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CENTER FOR ADVANCED PUBLIC AWARENESS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

DAISO CALIFORNIA LLC; *et al*,

Defendants.

Case No.: CGC-19-576244

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code §§ 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Center for Advanced
3 Public Awareness (“**CAPA**”) and defendant Daiso California LLC (“**Daiso**”) with CAPA and
4 Daiso each individually referred to as a “**Party**” and, collectively, as the “**Parties**”, in order to
5 resolve the allegations in the October 5, 2018 60-Day Notice of Violation (“**Notice**”) without the
6 need for costly and protracted litigation, in compliance with the Safe Drinking Water and Toxic
7 Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

8 **1.1 Plaintiff**

9 CAPA is a California-based non-profit organization that seeks to protect the environment
10 though the elimination or reduction of toxic chemicals utilized in the manufacture of consumer
11 products and to increase public awareness of those chemicals by promoting environmentally
12 sound practices and corporate responsibility.

13 **1.2 Defendant**

14 Daiso employs ten or more persons and is a person in the course of doing business for
15 purposes of Proposition 65.

16 **1.3 General Allegations**

17 CAPA alleges that Daiso manufactures, imports, distributes, sells or offers for sale in
18 California: (a) gloves with vinyl/PVC components; and (b) vinyl/PVC cases that contain di(2-
19 ethylhexyl)phthalate (“**DEHP**”), and that it does so without providing the health hazard warning
20 CAPA alleges is required by Proposition 65.

21 **1.4 Listed Chemical**

22 The chemical that is the subject of this Consent Judgment is DEHP. On October 24,
23 2003, the State of California listed DEHP as a chemical known to cause birth defects,
24 reproductive toxicity and cancer.

25 **1.5 Product Description**

26 For purposes of this Consent Judgment, products are defined as: (a) gloves with
27

1 vinyl/PVC components containing DEHP, such as the *Daiso Cotton Gloves, Model #CO29, No.*
2 *193, UPC #4 979909 865750*; and (b) vinyl/PVC cases containing DEHP, such as the *Daiso*
3 *Romafle Pen Case, Model #323, KO-1610, TL-47, UPC #4 549131 138825* that are
4 manufactured, imported, distributed, sold or offered for sale in California by Daiso and include,
5 but are not limited to, the products identified on **Exhibit A** to this Consent Judgment
6 (collectively “**Products**”).
7

8 **1.6 Notice of Violation**

9 On October 5, 2018, CAPA served Daiso, and the requisite public enforcement agencies
10 with the Notice, alleging Daiso violated Proposition 65 when it failed to warn its customers and
11 consumers in California that the Products expose users to DEHP. To the best of the Parties’
12 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce
13 the allegations set forth in the Notice.

14 **1.7 Complaint**

15 On May 24, 2019, CAPA commenced the instant action (“Complaint”), *Center for*
16 *Advanced Public Awareness v. Daiso California LLC, CGC-19-576244*, naming Daiso as one of
17 the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

18 **1.8 No Admission**

19 Daiso denies the material, factual, and legal allegations contained in the Notice and
20 Complaint and maintains that all of the products it sold or distributed for sale in California,
21 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
22 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or
23 be construed as, an admission by Daiso of any fact, finding, conclusion of law, issue of law, or
24 violation of law. This section shall not, however, diminish or otherwise affect Daiso’s
25 obligations, responsibilities, and duties under this Consent Judgment.

26 **1.9 Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate this Court has
28

jurisdiction over Daiso as to the allegations contained in the Complaint; venue is proper in the County of San Francisco; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date this Consent Judgment is approved by the Court, including an unopposed tentative ruling.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date and continuing thereafter, Daiso shall only manufacture, import, sell or distribute for sale, in or into the State of California, Products that are either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Products that are labeled with a clear and reasonable warning, as set forth under Sections 2.3 through 2.5.


2.2 Reformulation Standard Defined

For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products containing DEHP in a maximum concentration 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) (the “**Reformulation Standard**”) 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-C1001.09.4 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 the Effective Date and continuing thereafter, Daiso shall provide clear and reasonable warnings, as set forth in this Section and in accordance with Title

27, California Code of Regulations § 25600 *et seq.*, for all Products manufactured, imported, sold, or otherwise distributed or provided for sale to customers in California that are not Reformulated Products. Each Product warning 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. Each Product warning shall be provided in a manner such that it is clearly associated with the *specific* Product to which the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Consent Judgment, the following warning is deemed a clear and reasonable warning displayed or transmitted according to the criteria detailed in Cal. Code Regs. § 25602 *et seq.*, but Daiso is not limited to using such warning language provided that the warning language used by Daiso is in accordance with Title 27, California Code of Regulations § 25600 *et seq.*:

 **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl) (DEHP), which is 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, if placed directly on the Product or its labeling, Daiso may, at its option, utilize the following short-form warning statement (“**Short-Form Warning**”), provided it appears in a type size no smaller than the largest type size used for other consumer information on the Product’s label, and in no case smaller than six-point type, as follows:

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

For purposes of this Consent Judgment, “**Product Label**” is defined as 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 smaller than the largest type size used for other consumer information on the product.

1 **2.4 Internet and Mail Order Catalog Warnings**

2 Daiso agrees that, if, after the Effective Date, it sells Products that do not meet the
3 definition of Reformulated Products via the internet or by mail order catalogue, Daiso shall
4 provide a warning for each Product, pursuant to Section 2.3, supra, and subject to the following
5 requirements.

6 For all Products sold to consumers in California via a catalogue printed after the Effective
7 Date that do not qualify as Reformulated Products, Daiso agrees to provide a warning both on
8 the Product label and in the written text of the catalog, in a manner that clearly associates the
9 warning with the specific Product being purchased, such that the consumer does not have to
10 search for it in the general content of the catalogue. The warning shall be in the same type size
11 or larger than other consumer information provided for the Product within the catalog and on the
12 same page and in the same location as the display and/or description of the Product.

13 For all Products sold via the internet to consumers or customers located in California
14 that do not qualify as Reformulated Products, the warning requirements of this Section shall be
15 satisfied if, prior to purchase, as described in Section 2.3: (a) a warning appears on the same web
16 page, in the same type size or larger than the Product description text, as the Product; (b) a
17 warning appears on the same web page as the price for the Product, in the same type size or
18 larger than the Product description text; (c) a warning appears on one or more web pages
19 displayed to the consumer prior to purchase, in the same type size or larger than the Product
20 description text; or (d) a hyperlink, clearly marked “**WARNING**” appears on the same web page
21 and in the same location as the display and/or description of the Product, in type large enough so
22 that the consumer does not have to search for it, and a prominently placed warning appears
23 elsewhere, such as on the Product description page, in a manner that clearly associates it with the
24 Product to which the warning applies, prior to checkout or purchase.

25 If Daiso utilizes the Short-Form Warning label content, pursuant to Cal. Code Regs. §
26 25602(a)(4) and detailed above, the warning provided on the website or in the catalogue may use
27

1 the same content.

2 **2.5 Compliance with Warning Regulations**

3 Daiso may also comply with the warning requirements of this Section by any other means
4 authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe
5 harbor guidelines published by the Office of Environmental Health Hazard Assessment as set
6 forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at §
7 25600 *et seq.*, as may be amended from time to time.
8

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty Payments**

11 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred
12 to in the Notice, Complaint, and this Consent Judgment, Daiso agrees to pay \$20,000 in civil
13 penalties. Daiso's civil penalty payment will be allocated according to Health and Safety Code
14 §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
15 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five
16 percent (25%) of the penalty payment retained by CAPA. Daiso shall issue its payment in two
17 checks made payable to (a) "OEHHA" in the amount of \$15,000; and (b) "Center for Advanced
18 Public Awareness" in the amount of \$5,000. CAPA's counsel shall be responsible for delivering
19 OEHHA's and CAPA's portions of the penalty payment.

20 **3.2 Reimbursement of Attorneys' Fees and Costs**

21 The parties acknowledge that CAPA and its counsel offered to resolve this dispute
22 without reaching terms on their fees and costs. Shortly after the Parties finalized the other
23 settlement terms, they then negotiated the compensation to be paid to CAPA and its counsel,
24 under general contract principles and the private attorney general doctrine, codified at California
25 Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this
26 Consent Judgment and court approval of the same, but exclusive of fees and costs on appeal, if
27 any. Daiso agrees to pay \$32,500 by a check made payable to "Gates Johnson Law" for all fees
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1 and costs incurred in investigating, bringing this matter to Daiso's attention, litigating, and
2 negotiating a settlement in the public interest.

3 **3.3 Payment Timing; Address**

4 Within ten (10) days of the Effective Date, Daiso shall deliver all payments due under
5 this agreement to the payment address below. Daiso or its counsel agrees to provide tracking
6 information to counsel for CAPA, and CAPA's counsel agrees to provide Federal Form W9s for
7 each payee entity, allowing Daiso to comply with its tax reporting requirements.
8

9 All payments required by this Consent Judgment shall be delivered to the following
10 address:

11 Gates Johnson Law
12 Attn: Kimberly Gates Johnson
2822 Moraga Street
San Francisco, CA 94122

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 CAPA's Release of Proposition 65 Claims**

15 CAPA, acting on its own behalf and in the public interest, releases Daiso and its parents,
16 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
17 attorneys ("**Releasees**") and each entity to whom Daiso directly or indirectly distributes or sells
18 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
19 retailers, franchisers, cooperative members, licensors and licensees ("**Downstream Releasees**")
20 for any violations arising under Proposition 65 for unwarned exposures to DEHP from the
21 Products manufactured, imported, distributed or sold by Daiso prior to the Effective Date, as set
22 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
23 with Proposition 65 by Daiso with respect to the alleged or actual failure to warn about
24 exposures to DEHP from Products manufactured, sold or distributed for sale by Daiso after the
25 Effective Date.

26 **4.2 CAPA's Individual Release of Claims**

27 CAPA, in its individual capacity only and *not* in its representative capacity, also provides
28

1 a release to Daiso, Releasees, and Downstream Releasees which shall be effective as a full and
2 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
3 attorneys' fees, damages, losses, claims, liabilities and demands of CAPA of any nature,
4 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
5 or actual exposures to DEHP in Products manufactured, imported, distributed or sold by Daiso
6 prior to the Effective Date. Nothing in this Section shall affect CAPA's right to commence or
7 prosecute an action under Proposition 65 against a Releasee or Downstream Releasee that does
8 not involve Daiso's Products.
9

10 **4.3 Daiso's Release of CAPA**

11 Daiso, on its own behalf and on behalf of its past and current agents, representatives,
12 attorneys, successors and/or assignees, hereby waive any and all claims against CAPA and its
13 attorneys and other representatives, for any and all actions taken or statements made (or those
14 that could have been taken or made) by CAPA and its attorneys and other representatives in the
15 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
16 respect to the Products.

17 **5. COURT APPROVAL**

18 This Consent Judgment shall be null and void if, for any reason, it is not approved and
19 entered by the Court within one year after it has been fully executed by all Parties. CAPA and
20 Daiso agree to support the entry of this agreement as a judgment and to obtain the Court's
21 approval of this settlement in a timely manner. The Parties acknowledge that, pursuant to
22 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial
23 approval of this Consent Judgment, which motion CAPA shall draft and file. In furtherance of
24 obtaining such approval, the Parties agree to mutually employ their best efforts, and those of
25 their counsel, to support the entry of this agreement as a judgment and to obtain judicial approval
26 of their settlement in a timely manner. For purposes of this section, "**best efforts**" shall include,
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1 at a minimum, supporting the motion for approval, responding to any objection that any third-
2 party may file or lodge, and appearing at the hearing before the Court if so requested.

3 **6. SEVERABILITY**

4 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
5 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
6 remaining provisions shall not be adversely affected.
7

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed,
11 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
12 Products, then Daiso may provide CAPA with written notice of any asserted change in the law,
13 and shall have no further injunctive obligations pursuant to this Consent Judgment, with respect
14 to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
15 interpreted to relieve Daiso from its obligation to comply with any pertinent state or federal law
16 or regulation.

17 **8. NOTICE**

18 Unless specified herein, all correspondence and notice required by this Consent Judgment
19 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
20 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
21 following addresses:

22 For Daiso:

23
24 Kyoko Yamada, Compliance
25 Daiso California LLC
26 3502 Breakwater Court
27 Hayward, CA 94545
28

1 With a Copy to:

2 Liz Shoemaker, Esq.
3 Teraoka & Partners LLP
4 Four Embarcadero Center, Suite 1400
5 San Francisco, CA 94111

6 For CAPA:

7 Kimberly Gates Johnson, Esq.
8 Gates Johnson Law
9 2822 Moraga Street
10 San Francisco, CA 94122

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

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or portable
15 document format (pdf) signature, each of which shall be deemed an original and, all of which,
16 when taken together, shall constitute one and the same document.

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 CAPA and its counsel agree to comply with the reporting form requirements referenced
19 in California Health and Safety Code § 25249.7(f).

20 **11. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
24 and therein. There are no warranties, representations, or other agreements between the Parties
25 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
26 other than those specifically referred to in this Consent Judgment have been made by any Party
27 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
28 shall be deemed to exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
3 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
4 motion of any party and the entry of a modified Consent Judgment by the Court thereon.
5

6 **13. AUTHORIZATION**

7 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
9 Consent Judgment.

10 **AGREED TO:**

AGREED TO:

11
12 Date: 10/12/2021

Date: 10/6/2021

13
14
15 By: 

16 Linda DeRose-Droubay, Executive
17 Director

18
19
20 By: 

21 Tomohiro Takao, President
22 DAISO CALIFORNIA LLC
23
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27
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EXHIBIT A

EXHIBIT A

CATEGORY/NAME

PRODUCT IDENTIFIER

<u><i>GLOVES WITH VINYL/PVC COMPONENTS</i></u>	<u><i>UPC CODE</i></u>
Print Gloves	04979909865750
Men's Non-slip Working Gloves	04549131231069
Women's Non-slip Working Gloves	04549131231076
Nonslip Gloves for Men	04549131377170
Nonslip Gloves for Women	04549131377187
Tight Fit Gloves Black with Anti-Slip Grip	04979909816073
Fit Gloves with Cut-Off Fingers 7.5 in.	04979909847183
Three-Fingertip Cut Tight-Fit Gloves with Anti-Slip Grip	04979909865767
Three-Fingertip Cut Tight-Fit Gloves with Anti-Slip Grip	04979909847190
<u><i>VINYL/PVC CASES</i></u>	<u><i>UPC CODE</i></u>
Romafille Pen Case	4549131138825
Print Case	4549131196115
Golf Ball Case	4549131225938
Glasses Case	4549131225952
Double Folding Color Cover Case	4549131228014
Color Line Case	4549131228069
L Open Flat Case	4549131295924
Waist Pouch	4549131295962
Frosted Travel Case	4549131309263
Square Vinyl Case	4549131309348
A4 Vinyl Net Case	4549131313055
Mini Vinyl Net Case	4549131313086
Clear Spa Bag	4549131339468
Travel Case with Mesh Bottom	4549131339475
Soft Flat Case	4549131342895
Boat-Shaped Pen Case	4549131388817
Boat-Shaped Pen Case	4549131388824
Pen Case	4549131388848
A5 Case	4549131388855
A5 Case	4549131388862
Bear Case	4549131421187
Lion Case	4549131421200
Rabbit Case	4549131421231
Alpaca Case	4549131421248
Whale Double Pencil Case	4549131423723
Giraffe Double Pencil Case	4549131435061
Hedgehog Double Pencil Case	4549131435078
B5 Suppori Case	4549131439274
Simple Case	4549131558999

[PROPOSED] CONSENT JUDGMENT

1	Tagged Square Dark Case	4549131569162
	Accordion Card Case	4549131609257
2	Pastel Flower Gusset Tote Case	4549131617924
	Denim Pen Case	4549131625226
3	PP Border Case	4549131636673
	Bear Flat Case	4549131652659
4	Bear Boat Case	4549131652697
	Two-Tone Pen Case	4549131679052
5	Denim Flat Case	4549131686258
	Denim Multipurpose Case	4549131686265
	Passport Case	4947678960105
6	Dot Toothbrush Case	4979909943717
	Feathers Case 23.6in.x51.2in.	4979909946053
7	Ariel Princess Case	4979909948835
	Belle Princess Case	4979909948842
8	A4 Clear Case with Binding	4984343028685
	Multi Flat Chic Case	4997642129816
9	Alphabet Case	4549131657555
	PVC Case	4947678003116
10	A7 Vinyl Net Case	4984343028630

[PROPOSED] CONSENT JUDGMENT