

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. ("CAPA") and 99 CENTS ONLY STORES LLC ("99 CENTS STORES"), with 99 CENTS STORES 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 99 CENTS STORES 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 and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.2.3 CAPA alleges that 99 CENTS STORES imported, sold, and/or distributed for sale in California the Covered Products without provision of a Proposition 65 warning, and that the Covered Products contain Di-(2-ethylhexyl) phthalate ("DEHP"), a chemical known to the State of California to cause cancer and reproductive toxicity. CAPA further alleges that 99 CENTS STORES failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products as defined in Section 1.3 below.

1.3 Product Description.

The products covered by this Settlement Agreement are the Momentum LED String Lights (UPC: 818068067169), Inflatable Animal Chairs (UPC: 818068081783), Soft Baby Potty Seats (UPC: 6932683722136), and Momentum Non Slip Placemats (UPC: 818068055951),

which were imported, sold and/or distributed for sale in California by 99 CENTS STORES (collectively the “Covered Products”).

1.4 60 Day Notices of Violation and Exchange of Information.

On January 29, 2019 and February 5, 2019 CAPA served 99 CENTS STORES and the requisite public enforcement agencies with 60-Day Notices of Violation relating to the Covered Products (collectively the “Notices”). The Notices alleged that 99 CENTS STORES and its vendors had failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the import, sale and/or distribution of the Covered Products.

CAPA subsequently provided 99 CENTS STORES with test results in CAPA’s possession concerning its allegations. 99 CENTS STORES provided CAPA with sales data and test results related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission.

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth herein concerning 99 CENTS STORES’ compliance with Proposition 65 (the “Dispute”). Specifically, CAPA alleges that 99 CENTS STORES imported, sold or distributed for sale in the state of California the Covered Products, which contained DEHP, without first providing the clear and reasonable exposure warning required by Proposition 65. 99 CENTS STORES denies that such warnings are required under Proposition 65 or any otherwise applicable law.

99 CENTS STORES further denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has imported, sold and/or 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 99 CENTS STORES 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 99 CENTS STORES of any fact, finding, conclusion, issue of law, or violation of law, such being

specifically denied by 99 CENTS STORES. However, this section shall not diminish or otherwise affect 99 CENTS STORES's obligations, responsibilities, and duties hereunder. Notwithstanding the allegations in the Notices, 99 CENTS STORES maintains that it has not knowingly sold or caused to be sold the Covered Products in California in violation of Proposition 65.

1.6 Effective Date.

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that the Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard. Commencing on the Effective Date, and continuing thereafter, the Inflatable Animal Seats and the Momentum String Lights that 99 CENTS STORES imports, manufactures, ships to be sold or offered for sale or purchase in or into California, or sells in California 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 and other phthalates on the Proposition 65 list in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or any other scientifically reliable methodology for determining content in a solid substance ("Reformulation Standard") of DEHP. With respect to existing Inflatable Animal Seats and Momentum String Lights, meaning those that are currently in the channels of distribution, with distributors, retailers, and/or 99 CENTS STORES's storage facilities, 99 CENTS STORES may continue to sell-through those items. However, after the Effective Date, no new Inflatable Animal Seats and Momentum String Lights may be distributed by 99 CENTS STORES for sale to California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3.

With respect to the Soft Baby Potty Seats and Momentum Non Slip Placemats, 99 CENTS STORES represents and has provided tests results demonstrating that such products currently comply with the standard for Reformulated Products, and therefore no reformulation or warnings are necessary for those products.

2.2 Warning Option. Covered Products that do not meet the warning exemption 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 after the Effective Date, 99 CENTS STORES shall ensure that in the event it ships any unreformulated Covered Product to California retailers or for sale in California, they include clear and reasonable warnings. 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), 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

△ **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, 99 CENTS STORES 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 Compliance. The parties agree that compliance with the terms of this Agreement constitutes compliance with Proposition 65 with regard to the Covered Products.

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

99 CENTS STORES shall pay a civil penalty of \$3000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CAPA. 99 CENTS STORES shall issue two separate checks or wires for the penalty payment: (a) one check/wire 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 \$2,250, representing 75% of the initial civil penalty and (b) one check/wire to "Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.," in the amount of \$750, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to the Kawahito Law Group APC, who shall furnish a W-9 at least five calendar days before payment is due. The payments shall be delivered check or wire within ten (10) business days from the Effective Date to the following address or wired to the below account:

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

Wire Instructions can be provided upon request.

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, 99 CENTS STORES shall pay the total amount of \$27,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of 99 CENTS STORES, and negotiating a settlement. Payment shall be made within

ten (10) business days from the Effective Date to the following address or wired below to the following account.

James Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. 99 CENTS STORES
222 North Pacific Coast Hwy. Suite 2222
El Segundo, CA 90245

Wire Instructions can be provided upon request.

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide 99 CENTS STORES with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days before payment is due.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

This Settlement Agreement is a full, final and binding resolution between CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, and (a) 99 CENTS STORES, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively the "Releasees"), and (b) all entities who directly or indirectly provided the Covered Products to 99 CENTS STORES or to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, agents, attorneys, predecessors, successors, and assigns ("Other Releasees"), on the other hand, of any violation or claimed violation of Proposition 65 or any statutory or common law claim that was or could have been asserted by CAPA against the Releasees and/or Other Releasees regarding exposing persons to DEHP and the failure to warn about exposure to DEHP arising in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Parties agree that compliance with the terms of this Settlement Agreement by 99 CENTS STORES shall be deemed to be compliance with Proposition 65 by Releasees and Downstream Releasees with respect to any exposures to DEHP in the Covered Products manufactured, distributed, or sold by Defendant after the

Effective Date. This release is provided in CAPA's individual capacity and is not a release on behalf of the public.

CAPA acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY 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 OR RELEASED PARTY.

CAPA, in its capacity only, and 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 California 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 that it may lawfully waive such rights or benefits pertaining to the released matters.

5.2 99 CENTS STORES' Release of CAPA.

99 CENTS STORES on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, 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 Covered Products.

5.3 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 99 CENTS STORES: Mary Kasper, Esq.
99 Cents Only Stores LLC
4000 Union Pacific Avenue
Commerce, CA 90023

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. 99 CENTS STORES
222 North Pacific Coast, Hwy., Suite 2222
El Segundo, CA 90245

with a copy to: Center for Advanced Public Awareness, Inc.
Attn: Linda Droubay
100 Promenade Circle, Suite 300
Sacramento, CA 95834

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 his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f)

11. 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.

12. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

13. 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: 098/09/2019

Date: 09/20/2019

By: 
Center for Public Awareness, Inc.

By: 
99 Cents Only Stores LLC