

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. (“CAPA”), Barnes & Noble, Inc. (“Barnes & Noble” or “B&N”) and Natural Products Ltd. dba NPW (“NPW”) with NPW, B&N 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 NPW employs ten or more persons, and CAPA alleges that NPW 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 NPW imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. CAPA further alleges that NPW failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products. CAPA further alleges that B&N distributed for sale in California Covered Products, as defined below, that contain DEHP, a chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. CAPA further alleges that B&N failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

#### 1.3 Product Description.

The products covered by this Settlement Agreement are the Furry Llama Journals, which were imported, sold and/or distributed for sale in California by NPW with UPC No. 5037200061437 (“Covered Products”).

**1.4 60 Day Notice of Violation and Exchange of Information.**

On August 6, 2019, CAPA served NPW, Barnes & Noble and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that NPW violated Proposition 65. The Notice alleged that NPW and B&N violated Proposition 65 by failing to warn consumers about alleged exposures to DEHP from its import, sale and/or distribution of the Covered Products.

CAPA subsequently provided NPW with test results in CAPA’s possession concerning its allegations. NPW provided CAPA with sales data 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 Notice.

**1.5 No Admission.**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65. By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission against interest by any Party of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by NPW or B&N or their officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for NPW or B&N, or any direct or indirect customer of NPW or B&N who sold or sells the Covered Product, in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not,

however, diminish or otherwise affect NPW's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date.**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 1, 2020.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

**2.1 Reformulation Standard.** NPW has represented that it has discontinued the manufacture and distribution of the Covered Product. To the extent NPW decides to import, manufacture, ship, or sell the Covered Products in or into California in the future commencing on the Effective Date, and continuing thereafter, NPW 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 in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance ("Reformulation Standard"). Covered Products, currently in the channels of distribution with distributors and retailers may continue to be sold-through. However, as of the Effective Date, NPW may not distribute or sell new Covered Products in California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3

**2.2 Warning Option.** Covered Products that do not meet the Reformulation 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 on the Effective Date, NPW shall ensure that any un-reformulated Covered Products that it ships to California retailers or for sale in California

include a clear and reasonable warning. 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) phthalate (DEHP), 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](http://www.P65Warnings.ca.gov).

OR

⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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 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, NPW 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 **Accessible Component.** The term “Accessible Component” shall mean any component of the Covered Product that could be touched by a person during reasonably foreseeable use.

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

NPW shall pay a civil penalty of \$500 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. In the event of payment by checks, NPW shall issue two separate checks for the penalty payment: (a) one check 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 \$375.00 representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.,” in the amount of \$125.00, representing 25% of the initial civil penalty. Payment may also

be made by wire transfer for the total amount of \$500. Wire transfer instructions shall be sent separately. 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 Kawahito Law Group APC, who shall furnish a W-9 at least five business days before payment is due. The payment of \$500 shall be delivered within ten (10) days after the Effective Date (by January 10, 2020) to the following address:

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

#### **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, NPW shall pay the total amount of \$16,000.00 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of NPW, and negotiating a settlement. NPW shall make the check payable to “Kawahito Law Group APC.” Payment may also be made by wire transfer. Wire transfer instructions shall be sent separately. Payment shall be made within ten (10) days after the Effective Date (by January 10, 2020) and delivered to the following address:

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

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide NPW with a completed IRS Form W-9 for the Kawahito Law Group APC at least five business days prior to payment.

## **5. RELEASE OF ALL CLAIMS**

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

CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases NPW of any and all claims or actions alleging violations of Proposition 65 that were or could have been asserted by CAPA against NPW, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying NPW with the Covered Products, and each entity to which NPW directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to Barnes & Noble, Inc., Vivona Brands Ltd., their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, subsidiaries, affiliated entities, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively “Releasees”) based on their alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by NPW (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Covered Products that were in the stream of commerce prior to the Effective Date. However, as of the Effective Date, no new Products shall be shipped to or distributed in California that are not Reformulated Products or contain the warnings set forth in Sections 2.2 and 2.3. This release is provided in CAPA’s individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against NPW and Releasees that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys’ fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by NPW or Releasees.

## **5.2 NPW's Release of CAPA.**

NPW 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 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 NPW or B&N:

Robert Niemann, Esq.  
KELLER AND HECKMAN LLP  
Three Embarcadero Center  
Suite 1420  
San Francisco, CA 94111

with a copy to:

For CAPA:

James K. Kawahito  
Kawahito Law Group APC  
Attn. CAPA v. NPW  
222 N. Pacific Coast Hwy., Suite 2222  
El Segundo, CA 90245

with a copy to:

Center for Advanced Public Awareness, Inc.  
2342 Shattuck Ave. #347  
Berkeley, CA 94704

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

#### **11. MODIFICATION**

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


#### **12. 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: 12/16/2019

By:   
Center for Public Awareness, Inc.  
Name:  
Title:

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Natural Products, Ltd. dba NPW  
Name:  
Title:

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Barnes & Noble, Inc.  
Name:  
Title:

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_


Center for Public Awareness, Inc.

Name:

Title:

**AGREED TO:**

Date: December 28<sup>th</sup> 2019.

By:  \_\_\_\_\_

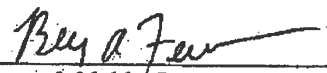
Natural Products, Ltd. dba NPW

Name: T.J. WRIGHT.

Title: CEO

**AGREED TO:**

Date: December 16, 2019.

By:  \_\_\_\_\_

Barnes & Noble, Inc.

Name: BRADLEY A FEUER

Title: VP, GENERAL COUNSEL