

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) and Carolina Biological Supply Company (“**Carolina Biological**”) with CAPA and Carolina Biological 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. Carolina Biological 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 Carolina Biological manufactures, imports, sells and/or distributes for sale in California dust covers 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, birth defects and other reproductive harm.

1.3 Consumer Product Description

The consumer products covered by this Settlement Agreement are dust covers containing DEHP that are manufactured, imported, distributed, sold or offered for sale, in California, by Carolina Biological, including, but not limited to, the *Wolfe Microscope Dust Cover, Model #DC221, Item #591704*, referred to hereinafter as the “**Products**.”

1.4 60-Day Notice of Violation

On March 12, 2021, CAPA served Carolina Biological, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”) alleging Carolina Biological violated Proposition 65 when it failed to warn its customers and consumers in California the Products expose users to DEHP, a carcinogen and reproductive toxin. 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

Carolina Biological denies the material, factual and legal allegations contained in the Notice 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 Carolina Biological 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 Carolina Biological 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 March 26, 2022.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Provide Clear & Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, Carolina Biological agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with the Reformulation Standard, as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.7.

2.2 Reformulated Products & Reformulation Standard Defined


For purposes of this Agreement, “**Reformulated Products**” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each 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-C1001.09.4, 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, for all Products not meeting the foregoing Reformulation Standard or in conformity with the definition of Reformulated Products, Carolina Biological shall provide clear

and reasonable health hazard warnings for Products manufactured, imported, sold or distributed for sale, in or into California, in accordance with this Section 3 and 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 DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Short-Form Warning.** Carolina may, but is not required to, use one of the following short-form warnings, as set forth (“**Short-Form Warning**”), subject to the additional requirements in Sections 2.5 and 2.6, as follows:

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

Or

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

(c) **Foreign Language Requirement.** Where a Product’s sign, label or shelf tag includes consumer information in a language other than English, then the warning must also be provided in the alternative language, in addition to its provision in English.

2.4 **On-Product Warnings**

Carolina Biological 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 all Products that do not meet the Reformulation Standard. 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 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, 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, in no event, 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 Warnings described *supra*

2.5 Internet Warnings

If, after the Effective Date, Carolina Biological sells Products that are not Reformulated via the internet to customers located in California or to online or third-party retailers or vendors who sell in or into California, then Carolina Biological shall provide warnings for each Product, both on the Product label, per Section 2.4, and by prominently displaying the warning to the customer during the Product purchase process or prior to completing the Product purchase, without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning and using the word “**WARNING**”, given in conjunction with the sale of the Products via the internet, shall appear: (a) on the same web page where the Product is displayed; (b) on the same web page as the Product order form; (c) on the same page as the Product price; or (d) on one or more web pages displayed to a purchaser during the checkout process. In any of the above 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. Carolina Biological’s internet warning may use the Short-Form Warning, if the warning provided on the Product label is also the Short-Form Warning.

2.6 Compliance with Warning Regulations

Carolina Biological may comply with the warning requirements of this Section by any other means authorized by 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 and 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 Notice or referred to in this Settlement Agreement, Carolina Biological agrees to pay \$2,500 in civil penalties. The 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 five (5) days of the Effective Date, pursuant to Health & Safety Code § 25249.7(b), Carolina Biological agrees to remit two separate checks, made payable as follows: (1) “OEHHA” in the amount of \$1,875; and “Center for Advanced Public Awareness” in the amount of \$625, delivered to the address in Section 3.3., below. CAPA’s counsel shall deliver to OEHHA and CAPA their respective 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, Carolina Biological 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 five (5) days of the Effective Date, Carolina Biological agrees to pay \$25,000 to CAPA and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of Carolina Biological’s management, and negotiating a settlement in the public interest. Carolina Biological’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 Carolina Biological

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Carolina Biological, 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 Carolina Biological, its parents, subsidiaries, affiliated entities under common ownership, directors,

officers, employees, attorneys, and each entity to whom Carolina Biological 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 manufactured, imported, distributed, sold or offered for sale in California by Carolina Biological, as alleged in the Notice, 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 Carolina Biological prior the Effective Date, as alleged in the Notice, against Carolina Biological 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 Carolina Biological. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee not involving Carolina Biological's Products.

4.2 Carolina Biological's Release of CAPA

Carolina Biological, 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.

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 Carolina Biological 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 Carolina Biological 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 Carolina Biological:

Ken Pittman, Vice President & Chief Financial Officer
Carolina Biological Supply Company
2700 York Rd.
Burlington, NC 27215

With a Copy to:

Brad DeVore, Partner
Womble Bond Dickinson (US) LLP
One Wells Fargo Center, Suite 3500
Charlotte, NC 28202-6037

For CAPA:

Kimberly Gates Johnson, Esq.
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:

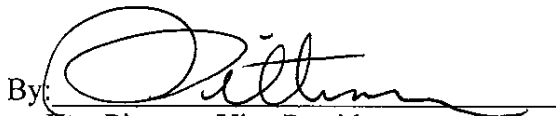
AGREED TO:

Date: 03/21/2022

Date: March 21, 2022



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



By: _____
Ken Pittman, Vice President
Carolina Biological Supply Company