

SETTLEMENT AGREEMENT
BETWEEN
CENTER FOR ADVANCED PUBLIC AWARENESS
And
SAN DIEGO ZOO GLOBAL

This Settlement Agreement is entered by and between Center for Advanced Public Awareness (“CAPA”) and San Diego Zoo Global (“San Diego Zoo”), with each individually referred to as a “Party” and, collectively, as the “Parties”, in order to resolve the allegations contained in the May 6, 2019 60-Day Notices of Violation.

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.

The San Diego Zoo is a non-profit entity whose mission is to save species worldwide by using its expertise in animal and plant care, through conservation science, by inspiring passion for nature, and by striving to be at the forefront of wildlife conservation and education. The San Diego Zoo’s goal is to save for future generations the unique species located and living in regions with some of the greatest biodiversity on the planet, from the rain forests of the Amazon to the savannas of Africa, and from the jungles of Indonesia to the tundra of the Arctic. Clean water is key to this goal.

San Diego Zoo 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 San Diego Zoo manufactures, imports, sells and/or distributes for sale in California vinyl/PVC organizers and clothing with vinyl/PVC components containing di(2-ethylhexyl)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 covered by this Settlement Agreement are: (1) vinyl/PVC organizers containing DEHP manufactured, imported, distributed, sold or offered for sale in California by San Diego Zoo, including, but not limited to, the *Souvenir Penny Collecting Book, Model #1651000, UPC #4 23450 55222 4* (“Organizer Products”); and (2) clothing with vinyl components containing DEHP distributed, sold or offered for sale by the San Diego Zoo in California and specifically limited to the *Backyard Safari Cargo Vest, Model # 1641170, UPC #4 23450 41181 1* (“Clothing Products”), collectively, hereinafter, the “Products.”

1.4 60-Day Notices of Violation

On May 6, 2019, CAPA served San Diego Zoo, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging San Diego Zoo violated Proposition 65 when it failed to warn its customers and consumers in California that the Organizer Products expose users to DEHP. On May 6, 2019, CAPA served Alex Brands, Alex Toys, Inc., San Diego Zoo, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (collectively with Notice, the “Notices”), alleging San Diego Zoo also violated Proposition 65 when it failed to warn its customers and consumers in California that the Clothing 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 Notices.

1.5 No Admission

San Diego Zoo denies the material, factual and legal allegations contained in the Notices and maintains that it has long made efforts to ensure compliance with Proposition 65 and 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 San Diego Zoo 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 San Diego Zoo 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 30, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION & MITIGATION

2.1 Commitment to Reformulate

Commencing on the Effective Date and continuing thereafter, San Diego Zoo 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.

2.3 Mitigation

Although the San Diego Zoo accepts the test results provided by CAPA in support of its allegations, it maintains it is, and has been, proactive in implementing the requirements of Proposition 65 throughout the organization. During the negotiation of this Settlement Agreement, the San Diego Zoo's vendor provided Proposition 65-compliant warning labels for the Products, and the San Diego Zoo ensured all Products, across all locations, were appropriately labeled. After a thorough investigation and due diligence, the labeled Products were discontinued and replaced with new, compliant Products, in accordance with the Reformulation Standard and Section 2.1, supra, in an ongoing effort by the San Diego Zoo to eliminate noncompliant products from their sales chain.

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 Notices or referred to in this Settlement Agreement, San Diego Zoo 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.

San Diego Zoo will deliver its payment on or before the Effective Date, in two checks made payable to: (a) "OEHHA" in the amount of \$2,625; and (b) "Center for Advanced Public Awareness, Inc." 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, San Diego Zoo 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 five days of the Effective Date, San Diego Zoo agrees to pay \$26,000 to CAPA and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of San Diego Zoo's management and negotiating a settlement in the public interest. San Diego Zoo'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 Johnson
2822 Moraga Street
San Francisco, CA 94122

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of San Diego Zoo

This Settlement Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and San Diego Zoo, 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 San Diego Zoo, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom San Diego Zoo 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 San Diego Zoo, as alleged in the Notices, 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 San Diego Zoo before the Effective Date, as alleged in the Notices, against San Diego Zoo 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 San Diego Zoo. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve San Diego Zoo's Products.

4.2 San Diego Zoo's Release of CAPA

San Diego Zoo, 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 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 San Diego Zoo 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 San Diego Zoo 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 San Diego Zoo:

Wendy Bulger, General Counsel
San Diego Zoo Global
P.O. Box 120551
San Diego, CA 92112-0551

With a Copy to:

Al De La Cruz
Manning & Kass, Elrod, Ramirez, Trester LLP
225 Broadway, Suite 1200
San Diego, CA 92101

For CAPA:

Kimberly Gates Johnson, 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

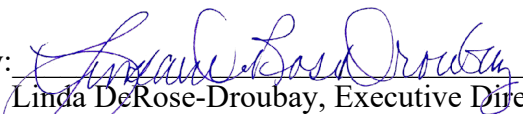
The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 10/06/2020

Date: _____

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

By: _____
Shawn Dixon, Chief Operating Officer
San Diego Zoo Global

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AGREED TO:

AGREED TO:

Date: _____

Date: 10/5/2020 _____

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

DocuSigned by:
Shawn Dixon
By: _____
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Shawn Dixon, Chief Operating Officer
San Diego Zoo Global