

# 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 Cygnus Beauty, Inc. (“Settling Party”), with CAPA and Settling Party each individually referred to 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) 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. Settling Party is alleged to be a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b). Settling Party enters this Agreement to resolve claims alleged by CAPA against Annie International, Inc. (“Annie”) a related entity of Settling Party.

### 1.2 Consumer Product Description

CAPA alleges Settling Party and/or Annie manufacture, import, sell and distribute for sale to consumers in California glass bottles with exterior decorations that contain the heavy metal, Lead (“Lead”). For purposes of this Agreement, Products are defined as, and specifically limited to, glass bottles with exterior decorations containing Lead sold and distributed for sale in California by Annie including, *but not limited to*, the *Nanacoco Nail Polish GEL Effect Nail Laquer 14 days of color 0.5 fl. oz./15m. #20107 Sherry UPC 7 05372 20107 8* (collectively, “Products”). CAPA alleges Annie sold and offered the Products for sale in California without providing the clear and reasonable warning required by California Health & Safety Code section 25249.5 *et seq.* (“Proposition 65”). Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

### 1.3 Notices of Violation

On March 17, 2022, CAPA served Annie, the California Attorney General and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Annie violated Proposition 65 by failing to warn its customers and consumers in California that

the exterior decorations on the bottles of its Products can expose users to Lead. Settling Party enters this Agreement to resolve CAPA's claims against Annie on Annie's behalf. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notices.

#### **1.4 No Admission**

Annie and Settling Party deny the factual, and legal allegations contained in the Notices, and maintain that all of the products Annie sold or distributed for sale in California, including the Products, comply with all laws. No term of this Agreement, nor Annie or Settling Party's compliance with this agreement shall be deemed an admission by Settling Party or Annie of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Annie and Settling Party's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "Effective Date" shall mean the date by which the Agreement is fully executed by the Parties.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Settling Party and/or Annie manufacture, import, or purchase for resale in or into California, directly or indirectly through one or more third-party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products defined by Section 2.2, below, or comply with the clear and reasonable warning requirements of Section 2.3, below.

### **2.2 Reformulation Standard**

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products that (i) contain no more than 0.009% or 90 parts per million ("ppm") Lead on any exterior surface analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or state

agencies for the purpose of determining Lead content in a solid substance; and (ii) yield a test result of no more than 1.0 micrograms of Lead on any exterior surface sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A methodologies (the “Reformulation Standard”).

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

Commencing on the Effective Date and continuing thereafter, for all Products that are not Reformulated Products as defined by Section 2.2, above, Settling Party and/or Annie 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.

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

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

(b) **Short-Form Warning.** Settling Party and Annie may, but are 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 Sections 2.4 and 2.5, below, as follows:

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

(c) **Foreign Language Requirement.** 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 must also be provided in the other language(s) in addition to English.

## 2.4 Product Warnings

Commencing on the Effective Date and continuing thereafter, for all Products sold and/or offered for sale in California that do not meet the definition of “Reformulated Products” established by Section 2.2, above. Settling Party and/or Annie shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For purposes of this Agreement, “Product label” means any display of written, printed or graphic material printed on or affixed to a Product or its immediate container or packaging. A warning provided pursuant to section 2.3(a) or (b) 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.

## 2.5 Internet Warnings

If, after the Effective Date, Annie and/or Settling Party sell Products other than Reformulated Products via the internet, through their own website(s), affiliated websites or a third-party website, to consumers located in California or to customers with retail outlets in California, nationwide distribution or e-commerce websites, Annie and/or Settling Party shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third-party websites or by retail customers, to the consumer during the purchase of the Product 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 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 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 Product for which it is given in the same type size or larger than other consumer information provided for the Product. For third-party websites, as a condition of sale, Annie and/or Settling Party shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, pursuant to this Section 2.

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

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b), Settling Party agrees to pay a civil penalty of \$2,500 within ten (10) business days of the Effective Date. Settling 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. Settling Party shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Keep America Safe & Beautiful" in the amount of \$625. CAPA's counsel shall deliver to OEHHA and CAPA their respective portion of the penalty payment.

#### **3.2 Reimbursement of Attorneys' Fees and Costs**

After the Parties finalized all other material settlement terms, they negotiated Settling Party's reimbursement of a portion of CAPA's attorneys' fees and costs 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 ten (10) days of the Effective Date, Settling Party agrees to issue a check for \$20,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Annie and Settling Party's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 10, below.

### **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 Release of Settling Party and Annie**

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, Settling Party and Annie, of any violation of Proposition 65 that was or could have been asserted by CAPA on its own behalf or on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, against Annie and/or Settling Party and either of their respective past and present parents, subsidiaries, affiliated entities under common ownership, members, directors, officers, employees, attorneys, and each entity to whom Settling Party and/or Annie directly or indirectly distributes or sells Products, including, but not limited, their respective downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including (collectively, "Releasees"), based on the alleged or actual failure to warn about exposures to Lead in Products manufactured, distributed, sold and/or offered for sale by Annie 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, waives all claims and rights it has or may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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 Lead in Products manufactured, distributed, sold and/or offered for sale by Annie and Releasees before the Effective Date.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entity that manufactured the Products or any component parts thereof, or any distributor or supplier who sold the Products or any component parts thereof to Annie. Nor shall this Section 4.1 release extend downstream to any individual or entity Annie asks to provide a warning for Products pursuant to Section 2.5, above and who fails 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 the Products.

#### **4.2 Annie' Release of CAPA**

Annie, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against CAPA and its attorneys and other representatives, for any and all action taken or statement 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. DISMISSAL OF PENDING ACTION**

Within 30 days of the Effective Date, or after CAPA's counsel confirms Annie's compliance with Section 3, above, whichever is later, CAPA and its counsel shall dismiss with prejudice the lawsuit captioned *Center for Advanced Public Awareness v. Annie International, Inc., et al.*, Santa Clara Superior Court, Case No. 23CV421616 currently pending in the Santa Clara County Superior Court.

#### **6. 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.

**7. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. If Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Settling Party may provide CAPA with written notice of any asserted change in the law, and shall have no further injunctive obligation 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 Settling Party from its obligation to comply with any applicable state or federal law or regulation.

**8. 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 Annie:

Kevin Shinn, President  
Annie International, Inc.  
500 Church Road  
North Wales, PA 19454-4106

For CAPA:

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

*With a Copy to:*

Michael Gleason  
Hahn Loeser & Parks, LLP  
One America Plaza  
600 West Broadway, Suite 1500  
San Diego, CA 92101

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.

**9. 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.



**10. 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).

**11. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all prior discussions, negotiations, commitments, or understandings related hereto, if any, are merged herein. No warranty, representation or other agreement exists between the Parties except as expressly set forth herein. No representation, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party. No other agreement not specifically contained herein shall be deemed to exist or to bind either of the Parties.

**12. MODIFICATION**

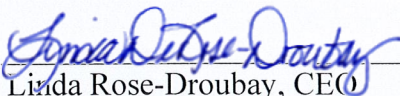
This Agreement may be modified only by a written agreement of the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Party and have read, understand, and agree to all of the terms and conditions of this Agreement.

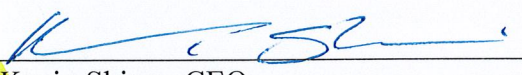
**AGREED TO:**

Date: May 7, 2024

By:   
Linda Rose-Droubay, CEO  
CENTER FOR ADVANCED PUBLIC  
AWARENESS

**AGREED TO:**

Date: 5/6/2024

By:   
Kevin Shinn, CEO  
Cygnus Beauty, Inc.