

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 Shen Manufacturing Company, Inc. d/b/a John Ritzenthaler Company ("**JRC**"), with CAPA and JRC each individually referred to as a "**Party**" and collectively, as the "**Parties.**" CAPA is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. JRC is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

CAPA alleges that JRC manufactures, imports, sells and distributes for sale in California vinyl aprons containing diisononyl phthalate ("**DINP**") including, but not limited to, Apron Bib Vinyl Brown CLVAT, Part No. 4618, Model # PBCLWPAP16-T, JRC Ritz CLVAT Vinyl Bib Dishwashing Apron, Brown SKU #: 4618, RITZ Food Service CLVA-1 Vinyl Kitchen Bib Apron, Brown, RITZ Food Service CLVAHD-1 Heavy-Duty Vinyl Kitchen Bib Apron, Brown, Trimark OSVA Heavy Duty Dishwashing Apron, Clear, 35502, Ritz CLOVA Dishwash Apron, 34" x 47", Clear Vinyl (Pack of 12), each individually referred to as a "**Product**" and, collectively, as the "**Products,**" without providing the health hazard warning that CAPA alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* ("**Proposition 65**"). DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Notices of Violation

On July 17, 2020, CAPA served TriMark USA, Inc. ("**TriMark**"), the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation ("**Notice**"), alleging that TriMark violated Proposition 65 when it failed to warn its customers and consumers in California that its Products can expose users to DINP. On or about



December 2, 2020, CAPA served TriMark and JRC, the California Attorney General and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”), alleging that TriMark and JRC violated Proposition 65 when they failed to warn their customers and consumers in California that their Products can expose users to DINP. The Notice and Supplemental Notice shall be collectively referred to herein as the “Notices.” The No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notices.

1.4 No Admission

JRC denies the material, factual, and legal allegations contained in the Notices, and maintains that, to the best of its knowledge, all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by JRC of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect JRC’s obligations, responsibilities, and duties under this Agreement. JRC maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.5 Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean December 15, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, each Product JRC manufactures, imports, sells or distributes for sale, directly or through third parties, to customers or consumers in California shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to Section 2.3.



2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain Diisononyl Phthalate ("DINP"), Di-n-butyl Phthalate ("DBP"), di(2-ethylhexyl)phthalate ("DEHP"), Butyl Benzyl Phthalate ("BBP"), Di-isodecyl Phthalate ("DIDP") and Di-n-hexyl Phthalate ("DnHP"), contain any or all of such listed phthalate chemicals each 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 methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, JRC shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section 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.

(a) **Warning.** The Warning shall consist of the following statement:

▲ **WARNING:** This product can expose you to DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Short-Form Warning.** JRC may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) ("**Short-Form Warning**"), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

▲ **WARNING:** Cancer - www.P65Warnings.ca.gov.

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings

JRC shall affix a warning to the Product label or otherwise directly on each Product provided for sale to customer with retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) or (b) 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. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, JRC prints new catalogs and sells Products through such catalogs to customers located in, or with retail outlets located, in California, JRC shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

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2.6 Internet Warnings

If, after the Effective Date, JRC sells Products via the internet to customers located in California, JRC shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word "WARNING" given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.7 Alternative Warning Language. 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, JRC shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. Nothing in this Agreement shall be construed to impose upon JRC any obligations, duties, or responsibilities to provide warning labels in excess of the requirements of Proposition 65.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), JRC agrees to pay a civil penalty of \$7,500 within five (5) days of the Effective Date. JRC's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent

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(75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) retained by CAPA. JRC shall issue its payment in two checks made payable to: (1) “OEHHA” in the amount of \$5,625; and (2) “Center for Advanced Public Awareness” in the amount of \$1,875. CAPA’s counsel shall deliver to OEHHA and CAPA their respective portion of the penalty payment.

3.2 Final Waivable Civil Penalty

JRC shall pay a second civil penalty of \$15,000. However, the second civil penalty shall be waived in its entirety, if, on or before the Effective Date, an officer of JRC certifies that as of the Effective Date, and continuing thereafter, any and all vinyl aprons made available for sale in California by JRC are Reformulated Products, as defined by Section 2.2. Unless the second civil penalty is waived, within five (5) days of the Effective Date, JRC shall issue a check made payable to “OEHHA” in the amount of \$11,250 and a check made payable to “Center for Advanced Public Awareness” in the amount of \$3,750.

3.3 Reimbursement of Attorneys’ Fees and Costs

CAPA and its counsel offered to resolve the allegations in the Notices without reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement 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 and reporting of this Agreement to the Office of the California Attorney General. Within five (5) days of the Effective Date, JRC agrees to issue a check in the amount of \$21,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to JRC’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

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3.4 Payments

All payments payable and due under this Agreement shall be delivered to CAPA's counsel at 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 JRC

This Agreement is a full, final and binding resolution between CAPA, acting in its individual capacity, *not* on behalf of the public, and JRC, of any violation of Proposition 65 that was or could have been asserted by CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against JRC, its past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom JRC directly or indirectly distributes or sells Products including downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to TriMark USA, LLC ("**Releasee(s)**"), based on the failure to warn about alleged exposures to DINP contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by JRC in California before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, CAPA in its individual capacity, *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that CAPA may have, 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DINP, DBP, DEHP, BBP, DIDP, and DnHP in the

Products manufactured, imported, distributed, sold and/or offered for sale by JRC, before the Effective Date (collectively, Claims), against Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to JRC. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Products manufactured, imported, distributed, sold and/or offered for sale by JRC.

4.2 JRC's Release of CAPA

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

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. CAPA, on behalf of itself only, on one hand, and JRC on behalf of itself only, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims. California Civil Code Section 1542 reads as follows:

GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.



4.4 Deemed Compliance with Proposition 65

Compliance by JRC with this Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP in the Products.

4.5 Public Benefit

It is JRC's understanding that the commitments it has agreed to herein, and actions to be taken by JRC under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5, California Health & Safety Code § 25249 *et. seq.*, and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of JRC that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to JRC's alleged failure to provide a warning concerning exposure to DINP with respect to the Products it has manufactured, distributed, sold or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Agreement, provided that JRC is in material compliance with this Agreement.

4.6 Enforcement

No action to enforce this Agreement may be commenced or maintained, and no notice of violation related to the Products may be served or filed against JRC by CAPA, unless the party seeking enforcement or alleging violation notifies the other Party of the specific acts alleged to breach this Agreement at least 90 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 Section 4.6. Any notice to JRC or the Releasees must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (b) the store or other place at which the Product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice. Within 30 days of receiving the notice hereabove described, JRC shall either (1) cause to be delivered to the store or other place at which the Product was available for sale to the public a letter directing that the offending Product be immediately removed from inventory and returned to JRC for full credit, including

shipping costs, or (2) refute the information provided in the notice hereabove described. The Parties shall meet and confer in good faith to resolve any dispute for at least 30 days after written notice is provided of any alleged violation. Should the Parties be unable to resolve such a dispute, either Party may file suit in the county of San Francisco in the state of California to enforce the terms and conditions contained in this Agreement, consistent with the terms of this Section 4.6.

5. **SEVERABILITY**

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, 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 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 JRC 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 that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve JRC from its obligation to comply with any pertinent state or federal law or regulation.

7. **NOTICE**

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

For JRC:

Steve Siana, Esquire
Siana Law
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425

For CAPA:

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

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:

12/17/2020

Date: _____

By: _____

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

AGREED TO:

Date: 12-20-2020

By: _____

Robert Steidle
[ROBERT STEIDLE] CFO
Shen Manufacturing Company, Inc. d/b/a
John Ritzenthaler Company