation Standard"). With respect to existing Covered Products, meaning those that are currently in the channels of distribution meaning in Forever 21 stores and/or Forever 21's storage facilities, Forever 21 may continue to sell-through those items. However, after the Effective Date, no new Covered Products may be distributed by Forever 21 for sale to California that are not Reformulated Products

2.2 **Accessible Component.**

The term "Accessible Component" is defined herein as a component of a Covered Product that can be touched by or which comes into contact with a person during normal, intended or reasonably foreseeable use of the Covered Product.

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

Forever 21 shall pay a civil penalty of \$3,000, 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. Forever 21 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 \$2,250, 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 \$750, 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 payments shall be delivered on or before January 31, 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, 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, Forever 21 shall pay the total amount of \$24,500 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Forever 21, and negotiating a settlement. Forever 21 shall make the check payable to "Kawahito Law Group APC" and shall deliver payment on or before January 31, 2019 to the following address:

James K. Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. Forever 21, Inc.
222 North 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 Forever 21 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 Resolution of Proposition 65 Allegations.

CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases Forever 21, of any violation of Proposition 65 that was or could have been asserted by CAPA against Forever 21, its 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 Forever 21 with the Covered Products, and each entity to which Forever 21 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, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively "Releasees") for any and all claims 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 Forever 21 (either directly or through the Releasees) in California before the Effective Date. 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 Forever 21 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, sold, or distributed for sale before the Effective Date by Forever 21 or Releasees.

5.2 Forever 21's Release of CAPA.

Forever 21 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.

6. Enforcement of Settlement Agreement.

6.1 Either 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 subject to Sections 6.2 and 6.3 below. 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 Forever 21 by CAPA, unless CAPA notifies Forever 21 of the specific future acts alleged to breach this Settlement Agreement at least sixty (60) days before serving or filing any action or Notice of Violation, and Forever 21 fails to comply with the requirements imposed on it as set forth in Section 6.3 below. Any notice to Forever 21 must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or a Proposition 65 compliant warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

6.3 For a period of two years after the Effective Date of this Agreement, the parties agree that, within 30 days of receiving the notice described in Section 6.2, Forever 21 shall ~~either (a) agree in writing not to contest CAPA's notification and make a contribution to CAPA to be used by CAPA in its Proposition 65 inspections and enforcement in the amount of (1) \$5,000, in the event that prior to taking delivery of the product, Forever 21 failed to obtain from its supplier independent testing data for a representative sample of the product from the lot or batch shipped to Forever 21 demonstrating that it met the reformulation standard required pursuant to the Settlement Agreement; (2) a contribution of \$2500 in the event that, prior to taking delivery of the product, Forever 21 received from its supplier independent testing data showing that the lot or batch from with the product was shipped met the reformulation standard required pursuant to this Agreement, or (b) refute the information provided to Forever 21 by CAPA under Section 6.2 with~~

analytical data reasonably acceptable to CAPA showing representative samples of the product meet the Reformulation Standard. In the event that Forever 21 fails to refute the information provided by CAPA, and the parties are unable to resolve the dispute, CAPA, in its sole discretion may elect to file a Notice of Violation with the California Attorney General and seek all penalties, damages, and other remedies available under Proposition 65 through a court proceeding notwithstanding the amounts listed in Section 6.3.

6.4 The Parties expressly agree that any and all applicable time limitations (whether arising from statutes, equitable principles or otherwise under common law) relating to any legal claims arising from the notice under Section 6.2 shall be tolled for the 60-day period. During this tolling period, no time shall be considered to pass, lapse or accrue with respect to any statutes of limitation or other time-based defense of any kind whatsoever.

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.

8. 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.

9. 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 Forever 21:

~~DO WON CHANG, President~~
FOREVER 21
3880 North Mission Road
Los Angeles, CA 90031

Attn: Legal

with a copy to: John J. Allen
Allen Matkins Leck Gamble Mallory and Natsis LLP
865 South Figueroa Street
Suite 2800
Los Angeles, CA 90017

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Forever 21, Inc.
222 North Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

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 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.

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. 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:

AGREED TO:

Date: _____

Date: 2/5/19 _____

By: _____
Center for Public Awareness, Inc.

By:  _____
Forever 21, Inc.