

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**CENTER FOR ADVANCED PUBLIC AWARENESS**  
**And**  
**REVLON, INC.**

This Settlement Agreement is entered by and between Center for Advanced Public Awareness, Inc. (“CAPA”), on the one hand, and Revlon, Inc. and Revlon Consumer Products Corp. (collectively, “Revlon”) on the other, with each individually referred to as a “Party” and, collectively, as the “Parties”, in order to resolve the allegations contained in the December 17, 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. Revlon 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 Revlon manufactures, imports, sells and/or distributes for sale in California makeup sponges containing di(2-ethyhexyl)phthalate (“DEHP”) and that it does so without providing the 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 covered by this Settlement Agreement are makeup sponges containing DEHP that are manufactured, distributed, sold or offered for sale in California and are

specifically limited to the following: (a) *Revlon Professional Blending Brush, UPC #3 09979 59670 6, Item #203896*; (b) *RV Airbrush Effect 4-in-1 Blending Sponge, UPC # 3 09979 596 69 0, Item #7224679000*; (c) *RV Airbrush Effect Blending Brush, UPC #3 09979 596 70 6, Item # 7224680000*; and (d) *RV Airbrush BT Brush Sponge Tip Replacement UPC # 3 09979 596 75 1, Item #7240148000* (“Products”).

#### **1.4 60-Day Notice of Violation**

On December 17, 2018, CAPA served Revlon, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Revlon 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**

Revlon 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 Revlon 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 Revlon 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 October 10, 2020.

## **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

### **2.1 Commitment to Reformulate or Provide Clear & Reasonable Warnings**

Commencing on or before the September 11, 2020 and continuing thereafter, Revlon agrees all Products it manufactures, import, sells or distributes for sale in California shall be either: (a) Reformulated Products, in accordance with and as defined by Section 2.2, below; or

(b) Products bearing a clear and reasonable health hazard warning, in compliance with the following Sections 2.3 through 2.5.

## **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) (“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-C1001.09.3 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 September 11, 2020, Revlon shall provide clear and reasonable warnings for all Products it manufactures, distributes, sells or offers sale to customers and consumers in California, unless such Products meet the Reformulation Standard. Such warnings shall be clear and reasonable, as set forth in Health and Safety Code 25249.5 *et seq.* and Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as amended from time to time. Each 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 warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.


Revlon shall affix one of the following warnings on the Product label, packaging or directly on each Product that is manufactured, distributed, sold or otherwise provided for sale to consumers in California. “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 at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

For purposes of this Settlement Agreement, either the following warnings shall be deemed clear and reasonable:

 **WARNING:** This product can expose you to chemicals, including 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](http://www.P65Warnings.ca.gov).

or

 **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Additionally, Revlon agrees to comply with additional specific warning-related requirements as they pertain to point-of-sale purchases, online or internet sales and mail order catalogs. Revlon may also comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

### **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, Revlon agrees to pay a total of \$5,000 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 twenty (20) business days, Revlon shall deliver its civil penalty payments, in two checks made payable to: (a) “OEHHA” in the amount of \$3,750; and (b) “Center for Advanced Public Awareness” in the amount of \$1,250. CAPA’s counsel shall be responsible for delivering CAPA’s and OEHHA’s portions of the penalties paid under this Settlement Agreement.

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

The Parties acknowledge 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, Revlon 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 twenty (20) business days of the Effective Date, Revlon agrees to pay \$19,500 to CAPA and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of Revlon's management, and negotiating a settlement in the public interest. Revlon'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 Revlon**

This Settlement Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Revlon, its parents, subsidiaries and affiliated entities, past and current directors, officers, agents, representatives, attorneys, successors, and/or assignees (collectively, Releasees), 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 Revlon, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, based on alleged exposures to

DEHP and the failure to provide a warning about exposures to DEHP in the Products, 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 to and defined by Section 1.3, that were distributed, sold and/or offered for sale by Revlon before the Effective Date, as alleged in the Notice, against Releasees and each entity to whom a Releasee directly or indirectly distributed or sold the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Downstream Releasees), based on alleged exposures to DEHP and the failure to provide a warning about exposure to DEHP contained in the Products manufactured prior to the Effective Date.

Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Revlon's Products.

#### **4.2 Revlon's Release of CAPA**

Revlon, 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 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 Revlon 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 Revlon 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 Revlon:

Law Department  
Revlon, Inc.  
1 New York Plaza  
New York, NY 10004

With a Copy to:

Michael J. Steel, Esq.  
Morrison & Foerster LLP  
425 Market Street, 35<sup>th</sup> Floor  
San Francisco, CA 94105

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.

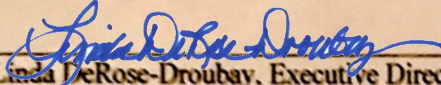


11. AUTHORIZATION

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.

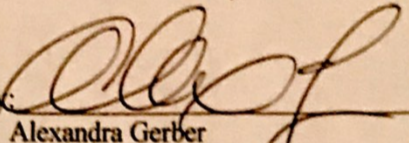
**AGREED TO:**

Date: 10/14/2020

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

**AGREED TO:**

Date: Oct 12, 2020

By:   
Alexandra Gerber  
Senior Vice President and  
Assistant General Counsel  
Global Operations, Marketing,  
and Regulatory  
Revlon, Inc.