

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 CONAIR CORPORATION (“CONAIR”), with CONAIR 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 CONAIR 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 CONAIR imported, sold, and/or distributed for sale in California the Covered Products without provision of a Proposition 65 warning, and that the Covered Products, as defined below in Paragraph 1.3 of this Agreement, contain Di-(2-ethylhexyl) phthalate (“DEHP”) and other phthalates, chemicals known to the State of California to cause cancer and reproductive toxicity. CAPA further alleges that CONAIR failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

1.2.4 CONAIR denies each and every material allegation that CAPA has asserted against it, and CONAIR asserts it has complied with all applicable laws at all times, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by the Parties 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 or evidence of fault, wrongdoing, or liability by CONAIR, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Neither CONAIR's nor any other non-admission in this Settlement Agreement shall diminish nor otherwise affect CONAIR's obligations, responsibilities, and duties hereunder.

1.3 Product Description.

The products covered by this Settlement Agreement are the Cleary Organized Bags, SKU 04902299937, Sonia Kashuk Cosmetic Cubes, UPC 079642221340, Beauty 360 Hanging Organizers, UPC 050428342602, and Makeup Clutch, UPC 04922150683, which were imported, sold and/or distributed for sale in California by CONAIR (collectively the "Covered Products").

1.4 60 Day Notices of Violation and Exchange of Information.

On August 3, 2018, CAPA served Walgreens Co ("Walgreens") and the requisite public enforcement agencies with a 60-Day Notice of Violation relating to the Clearly Organized Bag. Thereafter, on September 10, 2019, CAPA served CONAIR and Walgreens with an Amended Notice. On January 22, 2019, CAPA served Target Corporation ("Target") and the requisite public enforcement agencies with a 60-Day Notice of Violation relating to the Sonia Kashuk Cosmetic Cube. Thereafter, on September 10, 2019, CAPA served CONAIR and Target with an Amended Notice. On May 31, 2019, CAPA served CVS Pharmacy, Inc. ("CVS") and the requisite public enforcement agencies with a 60-Day Notice of Violation relating to the Beauty 360 Hanging Organizer. Thereafter, on September 10, 2019, CAPA served CONAIR and CVS with an Amended Notice. On August 6, 2019, CAPA served Walgreens Co ("Walgreens") and the requisite public enforcement agencies with a 60-Day Notice of Violation relating to the Makeup Clutch. Thereafter, on September 10, 2019, CAPA served CONAIR and Walgreens with an Amended Notice (collectively the "Notices"). The Notices alleged that CONAIR, Walgreens, Target, CVS 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. CONAIR assumed the defense of the Notices based on their agreement with Target and CVS. The Parties agree that CONAIR's assumption of the

defense of Target, Walgreens and CVS shall not be construed as an admission by any Party, nor Target, Walgreens or CVS, 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 or evidence of fault, wrongdoing, or liability by any Party, Releasee, Downstream Releasee, nor Target, Walgreens or CVS, or any of their officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. CAPA subsequently provided CONAIR with test results in CAPA's possession concerning its allegations. CONAIR does not by this Settlement Agreement agree to the accuracy, reliability, nor validity of CAPA's test results, its conclusions, nor its methodologies. CONAIR 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 Notices.

1.5 Settlement Purposes Only.

1.6 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth concerning the Parties' and the Covered Products' compliance with Proposition 65, as alleged in the Notices (the "Dispute"). Specifically, CAPA alleges that CONAIR imported, sold or distributed for sale in the state of California the Covered Products, which contained DEHP and other phthalates without first providing the clear and reasonable exposure warning required by Proposition 65. As stated, CONAIR denies all material allegations including those in the Notice.

1.7 Effective Date.

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

2. INJUNCTIVE RELIEF

2.1 **Reformulation Standard.** Commencing on the Effective Date, and continuing thereafter, Covered Products that CONAIR 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 and other phthalates on the Proposition 65 list, 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, as defined in Paragraph 2.4 of this Settlement Agreement 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 and other phthalates on the Proposition 65 list. With respect to existing Covered Products, meaning those that are currently in the channels of distribution, with distributors, retailers, and/or CONAIR’s storage facilities, CONAIR may continue to sell-through those items. However, after the Effective Date, all Covered Products that CONAIR distributes must either (i) constituted Reformulated Products, or (ii) contain the warnings required under Paragraph 2.3.

2.2 **Warning Option.** Covered Products that do not meet the warning exemption standard set forth in Paragraph 2.1 of this Settlement Agreement shall be accompanied by a warning as described in Paragraph 2.3 of this Settlement Agreement. 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.** The warning required Sections 2.1 and Section 2.2 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 and/or _____, 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, CONAIR shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement 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.

2.5 **Compliance.** The parties agree that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with regard to the Covered Products.

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

CONAIR shall pay a civil penalty of \$4000, 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. CONAIR 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 \$3,000, 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 \$1,000, 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 (5) business days before payment is due. The payments shall be delivered check or wire within ten (10) business days from the Effective Date or five (b) business days after the payee identified in the check or wire transfer delivers to CONAIR a full and complete W-9, whichever is later, to the following address:

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, CONAIR shall pay the total amount of \$36,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of CONAIR, and negotiating a settlement. Payment shall be made within ten (10) business days from the Effective Date or five (5) business days after the payee identified in the check or wire transfer delivers to CONAIR a full and complete W-9, whichever is later, to the following address or wired to the below account:

James Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. CONAIR
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 CONAIR with a completed IRS Form W-9 for the Kawahito Law Group APC at least five (5) business 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) CONAIR, 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 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, and licensees, including Walgreens, Target, CVS, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, agents, attorneys, predecessors, successors, and assigns (“Downstream 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 Downstream Releasees regarding exposing persons to DEHP and other phthalates on the Proposition 65 list, and the failure to warn about exposure to DEHP and other phthalates on the Proposition 65 list 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 CONAIR shall be deemed to be compliance with Proposition 65 by Releasees and Downstream Releasees with respect to any exposures to DEHP and other phthalates on the Proposition 65 list 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 Section 1542 of 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.

CAPA, 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 Civil Code § 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 Covered Products.

5.2 CONAIR's Release of CAPA.

CONAIR 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.

No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against CONAIR by CAPA, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 60 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in this Settlement Agreement. Any notice to CONAIR must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (c) the store or other place at which the product was available for sale to consumers, (d) the specific provisions of this Settlement Agreement allegedly breached, and (e) any other evidence or other support for the allegations in the notice.

Within 30 days of receiving the notice described in this Section, CONAIR shall either (ii) provide to CAPA proof that it has addressed the allegations in the Notice such that the products at issue are returned to CONAIR or henceforth shall bear the warning required under Paragraph 2.3 of this Settlement Agreement, or (ii) refute the information provided in CAPA's notice under this Paragraph.

The Parties shall use reasonably good faith efforts to resolve all disputes related to this Settlement Agreement prior to bringing any suit, which is a predicate for attorneys' fees and costs to any prevailing party.

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. 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:

AGREED TO:

Date: 2/26/2020

Date: February 19, 2020

By: 
Center for Public Awareness, Inc.

By: 
Conair Corporation