

# 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 Wilcor International, Inc. (“**Wilcor**”), with CAPA and Wilcor 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. CAPA alleges Wilcor 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 Wilcor manufactures, imports, sells, and distributes for sale in California (1) ceramic mugs with exterior decoration containing the heavy metal, lead (“**Pb**”), including, but not limited to, *Campfire Mug Happy Camper/Trailer, Item #GFT0367*, and (2) drawstring packs with vinyl components containing Pb and the toxic phthalate, di(2-ethylhexyl) phthalate (“**DEHP**”), including, but not limited to, *Willie Bear Camper Draw String Pack, Item #CMP0170*, without providing the health hazard warning that CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Hereinafter, ceramic mugs with exterior decoration are referred to as the “**Mugs**” and drawstring packs with vinyl components are referred to as “**Packs**” with Mugs and Packs collectively as “**Products.**” Lead and DEHP are listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects and other reproductive harm.

### 1.3 Notice of Violation

On February 14, 2023, CAPA served Wilcor, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Wilcor violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to Lead and/or DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Wilcor denies the factual and legal allegations contained in the Notice and maintains that all products it has 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 Wilcor of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Wilcor's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date it is executed by all parties.

## **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Wilcor manufactures, imports, sells, ships, or distributes for sale to consumers in or into California, directly or through one or more third party retailers, distributors or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, or shall provide the required warnings under Proposition 65 pursuant to Section 2.3 including notice pursuant to California Code of Regulations title 27, section 25600.2 as permitted by California law .

### **2.2 Reformulation Standard**

For purposes of this Agreement, the term "Reformulated Products" is defined as follows:

**2.2.1** Products containing no more than 0.009% or 90 parts per million ("ppm") Pb in any vinyl component, decoration, description, artwork and/or design on the exterior surface when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or California agencies for the purpose of determining Pb content in a solid substance; (b) yielding a test result

of no more than 1.0 microgram (“µg”) of Pb on any exterior surface covered with a decoration, description, artwork and/or design when sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A, a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“**Accredited Lab**”) and (c) for Mugs, yielding a result of non-detect, defined as no more than 25 ppm by weight of Pb, for any decoration located in the upper 20 millimeters of a Mug, i.e., the “Lip-and-Rim” area when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or California agencies for the purpose of determining Pb content in a solid substance. For Mugs, if the decoration is tested after it is affixed to the Product, the percentage of the Pb by weight must relate only to the decorating materials and must not include any quantity of Pb attributable to non-decorating material, e.g., ceramic substrate.

**2.2.2** Packs with vinyl components which, if they contain DEHP in a maximum concentration of less than 0.1 percent (1,000 ppm) when analyzed by an Accredited Lab.

### **2.3 Clear and Reasonable Warnings**

As an alternative to reformulation, Wilcor may comply with this Agreement by providing clear and reasonable warnings for all Products that are not Reformulated Products offered for sale to consumers in California or distributed to customers with distribution into California, nationwide distribution, e-commerce platforms or with locations 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, or designs 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. The Warning for Lead in excess of the Reformulation Standard for set forth in Section 2.2 shall consist of the following statement:

(a) **Warning.** The Warning shall consist of the following statement:

**⚠WARNING:** This product can expose you to [Lead], 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](http://www.P65Warnings.ca.gov).

The bracketed language may be replaced with di(2-ethylhexyl) phthalate (“**DEHP**”).

(b) **Short-Form Warning.** As an alternative to the warning set forth in subsection 2.4(a) above, Wilcor may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (“**Short-Form Warning**”), and subject to the additional requirements in Section 2.3 as follows:

**⚠WARNING:** –Cancer and Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### **2.3.1 Product Warnings**

Wilcor may affix a warning to the Product label or otherwise directly on Products that are not Reformulated Products. For the purpose of this agreement, “**Product label**” means a display of written, printed, or graphic material printed on or affixed to each of the Products 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, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. Where a consumer product label used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

### **2.3.2 Internet Warnings**

For third-party websites, as a condition of sale, Wilcor shall notify its customers the Products must be accompanied by a warning, prior to sale in or into California, and shall supply the warning requirements, pursuant to Section 2. Wilcor does not sell products directly to consumers. If, after the Effective Date, this changes and Wilcor sells Products, that are not

Reformulated Products, via the internet, through its own website or affiliated websites to consumers located in California, Wilcor shall provide warnings for each Product both on the Product label in accordance with Section 2.3.1, and by prominently displaying, or requiring the warning to be prominently displayed on its website and affiliated websites to the consumer 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 Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. The internet warning may use the Short-Form Warning content described in Section 2.4(b) if the warning provided on the Product label also uses the Short-Form Warning content.

### **2.3.3 Written Notice to Distributors or Retailer Warning**

Wilcor may, at its option, comply with the terms of this Agreement by providing written notice directly to business customers to which they sell or transfer the Products pursuant to California Code of Regulations title 27, section 25600.2. The written notice shall:

- (1) State that the Product may result in an exposure to one or more listed chemicals;
- (2) Include the exact name or description of the product or specific identifying information for the product such as a Universal Product Code or other identifying designation;
- (3) Include all necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for products sold on the internet, that satisfies Section 25249.6 of the Act; and
- (4) Be renewed annually during the period in which the product is sold in California by a retail seller.

Wilcor must receive confirmation of receipt of the written notice and any renewed notices electronically or in writing from the authorized agent to the business customers to which Wilcor sold or transferred the Products.

## **2.5 Customer Notification**

No later than the Effective Date, Wilcor shall send a letter, electronic or otherwise (“**Notification Letter**”) to each customer that is a retailer or distributor that has Wilcor knows has any remaining inventory of Products for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain Pb and/or DEHP, chemicals known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that (a) all Packs must be returned to Wilcor for a full refund and (b) all Mugs must be either be returned to Wilcor or have a label, attached to the Mug before sale on or into the California market or to a consumer in California, expressly referring to the Mug with the following warning statement:

**⚠WARNING:** This product can expose you to chemicals including Lead, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

-or-

**⚠WARNING:** Cancer and Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The foregoing warnings 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. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and postage paid by Wilcor. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the forgoing warning statements.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Wilcor agrees to pay a civil penalty of \$5,250 within five (5) business days of the Effective Date. Wilcor'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. Wilcor shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$3,937.50; and (b) "Center for Advanced Public Awareness" in the amount of \$1,312.50. 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, Wilcor agrees to issue a check in the amount of \$24,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Wilcor'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: Laralei Paras  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

#### 4. **CLAIMS COVERED AND RELEASED**

##### 4.1 **CAPA's General Release of Wilcor**

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Wilcor, 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 Wilcor, its directors, officers, employees, attorneys, and each entity to whom Wilcor directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), from claims of violations of Proposition 65 based on their failure to warn about alleged exposures to Pb and/or DEHP contained in the Products that were manufactured, distributed or sold by Wilcor and/or offered for sale 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 Pb and/or DEHP in the Products manufactured, distributed, sold and/or offered for sale by Wilcor, before the Effective Date (collectively, "**Claims**"), against Wilcor and Releasees.

The Parties further understand and agree that this Section 4.1 release shall extend neither (a) 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 thereof to Wilcor, nor (b) downstream to Releasees who have been instructed by Wilcor, pursuant to Section 2.3, to provide a warning on Products that are not Reformulated Products and have failed to do so.



Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Wilcor's 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. Nothing in this Agreement shall be interpreted to relieve Wilcor 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 Wilcor:

Karen Rider, CEO  
Wilcor International, Inc.  
161 Drive In Road  
Frankfort, NY 13340

For CAPA:

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

With a copy to:  
Matthew S. Kenefick  
Jeffer Mangels Butler & Mitchell LLP  
2 Embarcadero Center, 5<sup>th</sup> Floor  
San Francisco, CA 94111

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 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: October 16, 2024

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

**AGREED TO:**

10/14/2024  
Date: \_\_\_\_\_

By:   
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Karen Rider, Chief Executive Officer  
Wilcor International, Inc.