

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) and P.S. Pibbs, Inc. (“**P.S. Pibbs**”), with CAPA and P.S. Pibbs each individually referred to as a “Party” and, collectively as the “Parties,” to resolve the allegations in the July 6, 2020 60-Day Notice of Violation issued pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”). CAPA is a California-based non-profit organization. P.S. Pibbs employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, pursuant to Health & Safety Code § 25249.11(b).

1.2 Consumer Product Allegations

CAPA alleges that P.S. Pibbs manufactures, imports, sells, offers for sale and/or distributes seats with vinyl upholstery containing di(2-ethylhexyl)phthalate (“**DEHP**”) including, but not limited to, *Child Sofa Seats-Black, Item No. 600BL*, to consumers in California without first providing a warning that CAPA alleges is required by California Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”). All such seats with vinyl upholstery are collectively referred to herein as “**Products**.” On October 24, 2003, DEHP was listed as a chemical known to the State of California to cause birth defects and reproductive toxicity.

1.3 Notice of Violation

CAPA served P.S. Pibbs, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation dated July 6, 2020 (“**Notice**”), alleging P.S. Pibbs violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. To the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

P.S. Pibbs denies the factual and legal allegations contained in the Notice, and maintains that all of the products it has sold, offered for sale and/or distributed in California, including the

Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by P.S. Pibbs of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, diminish or otherwise affect P.S. Pibbs' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

The term “**Effective Date**” shall mean the last date on which both Parties signed this Agreement.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate

Commencing sixty (60) days after the Effective Date and continuing thereafter, P.S. Pibbs shall only sell to customers or retail outlets in California, Products that are Reformulated Products, as defined by Section 2.2, below, or which are accompanied by a clear and reasonable Proposition 65 warning pursuant to Section 2.3, below.

2.2 Reformulation Standard Defined


For purposes of this Agreement, “Reformulated Products” are defined as Products containing DEHP in a maximum concentration of less than 0.1 percent (1,000 parts per million) 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”) methodologies 8270D, or other scientifically valid methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

Within thirty (30) days after the Effective Date, P.S. Pibbs, in writing, shall notify its vendors of Products that P.S. Pibbs sells or intends to offer for sale in California that P.S. Pibbs will only accept Products containing a maximum concentration of 0.1 percent (1,000 parts per

million) or less of each DEHP, butyl benzyl phthalate (“BBP”), di-isodecyl phthalate (“DIDP”), di-n-butyl phthalate (“DBP”), di-n-hexyl phthalate (“DnHP”) or diisononyl phthalate (“DINP”).

2.3 Clear and Reasonable Warnings

For Products that are not Reformulated Products as defined by Section 2.2, P.S. Pibbs shall provide clear and reasonable warnings in accordance with Sections 2.3 and 2.4. pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be prominently placed 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies. The warning below is an acceptable warning:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate, which is known to the State of California to cause cancer or birth defects or reproductive harm. For more information, go to www.P65Warnings.ca.gov/furniture.

2.4 Warning Methods

P.S. Pibbs shall provide a warning on a label affixed to the furniture Products in the same manner as other consumer information or warning materials that are provided on the product. A warning provided pursuant to section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol may be in black and white.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), P.S. Pibbs agrees to pay \$10,000 within thirty (30) days of the Effective Date. P.S. Pibbs shall allocate this civil penalty payment according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) paid to the California Office of Environmental Health Hazard Assessment (OEHHA), and the

remaining twenty-five percent (25%) retained by CAPA by issuing two checks made payable to: (1) “OEHHA” in the amount of \$7,500; and (2) “Center for Advanced Public Awareness” in the amount of \$2,500. CAPA’s counsel shall deliver OEHHA’s and CAPA’s portion of the penalty payment.

3.2 Reimbursement of Attorneys’ Fees and Costs

CAPA and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of their attorneys’ fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the compensation to be paid to CAPA’s 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 Agreement pursuant to its terms, but exclusive of fees and costs on appeal, if any. Within thirty (30) days of the Effective Date, P.S. Pibbs agrees to issue a check in the amount of \$21,000 made payable to “Seven Hills LLP” for all fees and costs incurred relating to this matter including but not limited to, investigating, bringing this matter to P.S. Pibbs’ attention, litigating, negotiating a settlement in the public interest, and reporting this settlement pursuant to Section 9, below.

3.3 Payments

All payments required by this Agreement shall be delivered to the following address:

Seven Hills LLP
Attn: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 CAPA’s Release of Proposition 65 Claims

This Agreement is a full, final and binding resolution and release between CAPA and its past and current agents, representatives, attorneys, successors, and/or assignees (“**Releasors**”), acting in their individual capacity, not on behalf of the public, and P.S. Pibbs and its past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom P.S. Pibbs directly or indirectly distributed, sold

or offered for sale Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors and licensees (“**Releasee(s)**”), of any alleged or actual violation of Proposition 65 that was or could have been asserted by Releasors against Releasees, based on a failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by P.S. Pibbs in California within 60 days after the Effective Date.

Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by P.S. Pibbs with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured or distributed by P.S. Pibbs and sold or offered for sale in California sixty (60) days after the Effective Date.

4.2 CAPA’s Individual Release of Claims

CAPA, in its individual capacity only, not on behalf of the public, also provides a release to P.S. Pibbs and Releasees 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 CAPA of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP or DINP, in Products manufactured, distributed, sold or offered for sale in the State of California by P.S. Pibbs prior to sixty (60) days after the Effective Date. Nothing in this section shall affect CAPA’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve P.S. Pibbs’ Products.

4.3 P.S. Pibbs’ Release of CAPA

P.S. Pibbs, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, and Releasors, 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 in the course of investigating the claims alleged in the Notice, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed unenforceable by a court, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then P.S. Pibbs may provide CAPA with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve P.S. Pibbs from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notices required by this Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested, (iii) via email, or (iv) a recognized overnight courier to any Party by the other at the following addresses:

For P.S. Pibbs:

Malcolm C. Weiss, Esq.
Jennifer MikoLevine, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
mweiss@huntonAK.com
jmikolevine@huntonAK.com

For CAPA:

Laralei Paras, Esq.
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillslp.com

Any Party may, from time to time, 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 PDF SIGNATURES

This Agreement may be executed in counterparts and by 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.

9. COMPLIANCE WITH REPORTING REQUIREMENTS

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

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

Date: 5/13/21

By: 

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

AGREED TO:

Date: 5/13/21

By: 

Armando Petruccelli, Vice-President
P.S. Pibbs, Inc.