

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and AMSCAN Inc. (“AMSCAN”). Donaldson and AMSCAN shall each be sometimes referred to individually as a “Party” and collectively as the “Parties.” Donaldson is an individual who allegedly resides in the State of California who seeks to improve human health by reducing or eliminating hazardous substances used in consumer products. Donaldson alleges that AMSCAN 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 General Allegations

Donaldson alleges that AMSCAN manufactures, sells, and/or distributes for sale in California, certain costume footwear with PVC components containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”) without first providing California consumers with a Proposition 65 warning. DEHP is listed by the State of California pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### 1.3 Product Description

The products covered by this Settlement Agreement are all costume shoes manufactured, imported, sold, offered for sale, and/or distributed for sale in California by AMSCAN, including, but not limited to, the *AMSCAN Freakshow Clown Shoes; UPC: 0 13051 83438 8* (hereafter the “Products”).

#### 1.4 Notice of Violation

On December 9, 2020, Donaldson served AMSCAN and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”) alleging that AMSCAN violated Proposition 65 by failing to warn customers in California that

exposures to DEHP may occur from use of the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

AMSCAN enters into this Settlement Agreement as a full and final settlement of all claims that were or that could have been raised in the Notice, and to avoid prolonged and costly litigation. AMSCAN denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, and that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by AMSCAN of any fact, finding, issue of law, or violation of law, including but not limited to any fact or conclusion of law suggesting that AMSCAN has violated Proposition 65, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by AMSCAN of any of the above, such being specifically denied by AMSCAN. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense AMSCAN may have in this or any other future legal proceeding. This Settlement Agreement is the product of negotiation and compromise and is accepted by AMSCAN solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date**

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

## 2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

### 2.1 Reformulation Standards


“Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (“ppm”)) each of DEHP, Diisononyl phthalate (“DINP”), dibutyl phthalate (“DBP”), diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”), and butyl benzyl phthalate (“BBP”), in any accessible components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

### 2.2 Reformulation or Warning Commitment

As of the Effective Date, AMSCAN shall not sell or offer Products for sale in the State of California unless they are: (a) Reformulated Products pursuant to Section 2.1 above; or (b) labeled with a clear and reasonable warning pursuant to Sections 2.3 and 2.4 below.

**2.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in Sections 2.3 and 2.4 shall be provided for all Products that AMSCAN manufacturers, imports, distributes, sells, and/or offers for sale in California that are not Reformulated Products. There shall be no obligation for AMSCAN to provide a warning hereunder for Products that entered the stream of commerce prior to the Effective Date, as they have been included in the calculation of civil penalties pursuant to Section 3.1. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

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

 [California Prop 65] **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** AMSCAN may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 [California Prop 65] **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Language in brackets is optional for either warning.

**2.4** The warning provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and bold font, followed by a colon. 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 sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Product itself, or on the Product’s packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If AMSCAN sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) “[California Prop 65] **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price

for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

**2.5 Compliance with Warning Regulations.** The Parties agree that AMSCAN shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for DEHP different than those set forth above, AMSCAN shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement.

**2.6 Public Benefit.** It is AMSCAN's understanding that the commitments it has agreed to herein, and actions to be taken by AMSCAN under this Settlement Agreement, 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, it is the intent of AMSCAN that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to AMSCAN's alleged failure to provide a warning concerning actual or alleged exposure to DEHP or other listed phthalates prior to use of 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 Settlement Agreement, provided that AMSCAN is in material compliance with this Settlement Agreement.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in return for the releases provided in Sections 4.1 and 4.2 of this Settlement Agreement, AMSCAN agrees to pay at the earliest possible time after the Effective Date, and in no event more than 15 business days after the Effective Date, \$1,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson. AMSCAN will provide its payment at the earliest possible time after the Effective Date, and in no event more than 15 business days after the Effective Date, in two checks as follows: (1) “OEHHA” in the amount of \$750; and (2) “Audrey Donaldson” in the amount of \$250. The settlement checks above shall be delivered to the address for Plaintiff’s counsel specified in Section 3.3 below. Plaintiff shall be solely responsible for transmitting the settlement check made payable to OEHHA to OEHHA.

#### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of attorney’s fees and expenses to be reimbursed to them, thereby leaving the issue to be resolved after the other material terms of the agreement had been settled. Shortly after agreement on the other settlement terms, AMSCAN expressed a desire to resolve Donaldson’s fees and costs. The Parties thereafter reached an accord on the compensation due to Donaldson’s counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, AMSCAN shall reimburse Donaldson’s counsel the total amount of \$14,500 for any and all of Donaldson’s attorney’s fees and expenses, including but not limited to

all investigative, expert, and testing expenses incurred as a result of investigating and bringing this matter to AMSCAN's attention, and negotiating this settlement. At the earliest possible time after the Effective Date, and in no event more than 15 business days after the Effective Date, AMSCAN shall deliver a check payable to "Voorhees & Bailey, LLP" in the amount of \$14,500 for delivery to the address identified in § 3.3, below.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP  
990 Amarillo Avenue  
Palo Alto, CA 94303

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Donaldson's Release of Proposition 65 Claims**

Donaldson acting on her own behalf, and *not* on behalf of the public, releases AMSCAN, its parents, subsidiaries, affiliated entities under common ownership, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom AMSCAN directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including but not limited to Party City Corporation and its affiliates), franchisees, cooperative members, importers, licensors, and licensees (collectively, "Releasees"), from all claims for actual or alleged violations of Proposition 65 for all Products manufactured through the Effective Date relating to unwarned exposures to alleged or actual DEHP in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any unaffiliated entities that manufactured or supplied the Products or any component parts thereof, or any unaffiliated suppliers who sold the Products or any component parts thereof to

AMSCAN.

#### **4.2 Donaldson's Individual Release of Claims**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, Donaldson, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, DINP, DIDP, DnHP, DBP, and/or BBP in the Products..

#### **4.3 AMSCAN's Release of Donaldson**

AMSCAN, 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 Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**4.4 California Civil Code § 1542.** It is possible that other claims not known to the Parties including those arising out of the facts alleged in the Notice and relating to products manufactured by or for AMSCAN and its affiliates through the Effective Date will develop or be discovered. Donaldson on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees only, on the one hand, and AMSCAN and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims against the



Releasees for products manufactured by or for AMSCAN and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1, 4.2 and 4.3, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims.

California Civil Code § 1542 reads 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.

Donaldson and AMSCAN expressly waive and relinquish any and all rights and benefits that they may have under or that may be conferred upon them by the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters.

**4.5 Deemed Compliance with Proposition 65.** The Parties intend and agree that AMSCAN's compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposures to DEHP, DBP, DINP , DIDP, DnHP, and/or BBP from use of the Products.

**5. 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.

**6. 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

Products, then AMSCAN may provide written notice to Donaldson of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless otherwise 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 AMSCAN:

General Counsel  
Amscan Inc.  
80 Grasslands Road  
Elmsford, NY 10523

For Donaldson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
990 Amarillo Avenue  
Palo Alto, CA 94303

With Copy to:

J. Robert Maxwell  
Rogers Joseph O'Donnell, PC  
311 California St., 10th Floor  
San Francisco, CA, 94104

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.

**8. 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.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, within one year of the Effective Date, that Party must give the other Party written notice of such violation and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. Plaintiff agrees that if AMSCAN produces a passing test result for listed phthalates in the Products within a year of the Product's date of sale by AMSCAN in California without a Proposition 65 warning, AMSCAN shall have no liability for violating this settlement agreement or Proposition 65 with respect to the Products so long as the Parties can agree on appropriate corrective action to be taken by AMSCAN. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement. The prevailing party on any motion to enforce this Settlement Agreement shall be entitled to its reasonable attorney's fees and costs according to proof.

**12. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**13. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**14. 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.

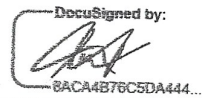
**AGREED TO:**

**AGREED TO:**

Date: May 17, 2021

Date: May 17, 2021

By:   
AUDREY DONALDSON

By:   
AMSCAN INC.