

Laralei Schmohl Paras, State Bar No. 203319
Brian C. Johnson, State Bar No. 235965
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillslp.com
brian@sevenhillslp.com

Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC AWARENESS

George Salmas, State Bar No. 62616
Michael R. Hambly, State Bar No. 119834
THE FOOD LAWYERS
1880 Century Park East, Suite 611
Los Angeles, CA 90064
Telephone: (310) 556-0721
george.salmas@thefoodlawyers.com

Attorneys for Defendant
GARFIELD COMMERCIAL ENTERPRISES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CONTRA COSTA COUNTY

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

GARFIELD COMMERCIAL ENTERPRISES,
INC.; and DOES 1-30, inclusive,

Defendants.

Case No. MSC21-02289

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Center for Advanced Public
3 Awareness (“CAPA”) and Garfield Commercial Enterprises, Inc. (“Garfield”), with CAPA and
4 Garfield each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the
5 allegations in the 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

8 CAPA is a California-based non-profit organization seeking to protect the environment
9 through elimination or reduction of toxic chemicals present in consumer products and to increase
10 public awareness of those chemicals through promotion of environmentally sound practices and
11 corporate responsibility. CAPA alleges Garfield employs ten or more individuals and is a person in
12 the course of doing business for purposes of Proposition 65, as defined by Health & Safety Code
13 § 25249.11(b).

14 **1.2 Consumer Product Description**

15 CAPA alleges Garfield manufactures, imports, sells or distributes for sale in or into California
16 seats with vinyl upholstery containing diisononyl phthalate (“DINP”), including but not limited to,
17 *Charlie Booster Seat, CH03 BK UPHL, Item No. CHO3.C01*, without a “clear and reasonable
18 warning” as required by Proposition 65. All such seats with vinyl upholstery containing DINP are
19 referred to hereinafter as the “Products” and individually as a “Product.” On December 20, 2013,
20 DINP was listed as a chemical known to the State of California to cause cancer.

21 **1.3 Notice of Violation**

22 On March 12, 2021, CAPA served Garfield, the Office of the Attorney General for the State
23 of California (“OAG”), and all requisite public enforcement agencies with a 60-Day Notice of
24 Violation (“Notice”). In its Notice, CAPA alleges Garfield violated Proposition 65 by failing to warn
25 its consumers in California the Products can expose users to DINP. No public enforcer has
26 commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.4 Complaint**

2 On October 29, 2021, CAPA commenced the instant action, naming Garfield as a defendant
3 for the violations of Proposition 65 alleged in the Notice.

4 **1.5 No Admission**

5 Garfield denies the factual and legal allegations contained in the Notice and Complaint and
6 maintains all products it sold or distributed for sale in California or caused to be sold or distributed
7 for sale in California, including the Products, comply with all laws. No term of this Consent
8 Judgment nor shall Garfield's compliance with this Consent Judgment constitute or be construed as
9 an admission by Garfield of any fact, finding, conclusion of law, issue of law, or violation of law.
10 This section shall not, however, affect Garfield's obligations, responsibilities, and duties under this
11 Consent Judgment.

12 **1.6 Jurisdiction**

13 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
14 over Garfield as to the allegations in the Complaint, that venue is proper in Contra Costa County and
15 the Superior Court for the County of Contra Costa has jurisdiction to enter and enforce the
16 provisions of this Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure
17 § 664.6.

18 **1.7 Effective Date**

19 The term "Effective Date" shall mean the date on which the Court grants the motion for
20 approval of this Consent Judgment contemplated by Section 5, below.

21 **2. INJUNCTIVE RELIEF: REFORMULATION AND INTERIM WARNINGS**

22 **2.1 Reformulation Commitment**

23 Garfield no longer sells or offers the Products for sale in California. It has ceased doing
24 business in California and is only operating for the purpose of winding up its corporate affairs and
25 obligations. The foregoing notwithstanding, while Garfield has no current intent to sell or off the
26 Products for sale in future, shall it elect to do so at any time in the future, Garfield agrees and
27 commits that all Products it manufactures, imports, sells, or purchases for resale to customers in
28 California, with nationwide distribution or e-commerce sales, shall meet the Reformulation Standard

for Reformulated Products, as defined by Section 2.2, and any remaining Products that are not Reformulated Products Garfield sells or distributes for sale to customers in California shall be accompanied by a clear and reasonable warning pursuant to Section 2.3.


2.2 Reformulation Standard

For purposes of this Consent Judgment, “Reformulated Products” are defined as Products diisononyl phthalate (“DINP”) 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

For all Products that do not meet the Reformulation Standard in Section 2.2, Garfield shall provide clear and reasonable warnings 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. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning or notice must also be provided in the other language(s) in addition to English.

(a) Warning Statement. A “clear and reasonable warning” as defined by this Consent Judgment shall contain the following statement:

 **WARNING:** This product can expose you to chemicals including diisononyl phthalate [DINP], which is known to the State of California to cause cancer. For more information go to www.P65warnings.ca.gov

1 **(c) Product Label Warning**

2 For all Products provided for sale to consumers located in California, or to customers with
3 retail outlets in California, ecommerce platforms or nationwide distribution, Garfield shall include the
4 applicable warning statement in Section 2.3 (a) or (b) on the Product label affixed to the furniture
5 product in the same manner as other consumer information or warning materials on Products. The
6 entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type
7 size used for other consumer information on the Products. For purposes of this agreement, “Product
8 label” means a display of written, printed or graphic material that is printed on or affixed to each of
9 the Products or its immediate container or wrapper.

10 **(d) Internet Warning**

11 If, after the Execution Date, Garfield sells Products via the internet, through its own website
12 or a third party website, to consumers located in California or to customers with nationwide
13 distribution and e-commerce websites, Garfield shall also provide the applicable warnings statement
14 in Section 2.3 (a) or (b) for each Product by prominently displaying, or requiring the warning to be
15 prominently displayed on third party websites or by downstream retailers or distributors with e-
16 commerce platforms, to the consumer during the purchase of the Products without requiring
17 customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using
18 the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall
19 appear either: (i) on the same web page on which the Products are displayed; (ii) on the same web
20 page as the virtual cart displaying the Products; (iii) on the same page as the price for the Products; or
21 (iv) on one or more web pages displayed to a purchaser during the checkout process. The warning
22 shall appear in any of the above instances adjacent to or immediately following the display,
23 description or price of the Products for which it is given in the same type size or larger than other
24 consumer information provided for the Products.

25 **(e) Catalog Warning**

26 If, after the Execution Date, prints new catalogs and sells Products via mail order through
27 such catalogs to customers located in California, Garfield shall also provide the applicable warnings
28 statement in Section 2.3 (a) or (b) for each Product in the catalog in a manner that clearly associates

1 the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog
2 shall be in the same type size or larger than other consumer information provided for the Product
3 within the catalog and shall be provided on the same page and in the same location as the display
4 and/or description of the Product.

5 **(f) Receipt Notice**

6 If, after the Execution Date, Garfield ships Product(s) to customers in California, Garfield
7 shall also provide, or require downstream retailers or distributes to provide, on the sales receipt and
8 packing slip, the following notice statement:

9 **NOTICE:**

10 Some furniture products with vinyl upholstery in this
11 shipment can expose you to chemicals including
12 diisononyl phthalate [DINP] which is known to the
13 State of California to cause cancer. Please check the
product label for warning information. For more
information go to: www.P65Warnings.ca.gov.

14 A notice statement provided pursuant to Section 2.3(h) must print the word “**NOTICE:**” in all capital
15 letters and in bold font. The entire notice statement shall appear in a type size of at least 12-point
16 type and no smaller than the largest type size used for other consumer information on the on the sales
17 receipt and packing slip.

18 **(g) Posted Notice Sign**

19 If, after the Execution Date, Garfield ships Product(s) to customers with retail outlets in
20 California, nationwide distribution or ecommerce platforms, Garfield shall inform, or require
21 downstream retailers or distributes to inform, customers that, if the customer sells, uses or offers the
22 product for sale or use in a business establishment in the State of California, a sign no smaller than 8
23 1/2 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in
24 no smaller than 28-point type which contains the following warning statement:

25 **NOTICE:**

26 Some furniture products with vinyl upholstery in this
27 establishment can expose you to chemicals including
28 diisononyl phthalate [DINP] known to the State of
California to cause cancer. Please check the product

label for warning information. For more information
go to: www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Garfield agrees to pay a civil penalty of \$2,000 within ten (10) days of the Effective Date. Garfield's civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (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. Garfield shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Center for Advanced Public Awareness" in the amount of \$500. CAPA's counsel shall deliver to OEHHA and CAPA their respective portions of the penalty payment.

3.2 Reimbursement of Attorneys' Fees and Costs

After the Parties finalized the nonmonetary and civil penalty terms of this Consent Judgment, 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 Consent Judgment to the Office of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal, if any. Within ten (10) days of the Effective Date, Garfield shall issue a check in the amount of \$15,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Garfield's attention, litigating, negotiating a settlement in the public interest, reporting to the settlement and any judgment entered thereon to the OAG and obtaining the Court's approval of its terms pursuant to Section 9, below.

3.3 Payments

All payments payable and due under this Consent Judgment shall be delivered to CAPA's counsel at the following address:

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1 Seven Hills LLP
2 Attn: Laralei Paras, Esq.
3 4 Embarcadero Center, Suite 1400
4 San Francisco, CA 94111

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4. **CLAIMS COVERED AND RELEASED**

4.1 **CAPA's Release of Proposition 65 Claims**

CAPA, acting on its own behalf and in the public interest releases Garfield and its past and present parents, subsidiaries, affiliated entities under common ownership, i.e., Garfield International Company, Inc., directors, officers, employees, attorneys and each entity to whom Garfield directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members and licensees ("Releasees") from all claims for violations of Proposition 65 up through the Execution Date based on exposure to DINP from Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DINP from Products as set forth in the Notice. The Parties further understand and agree this Section 4.1 release shall not extend upstream to any individual or entity who manufactured the Products or any component parts thereof, nor shall it extend downstream to any Releasees who has been instructed by Garfield, pursuant to Section 2.3, to provide warnings and notices for Products that are not Reformulated Products and who fail to do so.

4.2 **CAPA'S INDIVIDUAL RELEASE OF CLAIMS**

CAPA, in its individual capacity only and *not* in its representative capacity, also provides a release to Garfield 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 arising out of alleged or actual exposures to DINP in Products manufactured, imported, distributed or offered for sale to in or into the State of California by Garfield prior to the Execution 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 Garfield's Products. The Parties further understand and agree this Section 4.2 release shall not extend upstream to any individual or entity who manufactured the Products or any

1 component parts thereof, nor shall it extend downstream to any Releasee who has been instructed by
2 Garfield, pursuant to Section 2.3, to provide warnings and notices for Products that are not
3 Reformulated Products and who fail to do so.

4 **4.3 GARFIELD'S RELEASE OF CAPA**

5 Garfield, on behalf of itself, its past and current agents, representatives, attorneys, successors,
6 and assignees, hereby waives any and all claims against CAPA and its attorneys and other
7 representatives, for any and all actions taken or statements made by CAPA and its attorneys and other
8 representatives, whether in the course of investigating claims or seeking to enforce Proposition 65
9 against it in this matter with respect to alleged or actual exposures to DINP in the Products.

10 **5. COURT APPROVAL**

11 Pursuant to California Health and Safety Code § 25249.7(f)(4), CAPA shall file a noticed
12 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
13 best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to
14 obtain judicial approval of their settlement in a timely manner. For purposes of this section, "best
15 efforts" shall include, at a minimum, supporting the motion for approval, responding to any third-
16 party objection, and appearing at the hearing before the Court if so requested.

17 **6. SEVERABILITY**

18 If, at any time after the Court's approval and entry of this Consent Judgment as a judgment,
19 any provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
20 remaining provisions shall not be adversely affected.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within California. If Proposition 65 is repealed, preempted, or is otherwise rendered
24 inapplicable by reason of law generally, or as to the Products, then Garfield may seek to a
25 modification pursuant to Section 12, below. Nothing in this Consent Judgment shall be interpreted to
26 relieve Garfield from its obligation to comply with any state or federal law or regulation.

1 **8. NOTICE**

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

6 **For Garfield:**

7 George Salmas, Esq.
8 THE FOOD LAWYERS
9 1880 Century Park East, Suite 611
Los Angeles, CA 90064
george.salmas@thefoodlawyers.com

For CAPA:

Laralei Paras, Esq.
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laraleis@sevenhillslp.com

10 Any Party may, from time to time, specify in writing to the other Party a change of address to which
11 all notices and other communications shall be sent.

12 **9. COUNTERPARTS AND ELECTRONIC SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by portable document format
14 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,
15 shall constitute one and the same document.

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

19 **11. ENTIRE AGREEMENT**

20 This Consent Judgment contains the sole and entire agreement and understanding of the
21 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
22 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
23 therein. There are no warranties, representations, or other agreements between the Parties except as
24 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
25 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
26 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
27 exist or to bind any of the Parties hereto.
28

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
4 any party and the entry of a modified Consent Judgment by the Court thereon. No Party shall seek
5 modification of this Consent Judgment without first providing written notice to the other Party of the
6 basis for the modification sought and meeting and conferring in good faith prior to moving the Court
7 for an order modifying the Consent Judgment. In the event the Parties or either Party seek(s)
8 modification of this Consent Judgment by written agreement or on noticed motion by the Court, the
9 Party or Parties shall provide the OAG with no less than 45 days' notice of their intended revision(s)
10 to the Consent Judgment prior to reporting the revised agreement to the OAG or the date of any
11 hearing by the Court on a motion for such modification.

12 **13. AUTHORIZATION**

13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understand, and agree to all its terms and conditions.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 1/6/25

Date: 9/18/2024

18
19 By: 

Linda DeRose-Droubay, Executive Director
CENTER FOR ADVANCED PUBLIC
AWARENESS

By: 

Simon Yao, President
GARFIELD COMMERCIAL
ENTERPRISES, INC.