

SETTLEMENT AGREEMENT
BETWEEN
CENTER FOR ADVANCED PUBLIC AWARENESS
And
HDS TRADING CORP.

This Settlement Agreement is entered by and between Center for Advanced Public Awareness (“CAPA”) and HDS Trading Corp. (“HDS”) with each individually referred to as a “Party” and, collectively, as the “Parties”, in order to resolve the allegations contained in the August 28, 2018 60-Day Notice of Violation (“Notice”).

1. INTRODUCTION

1.1 Parties

CAPA is a California-based non-profit organization who seeks to protect the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increase public awareness of those chemicals by promoting environmentally sound practices and corporate responsibility. At the time of the Notice, HDS employed ten or more persons and was a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

CAPA alleges that HDS manufactures, imports, sells and/or distributes for sale in California vinyl/PVC bath mats that contain di(2-ethyhexyl)phthalate (“DEHP”) and that it does so without providing the health hazard warning CAPA alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are foam bath mats containing DEHP that are manufactured, imported, sold or offered for sale in California by HDS, specifically limited to, the *Home Basics Rubber Bath Mat, Model #BM41018, UPC #8 86466 41018 4*, hereinafter, the “Products.”

1.4 60-Day Notice of Violation

On August 28, 2018, CAPA served HDS, Home Goods, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that HDS violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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

HDS denies the material, factual and legal allegations contained in the Notice and maintains that all products it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by HDS of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by HDS of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 14, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate

Commencing on or before July 15, 2019, and continuing thereafter, HDS agrees that all Products it manufactures, imports, sells or distributes for sale in California shall be either: (a) “Reformulated Products, as defined by Section 2.2, below; or (b) Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 and 2.4.

2.2 Reformulated Products Defined

“Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e. any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before July 15, 2019, and continuing thereafter, for all Products that are not reformulated to meet the standard in Section 2.2, HDS shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section and/or Title 27 California Code of Regulations § 25600, *et seq.*, as amended from time to time. Any warning provided for Products shall be prominently placed 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 and shall be provided in a manner such that the consumer or user understand to which *specific* Product to which the warning applies. For purposes of this Settlement

Agreement, a warning affixed to the packaging, labeling, or directly on a Product and containing the following statement shall be deemed clear and reasonable:

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

HDS may, but is not required to, use the following short-form warning, subject to the additional specific requirements set forth in Sections 2.4 and 2.5, below:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

HDS shall affix a warning to the Product label or otherwise directly on each Product provided for sale at retail locations in California. For the purpose of this Settlement Agreement, “Product label” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and in no event no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the two warnings described in Section 2.3, above.

2.4 Internet Warnings

In the event HDS sells Products via the internet that do not qualify as Reformulated Products to consumers or other customers located in California after the Effective Date, the warning requirements of this Section shall be satisfied if, prior to purchase: (a) a warning is prominently displayed to the consumer or customer such that the consumer does not have to search for it; (b) a warning also appears on the label or immediately on the Product or its packaging, in accordance with Section 2.4, above; and (c) warnings accompanying Products sold via the internet appear either: (1) on the same web page on which the Product is displayed; (2) on the same web page as the order form for the Product; or (3) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for

which it is given in the same type size or larger than the Product description text. HDS may utilize the short-form warning content for internet Product warnings, provided the Product label also utilizes the short-form warning. HDS may also comply with this Section by providing the warning using a clearly marked hyperlink that includes the word “**WARNING**” on the same web page and in the same location as the display and/or description of the Product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, HDS agrees to pay a total of \$3,000 in civil penalties. The penalty payment shall be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by CAPA.

Within ten (10) business days of the Effective Date, HDS will deliver its payment in two checks made payable to: (a) “OEHHA” in the amount of \$2,250; and (b) “Gates Johnson Law, Client Trust Account” in the amount of \$750. CAPA’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement of Attorneys’ 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 the issue to be resolved after the Parties settled the material terms of the agreement. Shortly after the Parties finalized the non-monetary and injunctive terms, HDS expressed a desire to resolve CAPA’s attorneys’ fees and costs. The Parties then negotiated a resolution of 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 § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, HDS agrees to pay a total of \$18,500 to CAPA and its counsel for all reasonable fees

and costs incurred in investigating, bringing this matter to the attention of HDS' management, and negotiating a settlement in the public interest. HDS' fee reimbursement payments shall be broken out into two equal installments, by delivering a check on or before the stated due date, made payable to "Gates Johnson Law" and delivered to the address listed in Section 3.3, below.

The first installment payment of \$9,250 shall be due within ten (10) business days of the Effective Date, on or before June 28, 2019. The second installment payment of \$9,250 shall be due on or before August 28, 2019. For any payment received after the payment due date, HDS understands and agrees that CAPA reserves the right to pursue any and all available recovery options, including the filing of a complaint seeking judgment for outstanding payments due under this Settlement Agreement, in a California court of competent jurisdiction.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Gates Johnson Law
c/o Kimberly Gates
2822 Moraga Street
San Francisco, CA 94122

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of HDS

This Settlement Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and HDS, of any violation of Proposition 65 that was or could have been asserted by CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against HDS, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom HDS directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including, without limitation, Home Goods, Inc.), franchisees, cooperative members, and licensees (collectively, "Releasees"), based on alleged exposures to DEHP and the failure to provide a warning about exposures to

DEHP contained in Products, as specifically limited by Section 1.3, that were distributed, sold or offered for sale by HDS, as alleged in the Notice, prior to the Effective Date.

In further consideration of the promises and agreements herein contained, CAPA as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that CAPA may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in Products, as specifically limited by Section 1.3, that were distributed, sold and/or offered for sale by HDS before the Effective Date, as alleged in the Notice, against HDS and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to HDS. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve HDS' Products.

4.2 HDS' Release of CAPA

HDS, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against CAPA and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or 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 Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining

enforceable provisions shall not be adversely affected.

6. 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 by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as to the Products, then HDS shall provide written notice to CAPA of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve HDS from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For HDS:

Fred Guindi, Vice President
HDS trading Corp.
1305 Jersey Avenue
North Brunswick, NJ 08902

For CAPA:

Kimberly Gates, Esq.
Gates Johnson Law
2822 Moraga Street
San Francisco, CA 94122

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same document.

9. **REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)**

CAPA agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. **MODIFICATION**


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

11. **AUTHORIZATION**

The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


AGREED TO:

Date: 6/19/19

By: 
Linda DeRose Droubay, Executive Director
Center for Advanced Public Awareness

AGREED TO:

Date: 6/13/19

By: 
Fred Guindi, Vice President
HDS Trading Corp.