

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Consumer Protection Group, LLC and Navajo, Inc.

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC ("CPG"), on the one hand, and Navajo, Inc. ("Navajo"), on the other hand, with CPG and Navajo collectively referred to as "Parties."

1.2 General Allegations

CPG alleges that Navajo manufactured and distributed and offered for sale, Wine Chill Bag in the State of California causing exposures to Di (2-ethylhexyl) phthalate ("DEHP") and that such product did not include warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"). On January 1, 1988, DEHP was added to the list of chemicals known to the State to cause cancer, and on October 24, 2003, DEHP was added to the list of chemicals known to the State to cause developmental male reproductive toxicity. Navajo denies violating Proposition 65 and contends that its products are and have been in compliance with the law.

1.3 Product Description

The products covered by this Settlement Agreement are Wine Chill Bag, UPC 052548608675 and similar PVC Wine Chill Bag products (the "Subject Product") that Navajo has sold, offered for sale, or distributed in California containing DEHP.

1.4 **Notice of Violation**

On January 20, 2020 (AG No. 2019-00144), CPG served 7-Eleven, Inc. (“7-Eleven”) and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided 7-Eleven and such public enforcers with notice that Navajo was allegedly in violation of Proposition 65 for failing to warn consumers and customers that the Subject Product exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 **No Admission**

The Parties enter into this Agreement to settle disputed claims between them as set forth herein. By execution of this Settlement Agreement, Navajo, 7-Eleven, and each of their respective affiliates, subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns, and each entity to whom Navajo and 7-Eleven directly or indirectly distributes or sells the Subject Product, including but not limited to downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members, and licensees (collectively, the “Releasees”), 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 by the Releasees 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 the Releasees in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CPG or Navajo may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein. Notwithstanding the allegations in the Notice, Releasees maintain that they have not knowingly manufactured or distributed, or caused to be manufactured or distributed, the Subject Product for sale in California in violation of Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Settlement Agreement is delivered to each Parties' counsel.

2. INJUNCTIVE RELIEF: WARNING

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentration no more than 0.1 percent (1,000 parts per million) by weight. To determine whether a product is a Reformulated Product, it is to be analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, and the testing sample 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 testing methodologies 3580A and 8270C, or

other scientifically valid methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.

2.2 Commitment to Reformulate or Warn

As of the Effective Date, Navajo shall not offer the Subject Product for sale in the State of California unless they are Reformulated Products or bear a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4 of this Settlement Agreement, or as provided by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600), as those regulations may be amended from time to time. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

2.3 Warning

If not reformulated, the Subject Product if sold by Navajo shall be accompanied by a warning as described in Section 2.4 below as of the Effective Date. The warning requirements set forth in Section 2.4 below shall apply only to the Subject Product that are distributed, marketed, sold or shipped for sale in the State of California. Navajo further agrees, promises and represents that, as of the Effective Date, to the extent it ships or sells any of the Subject Product in its existing inventory that have not been reformulated, it will provide warnings that comply with Proposition 65 law. The warning requirement shall not apply to any of the Subject Product that is already in the stream of commerce as of the Effective Date.

2.4 **Warning Language**

The warnings shall be provided in such a conspicuous and prominent manner that will ensure the message is made available and likely to be read, seen, or heard by the consumer prior to, or at the time of, the sale or purchase. Where required, Navajo shall have an option to provide any one of the following Proposition 65 warnings:

⚠ **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl) phthalate (DEHP), which is 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.

If the California State Legislature, the Government of the United States of America, the voters of California, the Office of Environmental Health Hazard Assessment (“OEHHA”), or any other state or Federal regulatory agency with authority to do so enacts legislation or issues regulations authorizing or requiring other applicable texts or transmission methods for warnings concerning carcinogenicity and/or reproductive toxicity concerning DEHP, or providing that no such warnings are necessary as to the Subject Products and these chemicals, Navajo’s compliance with such legislation or regulations will constitute compliance with Section 2 of this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Navajo shall pay a total of three-thousand dollars (\$3,000.00) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to CPG. CPG's counsel shall be responsible for delivering OEHHA's portion and CPG's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to CPG and its counsel under the Private Attorney General doctrine, codified at California Code of Civil Procedure § 1021.5. Under these legal principles, Navajo shall reimburse CPG's counsel for fees and costs incurred as a result of investigating and bringing this matter to Navajo's attention and negotiating a settlement in the public interest. Navajo shall pay Consumer Protection's counsel thirty-one thousand five hundred dollars (\$31,500.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

Within seven (7) days of the Effective Date, Navajo shall make a total payment of thirty-four thousand five hundred Dollars (\$34,500.00) for the civil penalties and attorneys' fees/costs to Plaintiff's counsel, Blackstone Law APC by wire transfer:

Bank: First Republic Bank
Routing No.: 321081669
Account No.: 80006597266
Beneficiary: Blackstone Law APC IOLTA

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. TAX DOCUMENTATION

Navajo agrees to provide a completed IRS 1099 for its payment to CPG, and CPG agrees to provide a completed IRS W-9 form to Navajo for its payment under the Agreement.

7. RELEASE OF ALL CLAIMS

7.1 Release of Navajo, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4, and 5 above, CPG, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Subject Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any

nature whatsoever, whether known or unknown, fixed or contingent, including the allegations made in the Notice (collectively "Claims"), against (a) Navajo, (b) each of Navajo's downstream distributors (including 7-Eleven), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Navajo's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities.

CPG also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against Navajo and the Releasees with regards to the Subject Product. CPG acknowledges that it is familiar with California Civil Code section 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.

CPG in its individual capacity only, and on behalf of itself, 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 California Civil Code section 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 released matters. The release in this section shall have no force or effect until payments for the full amount set forth in above Sections 3, 4, and 5 are paid in full to Blackstone Law, APC by Navajo.

7.2 Navajo LP Release of Consumer Protection Group, LLC.

Navajo waives any and all claims against CPG, its attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by CPG and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Subject Product. Navajo represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Navajo to this Settlement Agreement.

8. PUBLIC BENEFIT

The Parties understand that the commitments Navajo has agreed to herein, and actions to be taken by Navajo under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Navajo's failure to provide a warning concerning exposure to DEHP prior to use of the Subject Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, Navajo contends that such private party action would not confer

a significant benefit on the general public as to those Subject Products addressed in this Settlement Agreement, provided that Navajo is in material compliance with this Agreement.

9. 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 Subject Product, then Navajo shall have no further obligations pursuant to this Settlement Agreement, but shall have no recourse to claw back payments already made in accordance with Section 3, 4, and 5 of this Settlement Agreement.

10. SEVERABILITY.

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

11. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent

by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Navajo: Willis M. Wagner, Esq.
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814-3938

For CPG: Jonathan M. Genish, Esq.
Blackstone Law APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211

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.

12. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

CPG agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

14. ENTIRE AGREEMENT


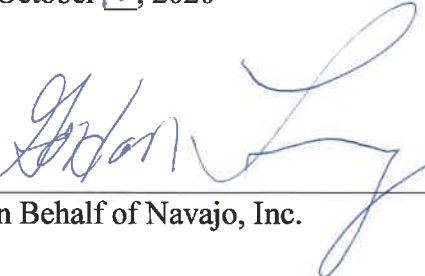
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

15. MODIFICATION

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

16. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligations that will or might prevent or interfere with the execution or performance of this Settlement Agreement by said Party.

<p style="text-align: center;">AGREED TO:</p> <p>Date: October <u>27</u>, 2020</p> <p style="text-align: center;"></p> <p>By: _____</p> <p>On Behalf of Consumer Protection Group, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: October <u>28</u>, 2020</p> <p style="text-align: center;"></p> <p>By: _____</p> <p>On Behalf of Navajo, Inc.</p>
--	---