

SETTLEMENT AGREEMENT
BETWEEN
CENTER FOR ADVANCED PUBLIC AWARENESS
And
SPIRIT HALLOWEEN SUPERSTORES LLC

This Settlement Agreement is entered by and between Center for Advanced Public Awareness (“CAPA”) and Spirit Halloween Superstores LLC (“Spirit Halloween”), with each individually referred to as a “Party” and, collectively, as the “Parties”, in order to resolve the allegations contained in the November 5, 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. Spirit Halloween employs ten or more persons and is 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 Spirit Halloween manufactures, imports, sells and/or distributes for sale in California makeup sponges 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 makeup sponges containing DEHP that are manufactured, imported, distributed, sold or offered for sale in

California by Spirit Halloween, specifically limited to the *Spirit Makeup Blender, Model #18110C0L01, Item #01350446*, hereinafter, the “Products.”

1.4 60-Day Notice of Violation

On November 5, 2018, CAPA served Spirit Halloween, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Spirit Halloween 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

Spirit Halloween 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 Spirit Halloween 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 Spirit Halloween 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 May 31, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing on the Effective Date and continuing thereafter, Spirit Halloween agrees that all Products it manufactures, import, sells or distributes for sale in California shall be Reformulated Products, in accordance with and as defined by Section 2.2, below.

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.

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, Spirit Halloween agrees to pay a total of \$3,500 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.

Spirit Halloween will deliver its payment within ten days of the Effective Date, in two checks made payable to: (a) “OEHHA” in the amount of \$2,625; and (b) “Gates Johnson Law, in Trust for CAPA” in the amount of \$875. 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, Spirit Halloween

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, within ten days of the Effective Date, Spirit Halloween agrees to pay \$19,000 to CAPA and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of Spirit Halloween's management, and negotiating a settlement in the public interest. Spirit Halloween's payment shall be delivered to the address listed in Section 3.3, below, in the form of a check, made payable to "Gates Johnson Law."

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 Spirit Halloween

This Settlement Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Spirit Halloween, 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 Spirit Halloween, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Spirit Halloween directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning about exposure to DEHP contained in Products distributed, sold or offered for sale by Spirit Halloween, 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 distributed, sold and/or offered for sale by Spirit Halloween before the Effective Date, as alleged in the Notice, against Spirit Halloween 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 Spirit Halloween. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Spirit Halloween's Products.

4.2 Spirit Halloween's Release of CAPA

Spirit Halloween, 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, unless contrary to the intent of the parties in entering into this Settlement Agreement.

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 Spirit Halloween 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 Spirit Halloween 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 Spirit Halloween:

Kevin Mahoney, General Counsel
Spencer Gifts LLC
Spirit Halloween Super Stores LLC
6826 Black Horse Pike
Egg Harbor Township, NJ 08234-4197

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.

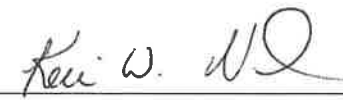
AGREED TO:

AGREED TO:

Date: 06/03/2019

Date: 5/31/19

By: 
Linda DeRose-Droubay
Center for Advanced Public Awareness

By: 
Kevin W. Mahoney, SVP & General Counsel
Spirit Halloween Superstores LLC

