

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“DONALDSON”) and CVS Pharmacy, Inc. (“CVS”), with DONALDSON and CVS each individually referred to as a “Party” and collectively as the “Parties.”

DONALDSON is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. DONALDSON alleges that CVS 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 General Allegations

DONALDSON alleges that CVS manufactures, sells, and distributes for sale in California, Vinyl Reusable Therapy Pack Storage Bags containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DONALDSON alleges that CVS failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are Vinyl Reusable Therapy Pack Storage Bags containing DEHP that are manufactured and/or supplied by Natural Wonders CA, Inc. and sold in California by CVS including, but not limited to, the “*Hot Pockets Warmabed Warmabody Therapy Pack*”; UPC 7 52750 22002 2 (hereinafter referred to as “Products”).

1.4 Notice of Violation

On April 12, 2019 DONALDSON served CVS and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that CVS violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

CVS denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that 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 CVS 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 CVS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CVS. This Section shall not, however, diminish or otherwise affect CVS’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean July 15, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment


As of September 13, 2019, CVS shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1, or carry appropriate health hazard warnings per section 2.3. The Parties agree and intend for compliance with the terms of this Settlement Agreement to constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice.

2.3 Product Warnings

As of September 13, 2019, all Products CVS sells and/or distributes for sale in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. CVS further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and containing one of the following statements:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, CVS shall pay or cause to be paid a civil penalty of \$2,500. The penalty payment will be allocated in

accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to DONALDSON. The civil penalty shall be paid on or before July 15, 2019 via two checks, as follows: (1) “OEHHA” in the amount of \$1,875; and (2) “AUDREY DONALDSON” in the amount of \$625, delivered to the address set forth in Section 3.3. CVS agrees to provide DONALDSON’S counsel with a tracking number for the payments made pursuant to this section.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that DONALDSON and her 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 material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, CVS expressed a desire to resolve DONALDSON’S fees and costs. The Parties reached an accord on the compensation due to DONALDSON’S counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, CVS agrees to pay or cause to be paid, \$14,500 to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of CVS’ management, and negotiating a settlement. The fee payment shall be made via six checks to Voorhees & Bailey, LLP, such that they are received by Voorhees & Bailey, LLP on the following schedule: (i) \$2,500 on or before July 15, 2019; (ii) \$2,500 on or before August 15, 2019; (iii) \$2,500 on or before September 13, 2019; (iv) \$2,500 on or before October 15, 2019; (v) \$2,500 on or before November 15, 2019; and (vi) \$2,000 on or before December 13, 2019. CVS agrees to provide DONALDSON’S counsel with a tracking numbers for the payments made pursuant to this section.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 DONALDSON'S Release of Proposition 65 Claims

DONALDSON acting on her own behalf, and *not* on behalf of the public, releases CVS, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom CVS directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers franchisees, cooperative members, and licensees, as well as Natural Wonders Ca, Inc., its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any unnamed 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 CVS.

4.2 DONALDSON'S Individual Release of Claims

DONALDSON, in her individual capacity only and *not* in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of DONALDSON of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products

manufactured, imported, distributed, or sold by CVS prior to the Effective Date. The Parties further understand and agree that, with the exception of Natural Wonders CA, Inc., this Section 4.2 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 CVS. Nothing in this Section affects DONALDSON'S right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve CVS' Products.

4.3 CVS Release of DONALDSON

CVS, on its own behalf and on behalf of Natural Wonders CA, Inc., and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against DONALDSON and her attorneys and other representatives, for any and all actions taken or statements made by DONALDSON and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

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 as to the Products, then CVS may provide written notice to DONALDSON 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 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 CVS:

CVS Pharmacy, Inc.
c/o CT Corporation System
818 West Seventh Street; Suite 930
Los Angeles, CA 90017

For DONALDSON:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

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.

8. 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. MODIFICATION

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

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11. 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:

Date: July 16, 2019

By: 
AUDREY DONALDSON

AGREED TO:

Date: July 16, 2019

By: 
CVS PHARMACY, INC.