

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 PERFORMANCE DESIGNED PRODUCTS LLC (“PDP”) on the other hand, with PDP 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 PDP employs ten or more persons, and CAPA alleges that PDP 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 PDP imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. CAPA further alleges that PDP failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

1.3 Product Description.

The products covered by this Settlement Agreement are the PlayStation Afterglow and LVL1 Headsets, which were imported, sold and/or distributed for sale in California by PDP with UPC No. 0708056057480 (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On September 26, 2018 served PDP, PDP's retail partner Target Corporation., and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), related to the Covered Products, alleging that PDP violated Proposition 65. The Notice alleged that PDP had failed to warn its 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 PDP with test results in CAPA's possession concerning its allegations. PDP provided CAPA with data related to the Covered Products as well as its test results. 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 PDP 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. PDP denies that such a warning is required under Proposition 65 or any otherwise applicable law.

PDP 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 PDP 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 PDP of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by PDP. This Section shall not, however, diminish or otherwise affect PDP'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 Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Standard. Commencing on the Effective Date, and continuing thereafter, to the extent that PDP continues to import, manufacture, ship to be sold or offer for sale or purchase the Covered Products in California, they shall be deemed to comply with Proposition 65, and 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"). With respect to existing Covered Products, meaning those that are currently in the channels of distribution, with importers, distributors, and retailers, PDP may continue to sell-through those items. However, as of the Effective Date, no new Covered Products may be distributed or sold 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 out to consumers, retailers, or distributors 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.

2.3 **Warning Language.** Commencing on the Effective Date, PDP 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, 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, PDP 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

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.

2.5 **Compliance with Settlement Terms.** The Parties agree that compliance with the terms of this Settlement Agreement by PDP shall be deemed to be compliance with Proposition 65 by all Releasees with respect to any exposures to the Listed Chemical in the Covered Product manufactured, distributed, or sold by PDP after the Effective Date.

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

PDP shall pay a civil penalty of Five Hundred Dollars (\$500), to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with seventy-five percent (75%) of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the penalty remitted to CAPA. PDP shall issue two (2) 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 Three Hundred Seventy-Five Dollars (\$375), representing seventy-five percent (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 One Hundred Twenty-Five Dollars (\$125), representing twenty-five percent (25%) of the initial civil penalty. PDP shall issue two (2) separate IRS approved information returns for the above payments. More specifically PDP shall provide an IRS Form 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and a second IRS Form 1099 to the Kawahito Law Group APC, subject to PDP receiving a validly completed IRS Form W-9 from Kawahito Law Group APC. Payment shall be due within thirty (30) days of the later of the Effective Date or PDP's receipt of the Kawahito Law Group APC prepared IRS Form W-9. The payment shall be 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 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, PDP shall pay the total amount of Sixteen Thousand Dollars (\$16,000) for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of PDP, and negotiating a settlement. PDP shall make the check payable to "Kawahito Law Group APC." Such payment shall be subject to the condition precedent that PDP receive a validly completed IRS Form W-9 from Kawahito Law Group APC. Payment shall be due within thirty (30) days of the later of the Effective Date or PDP's receipt of the Kawahito Law Group APC prepared IRS Form W-9. The payment shall be delivered to the following address:

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

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 PDP, of any violation of Proposition 65 that was or could have been asserted by CAPA against PDP, its retailers, importers and/or distributors (expressly including Target Corporation), 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 PDP with the Covered Products, and each entity to which PDP directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to Target Corporation, 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") 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 PDP (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Products that were in the stream of commerce prior to the Effective Date. However, as of the Effective Date, no new Products shall be shipped to or distributed in California that are not Reformulated Products or 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 PDP 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 PDP or Releasees.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. CAPA on its own behalf, on one hand, and PDP, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. CAPA acknowledges that the claims released in this Paragraph may include unknown claims related to the Covered Products, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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, on behalf of itself, 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.

It is PDP's understanding that the commitments it has agreed to herein, and actions to be taken by PDP under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to PDP's failure (or failure of any Releasee) to provide a warning concerning exposure to DEHP with respect to the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that PDP is in material compliance with this Settlement Agreement.

5.2 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 PDP: Performance Designed Products LLC
9179 Aero Drive
San Diego, CA 92123
Attention: Corporate & Legal Affairs

with a copy to: David Gabor, Esq.
Weintraub Tobin Law Corporation
10250 Constellation Boulevard
Suite 2900
Los Angeles, CA 90067

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Performance Designed Products 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.

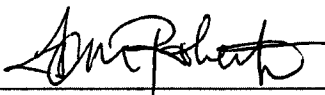
AGREED TO:

AGREED TO:

Date: _____

Date: 4 JAN 2019

By: _____
Center for Public Awareness, Inc.

By:  _____
Performance Designed Products LLC

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.

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By:  _____
Digitally signed by
Linda DeRose-Droubay
Date: 2018.12.23 18:08:51
EST
Center for Public Awareness, Inc.

By: _____
Performance Designed Products LLC