

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) and Pet Party Products Co. Ltd. (“**Pet Party**”) with CAPA and Pet Party each individually referred to as a “**Party**” and, collectively, 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. Pet Party is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 General Allegations & Consumer Product Description

CAPA alleges Pet Party manufactures, imports, sells, and distributes for sale, by and through Petco Health & Wellness Company, Inc., Petco Animal Supplies, Inc. and International Pet Supplies & Distribution, Inc., (collectively, “**Petco**”), in and into California, waste bag dispensers containing di(2ethylhexyl) phthalate (“**DEHP**”), specifically, the *So Phresh Waste Bag Dispenser with refill rolls, SKU# 3185055, UPC 8 00443 44115 2*, without providing the health hazard warning required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Waste bag dispensers are referred to hereinafter as the “**Products.**” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Notice of Violation

On August 24, 2022, CAPA served Petco, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Petco violated Proposition 65 by failing to warn its customers and consumers in California the Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice. Pet Party is stepping into the shoes of Petco to resolve the allegations that are the subject of the Notice.

1.4 No Admission

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

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean October 27, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION & CERTIFICATION

2.1 Commitment to Reformulate

Commencing on or before the Effective Date and continuing thereafter, all Products Pet Party manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through Petco, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

2.2 Reformulated Products & Reformulation Standard Defined

For purposes of this Agreement, "**Reformulated Products**" are defined as Products containing di(2-ethylhexyl) phthalate ("DEHP") in a maximum concentration of less than 0.1 percent (1,000 parts per million) in each and every "accessible component" (i.e. a component that may be touched or utilized 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 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 Certification to Compliance with Reformulation Standard

On or before December 31, 2023 an officer of Pet Party shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing

thereafter, any and all Products newly manufactured or imported by Pet Party for sale (a) directly to consumers in California, including through its own website, and (b) by, through, and to Petco, for sale at the retail level, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, for any newly manufactured Products, Pet Party shall provide a recent test result performed after the date of the Notice, definitively demonstrating the new Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and meet the definition of Reformulated Products. Failure to comply with this section shall render this agreement null and void.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Pet Party agrees to pay a civil penalty of \$3,000 on or before November 13, 2023. Pet Party'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. Pet Party shall issue their payments in two checks made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "Center for Advanced Public Awareness" in the amount of \$750. 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

CAPA and its counsel offered to resolve the allegations in the Notice 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. On or before November 11, 2023, Pet Party agrees to remit payment in the amount of \$20,000 payable to "Seven Hills LLP" for all fees and costs incurred in investigating, bringing this matter to Pet Party and Petco's attention, negotiating a settlement in the public interest, and reporting its

terms to Office of the California Attorney General, pursuant to Section 9.

3.3 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of Pet Party

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Pet Party 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 Pet Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and Petco (collectively, "**Releasees**"), based on their failure to warn, arising under Proposition 65, about alleged exposures to DEHP contained in Products, as defined and limited by Section 1.2, *supra*, manufactured, distributed, sold and/or offered for sale by Pet Party through Petco, in or into California, before the Effective Date, as alleged in the Notice.

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 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, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in Products, as that term is specifically defined and limited by Section 1.2, that were manufactured, distributed, sold and offered for sale by Pet Party to and through Petco, prior to the Effective Date (collectively, "**Claims**"), against Pet Party and Releasees.

The Parties further understand and agree this Section 4.1 release shall not extend upstream to any entities who manufactured the Products or any component parts thereof, or

any distributors or suppliers who sold the Products or any component parts thereof to Pet Party. Nor shall this Section 4.1 release apply to any downstream entities. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Pet Party's Products, as defined.

4.2 Pet Party's Release of CAPA

Pet Party, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waive 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 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 Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then Pet Party 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 Pet Party 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 Pet Party:
Tony Fan, President

For CAPA:
Kimberly Gates Johnson, Partner

Pet Party Products Co., Ltd.
Rm#306, Bldg A., Longhu Hongqiao Tianjie #1156
South Shenbin Road, Minhang Area
Shanghai City, China 201100

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

With a copy to:

Corrie L. Plant, Partner
Bick Law LLP
520 Newport Center Drive, Suite 750
Newport Beach, CA 92660

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:

Date: 11/2/2023



By: _____
Linda DeRose-Droubay, CEO
Center for Advanced Public Awareness

AGREED TO:

Date: 2023-11-01

By: Tony Fan
Tony Fan, President
Pet Party Products Co. Ltd.

