

SETTLEMENT AGREEMENT
BETWEEN
CENTER FOR ADVANCED PUBLIC AWARENESS
AND
CLAIRE'S INC./ICING

This Settlement Agreement is entered by and between Center for Advanced Public Awareness (“CAPA”) and Claire's Holdings LLC¹ and CBI Distributing Corp.² (collectively, “Claire’s”) 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. Claire’s 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 Claire’s manufactures, imports, sells and/or distributes for sale in California makeup kits and pouches that contain di(2-ethyhexyl)phthalate (“DEHP”) and that Claire’s does so without providing a clear and reasonable Proposition 65 warning. DEHP is

¹ Claire’s Inc. dba Icing converted to Claire’s Holdings LLC in October, 2018.

² CBI Distributing Corp. was incorrectly referenced as CBI Distribution Corp. in the Notice of Violation.

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 (a) makeup kits and (b) pouches with cases containing DEHP that are manufactured, imported, sold or offered for sale in California by Claire's, including, but not limited to, the: (a) *Icing Black Mini Rescue Kit*, UPC # 8 88712 61894 8, Model #61894; and (b) *Icing Pour Some Glitter on Me Pouch Set*, UPC #8 88712 22434 7, Model #22434, hereinafter, collectively, the "Products."

1.4 60-Day Notice of Violation

On December 17, 2018, CAPA served Claire's, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Claire's violated Proposition 65 when it failed to warn its customers and consumers in California that the Products could expose consumers 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

Claire's 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 Claire's 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 Claire's 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 September 20, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Provide Clear and Reasonable Warnings

Commencing on or before October 15, 2019 and continuing thereafter, Claire's agrees that all Products manufactured, distributed, sold or imported with the intent of being sold into California shall be either: (a) "Reformulated Products", as defined by Section 2.2, below; or (b) Products bearing a clear and reasonable health hazard warnings set forth in Sections 2.3 through 2.5.


2.2 Reformulated Products Defined

"Reformulated Products" are Products containing DEHP in concentrations of less than 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 (the "Reformulation Standard.") 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. The Parties agree that Reformulated Products containing DEHP in a concentration of less than 1,000 parts per million shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.


2.3 Clear and Reasonable Warnings

For Products that do not meet the Reformulation Standard, Claire's shall provide clear and reasonable warnings for all Products that are imported, manufactured, sold, distributed or otherwise provided for sale to customers in California in accordance with this Section and/or in accordance with Title 27, Div. 4, Chap. 1, Art. 6 of the California Code of Regulations commencing at § 25600, *et seq.*, as amended from time to time. The 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 chemicals including 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.

Claire's 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.

2.4 Product Warnings

Claire's shall affix a warning on the Product label, directly on each Product provided for sale, or by providing a shelf tag warning or warning by other electronic means to consumers prior to purchase at retail locations in California, pursuant to California Code of Regulations §§ 25600.2, *et seq.* For Products sold via the internet, see Section 2.5, below. For purposes 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 if the short-form warning is used, and for either warning variation, in no event shall the warning type size be 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. Claire's may also comply with the injunctive requirements of this Settlement Agreement by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment ("OEHHA"), as set forth at

Title 27, Div. 4, Chap. 1, Art. 6 of the California Code of Regulations commencing at § 25600, *et seq.*, as amended from time to time.

2.5 Internet Warnings

In the event Claire's sells Products that are manufactured, imported, sold or distributed for sale after October 15, 2019 that do not meet the Reformulation Standard to consumers located in California via the internet, the warning requirements of this Section shall be satisfied if, prior to purchase: (a) a warning is prominently displayed to the consumer such that the consumer does not have to search for it; and (b) warnings accompanying Products sold via the internet appear either: (1) on the same web page on which the Product is displayed; (2) by a conspicuous hyperlink that includes the word "**WARNING**" on the same web page on which the Product is displayed in the same location as the display or description of the Product; (3) on the same web page as the order form for the Product; or (4) on one or more web pages displayed to a purchaser during the checkout process. The warning or hyperlink shall be conspicuously provided so that an average consumer can reasonably identify it. In any of the above instances, the warning shall appear adjacent to or immediately following the Product description or display and shall be in the same type size or larger than the Product description text. Claire's may utilize the short-form warning content for internet Product warnings, provided the Product label also utilizes the short-form warning.

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, Claire's 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, Claire's will deliver its payment in two checks made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "Gates Johnson Law, IOLTA Account", to be paid to CAPA, 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, Claire's 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, Claire's agrees to pay \$20,875 to CAPA and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of Claire's management, and negotiating a settlement in the public interest. Claire's shall make payment within ten (10) business days of the Effective Date and 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 Johnson
2822 Moraga Street
San Francisco, CA 94122

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of Claire's

This Settlement Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Claire's, 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 assigns ("Releasors"), against Claire's, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Claire's 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 and failure to warn about the listed chemical in Products manufactured, imported, distributed, sold or offered for sale by Claire's prior to the Effective Date, as alleged in the Notice.

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 the listed chemical in Products distributed, sold and/or offered for sale by Claire's before the Effective Date, as alleged in the Notice, against Claire's 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 Claire's. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Claire's Products.

4.2 Claire's Release of CAPA

Claire's, 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.

4.3 Mutual Waiver of California Civil Code Section 1542

The Parties each acknowledge they/it are/is familiar with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties, each on their/its own behalf, and on behalf of their/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above.

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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of

the Settlement Agreement being 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, as to the Products, then Claire's 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.

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 Claire's:

Stephen Sernett, Esq.
General Counsel
Claire's Stores
2400 West Central Road
Hoffman Estates, IL 60192

With a Copy to:

Will Wagner Esq.
Greenburg Traurig LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

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 e-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 Effective Date or the date this Settlement Agreement is fully executed by the Parties, whichever is later.

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.

12. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.


AGREED TO:

Date: 9/20/19

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

AGREED TO:

Date: 9/19/19

By: 
Stephen Sernett, General Counsel
Claire's Holdings LLC and CBI
Distributing Corp.

