

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 FGX INTERNATIONAL INC. (“FGX”), with FGX 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 FGX employs 10 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 § 25249.6, *et seq.* (“Proposition 65”).

1.2.3 CAPA alleges that FGX imported, sold, and/or distributed for sale in California the Covered Products, as defined in Section 1.3 of this Settlement Agreement, without provision of a Proposition 65 warning, and that the Covered Products, as defined below in Section 1.3 of this Settlement Agreement, contain Di-(2-ethylhexyl) phthalate (“DEHP”), which is known to the State of California to cause cancer and reproductive toxicity. CAPA further alleges that FGX failed to provide the warnings required under Proposition 65 for exposures to DEHP from the Covered Products.

1.2.4 FGX denies each and every material allegation that CAPA has asserted against it, and FGX 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 FGX, or 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 FGX's nor any other non-admission in this Settlement Agreement shall diminish or otherwise affect FGX's obligations, responsibilities, and duties hereunder.

1.3 Product Description.

The products covered by this Settlement Agreement are the Accessory Essentials Eyeware Pouches, UPC No. 193033055830, which were imported, sold and/or distributed for sale in California by FGX (the "Covered Products").

1.4 60-Day Notices of Violation and Exchange of Information.

On August 6, 2019, CAPA initially served Rite Aid Corporation ("Rite Aid") and the requisite public enforcement agencies with a 60-Day Notice of Violation relating to the Covered Products. Thereafter, on November 22, 2019, CAPA served FGX and Rite Aid with an Amended Notice (collectively the "Notices"). The Notices alleged that FGX and Rite Aid 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. FGX assumed the defense of the Notices based on its agreement with Rite Aid. The Parties agree that FGX's assumption of the defense of Rite Aid shall not be construed as an admission 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 or evidence of fault, wrongdoing, or liability by any Party, Releasee, or Downstream Releasee, or any of their respective current and former 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 FGX with test results in CAPA's possession concerning its allegations. FGX does not by this Settlement Agreement agree to the accuracy, reliability, or validity of CAPA's test results, its conclusions, or its methodologies. FGX 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 FGX 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. As stated, FGX denies all material allegations including those in the Notices.

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 FGX 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 Covered 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, as defined in Section 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. With respect to existing Covered Products, meaning those that are currently in the channels of distribution with distributors and/or retailers, and/or currently in FGX's storage facilities (collectively, the "Sell-Through Inventory"), FGX may continue to sell-through those items in compliance with this Settlement Agreement even if those items do not meet the Reformulation Standard and do not contain the warning required under Section 2.3. However, after the Effective Date, all Covered

Products that are not part of the Sell-Through Inventory and that FGX distributes must either (i) constitute Reformulated Products, or (ii) contain the warnings required under Section 2.3.

2.2 **Warning Option.** Covered Products that do not meet the warning exemption standard set forth in Section 2.1 of this Settlement Agreement shall be accompanied by a warning as described in Section 2.3 of this Settlement Agreement. This warning shall only be required as to Covered Products that are sold or shipped by FGX 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 under Section 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, 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 the specific Covered Product to which 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, FGX 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)

FGX shall pay a civil penalty of \$500, to be apportioned in accordance with California Health & Safety Code § 25249.12(c) and (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. FGX shall issue two separate checks or wires for the penalty payment: (a) one check/wire made payable to “Kawahito Law Group in Trust for the State of California’s Office of Environmental Health Hazard Assessment” in the amount of \$375, 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 \$125, 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 business days before payment is due. The payments shall be delivered by check or wire within 10 business days from the Effective Date or five business days after the payee identified in the check or wire transfer delivers to FGX a full and complete W-9, whichever is later, to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 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 Settlement 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 § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. More specifically, FGX shall pay the total amount of \$16,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of FGX, and negotiating a settlement. Payment shall be made within 10 business days from the Effective Date or five business days after the payee identified in the check or wire transfer delivers to FGX 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. FGX
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 FGX with a completed IRS Form W-9 for the Kawahito Law Group APC at least five 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, and its past and current agents, representatives, attorneys, successors, and/or assignees, and (a) FGX, and its past, present and future owners, parents, subsidiaries, affiliates, sister and related companies, and each of their respective past, present and future 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 Rite Aid and its past, present and future owners, parents, subsidiaries, affiliates, sister and related companies, and each of their respective past, present and future 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 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 FGX shall be deemed to be in 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 them 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 Civil Code § 1542, 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, and 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 FGX’s Release of CAPA.

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

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

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.

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. In the event that Proposition 65 or its implementing regulations are amended, repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the DEHP and/or the Covered Products, then FGX's compliance with all applicable laws and regulations at that time shall constitute compliance with this Settlement Agreement.

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 FGX: Jeffrey J. Giguere
Executive Vice President and General Counsel
FGX International Inc.
500 George Washington Highway
Smithfield, Rhode Island 02917

with a copy to: Bao M. Vu
Stoel Rives LLP
Three Embarcadero Center, Suite 1120
San Francisco, CA 94111

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. FGX
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 electronic, 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 & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

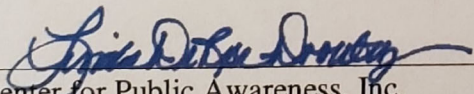
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

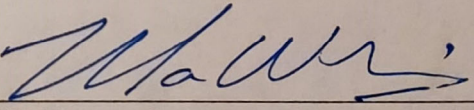
AGREED TO:

AGREED TO:

Date: 04/16/2020

Date: 4/22/2020

By: 
Center for Public Awareness, Inc.

By: 
FGX International Inc.
EVP & CFO