

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) and WPP Acquisitions, LLC dba Westminster Pet (“**Westminster Pet**”), with CAPA and Westminster Pet 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 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. CAPA alleges Westminster Pet is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

CAPA alleges that Westminster Pet manufactures, imports, sells, and distributes for sale, in and into California, the following vinyl dog toy containing di(2ethylhexyl) phthalate (“**DEHP**”) without providing the health hazard warning CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.*: specifically the *Ruffin’ It Sports Balls with Squeakers, Item# 20063, UPC 0 76158 20063 0* (“**Consumer Product**”). 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 Westminster Pet, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Westminster Pet violated Proposition 65 by failing to warn its customers and consumers in California that the Consumer Product can expose users to DEHP. No public

enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Westminster Pet denies the factual and legal allegations contained in the Notice and maintains all products it sold or distributed for sale in California, including the Consumer Product, have been, is, 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 Westminster Pet of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Westminster Pet's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean September 15, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on or before 120 days of the Effective Date and continuing thereafter, the Consumer Product that Westminster Pet manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Product, as defined by Section 2.2.

2.2 Reformulation Standard & Reformulated Consumer Product Defined

For purposes of this Agreement, "Reformulated Product" is defined as the Consumer Product, as set forth in Section 1.2, that contains di(2-ethylhexyl) phthalate ("DEHP") 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 certified or accredited by the State of California, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of

the International Laboratory Accreditation Cooperation ("**ILAC**"). 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. ("**Reformulation Standard.**")

2.3 Certification to Compliance with Reformulation Standard

Within 120 days of the Effective Date, an officer of Westminster Pet shall provide Seven Hills LLP with a written attested declaration stating, as of that date and continuing thereafter, the Consumer Product as defined by Section 1.2, if continued to be manufactured or imported by Westminster Pet for sale to (a) consumers in California directly, including through its own website, affiliated websites or any third party websites, to consumers located in California, and (b) customers with nationwide distribution and e-commerce websites are Reformulated Products, in compliance with the Reformulation Standard, as defined by and set forth in Section 2.2. Along with its attested declaration, Westminster Pet shall provide a recent test result, performed after the date of the Notice, demonstrating the consumer Product was tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated Product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

Pursuant to Health and Safety Code § 25249.7(b), Westminster Pet agrees to pay an initial, nonwaivable civil penalty of \$4,000 within five (5) business days of the Effective Date. Westminster Pet'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. Westminster Pet shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "Center for Advanced Public

Awareness” in the amount of \$1,000, and shall remit its payments to the address set forth in Section 3.3. CAPA’s counsel shall deliver to OEHHA and CAPA their respective portion of the penalty payment.

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. Within five (5) days of the Effective Date, Westminster Pet agrees to issue a check in the amount of \$20,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Westminster Pet’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 Payments

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

Upon full execution of this Settlement Agreement, counsel for CAPA shall provide to counsel to Westminster Pet via email Federal Form W9s for all payees under this Section 3, allowing Westminster Pet to comply with its reporting requirements.

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of Westminster Pet

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Westminster Pet, 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 Westminster Pet, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Westminster Pet 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 their failure to warn arising under Proposition 65 about alleged exposures to DEHP contained in the Consumer Product, as specifically limited and defined by Section 1.2, that were manufactured, distributed, sold and/or offered for sale by Westminster Pet in 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 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, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Consumer Product, as defined by and limited in Section 1.2, manufactured, distributed, sold and/or offered for sale by Westminster Pet, before the Effective Date (collectively, "**Claims**"), against Westminster Pet and Releasees.

The Parties further understand and agree this Section 4.1 release shall not extend upstream to any entities that manufactured the Consumer Product or any component parts thereof, or any distributors or suppliers who sold the Consumer Product or any of its component

parts thereof to Westminster Pet. Nor shall this Section 4.1 apply downstream to any third-party retailer who failed to provide a warning for the Consumer Product, as defined. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Westminster Pet Consumer Product.

4.2 Westminster Pet's Release of CAPA

Westminster Pet, 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 Consumer Product.

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 that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Consumer Product, then Westminster Pet 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 Consumer Product is so affected. Nothing in this Agreement shall be interpreted to relieve Westminster Pet 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 Westminster Pet:

Joe Flanigan, CEO
WPP Acquisitions, LLC
dba Westminster Pet Products
35 Martin Street
Cumberland, RI 02864

For CAPA:

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

With copy to:

William Donovan, Jr., Esq.
McDermott Will & Emery LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206

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

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:

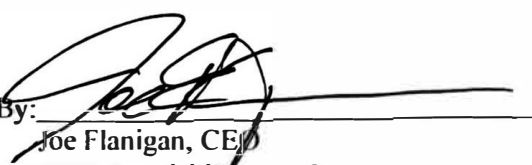
Date: 09/15/2023



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

AGREED TO:

Date: 9/15/23



By: _____
Joe Flanigan, CEO
WPP Acquisitions, LLC
dba Westminster Pet Products