

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) and TNG Worldwide, Inc. (“**TNG**”) with CAPA and TNG referred to individually 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), seeking to protect the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increase public awareness of those chemicals by promoting environmentally sound practices and corporate responsibility. TNG employs ten or more persons and is a “person in the course of doing business”, as defined by California Health & Safety Code § 25249.11(b), for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

1.2 General Allegations

CAPA alleges TNG manufactures, imports, sells and/or distributes for sale in California: (1) chair covers; and (2) vinyl pouches containing di(2-ethylhexyl) phthalate (“**DEHP**”) and that it does so without providing the health hazard warning CAPA alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 Consumer Product Description

The consumer products covered by this Settlement Agreement are: (1) chair covers, including, but not limited to, the *ForPro Premium Square Chair Back Salon Cover, Model #441828, UPC #6 72047 13694 5* (“**Chair Cover Products**”); and (2) vinyl pouches, including, but not limited to, the *ForPro Mani/Pedi Pack, Model/SKU # 140581* (“**Pouch Products**” and, referred to hereinafter collectively with Chair Cover Products, the “**Products**”), both containing DEHP and manufactured, imported, distributed, sold or offered for sale, in California, by TNG.

1.4 Notices

On August 26, 2020, CAPA served TNG, the California Attorney General, and the

requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”) alleging TNG violated Proposition 65 when it failed to warn its customers and consumers in California the Chair Cover Products expose users to DEHP, a carcinogen and reproductive toxicant.

On December 17, 2020, CAPA served TNG, the California Attorney General and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”, and, collectively with Notice, the “**Notices**”), alleging that, in addition to its Chair Cover Products, TNG’s Pouch Products also contain elevated amounts of DEHP requiring a warning where none was provided. 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 No Admission

TNG denies the material, factual and legal allegations contained in the Notices and maintains all products it sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by TNG of any fact, finding, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by TNG of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “**Effective Date**” shall mean July 2, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, TNG agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with and as defined by Section 2.2, below, and shall meet the Reformulation Standard; or (2) Products bearing a clear and reasonable health hazard warning, in accordance with Sections 2.3 through 2.6.

2.2 Reformulated Products Defined

For purposes of this Agreement, “**Reformulated Products**” are defined as defined as

Products which, if they contain di(2-ethylhexyl)phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) and/or di-n-hexyl phthalate (“**DnHP**”), contain any or all such chemicals in a maximum concentration of less than 0.1 percent (1,000 parts per million) in any accessible component (i.e. any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“**Reformulation Standard**”.) 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 or CPSC-CH-C1001.09.4, as applicable, and analyzed using U.S. Environmental Protection Agency (EPA) 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, and continuing thereafter, TNG shall provide clear and reasonable health hazard 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, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

(a) Warnings:


⚠ **WARNING:** This product can expose you to chemicals including 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:** 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:** The plastic pouch these items come in 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 P65Warnings.ca.gov.”

(b) Alternative Short-Form Warnings:

 **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

or

 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

The Parties agree, should TNG determine additional chemical endpoints need to be included in either of the above warnings, TNG may modify the content of its warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

2.4 On-Product Warning Requirements

TNG shall affix a warning to the Product label or otherwise directly on each Product provided for sale in 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**” is defined as 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. On-product warnings shall consist of either the Warning or the Short-Form Warning described in subsections 2.3(a) or (b), respectively.

2.5 Internet Warnings

If, after the Effective Date, TNG sells Products via the internet to customers located in California, TNG 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. In any of the preceding instances, the warning shall appear 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 described in Section 2.3(b), if the warning provided on the Product label also uses the Short-Form Warning.

2.6 Compliance with Warning Regulations

TNG may comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, TNG agrees to pay \$3,000 in civil penalties. The civil penalty payments shall be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by CAPA. Within ten (10) days of the Effective Date, TNG shall remit its civil penalty payments, in two separate checks to be delivered to the address in Section 3.3, below, made payable as follows: (1) “OEHHA” in the amount of \$2,250; and “Center for Advanced

Public Awareness” in the amount of \$750. CAPA’s counsel shall deliver both OEHHA’s and CAPA’s portions of the civil penalty payments.

3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties acknowledge 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 the issue to be resolved after the Parties settled the material terms of this Agreement. Shortly after the Parties finalized the non-monetary and injunctive terms, TNG expressed a desire to resolve CAPA’s attorneys’ fees and costs. The Parties then negotiated a resolution of 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.

Under these legal principles, within ten (10) days of the Effective Date, TNG agrees to pay \$18,500 to CAPA and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of TNG’s management, and negotiating a settlement in the public interest. TNG’s payment shall be delivered to the address listed in Section 3.3, below, in the form of a check, made payable to “Seven Hills LLP.”

3.3 Payment Address

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

Seven Hills LLP
c/o Kimberly Gates Johnson
4 Embarcadero Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 CAPA’s Release of TNG

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and TNG, 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 TNG, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom

TNG directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning about exposure to DEHP contained in Products distributed, sold or offered for sale by TNG, as alleged in the Notices, prior to the Effective Date.

In further consideration of the promises and agreements herein contained, CAPA as an individual and *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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in Products distributed, sold and/or offered for sale by TNG prior the Effective Date, as alleged in the Notices, against TNG and 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 to TNG. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee not involving TNG's Products.

4.2 TNG's Release of CAPA

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

5. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the 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 Agreement shall be governed by and apply within the laws of the State of California. In the event Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then TNG shall provide written notice to CAPA 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 TNG from its obligation to comply with pertinent state or federal toxics control laws.

7. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided by this Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For TNG:

Jim DiMarco, Chief Operating Officer
TNG Worldwide, Inc.
Lyon Tech Park
29683 West K Smith Dr.
New Hudson, MI 48165

With a Copy to:

Laura P. Worsinger
Dykema Gossett PLLC
333 S. Grand Ave., Suite 2100
Los Angeles, CA 90071

For CAPA:

Kimberly Gates Johnson
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

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

9. REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)

CAPA agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. MODIFICATION


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

11. AUTHORIZATION

The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


AGREED TO:

Date: 06/30/2021

By: 
Linda DeRose-Droubay, Executive Director
Center for Advanced Public Awareness, Inc.

AGREED TO:

Date: 6-30-21

By: 
Dawn Kuhn, Chief Financial Officer
TNG Worldwide, Inc.