

# 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 Amazing Shine Nails, Inc. (“**Amazing Shine**”), with CAPA and Amazing Shine 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. Amazing Shine 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 Amazing Shine manufactures, imports, sells, and distributes for sale in California glass nail polish bottles with exterior decoration containing the heavy metal, Lead, including, but not limited to, *Glitz Nail Polish Set – The Top 10 Shades Item# 925 UPC 8 11837 01925 3*, without providing the health hazard warning CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Glass bottles with exterior decoration are referred to hereinafter as the “**Products.**” Lead 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 3, 2023, CAPA served Amazing Shine, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Amazing Shine violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Amazing Shine 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 Amazing Shine of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Amazing Shine' 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 signed by both Parties.

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

#### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Amazing Shine 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 Products, as defined by Section 2.2.

#### **2.2 Reformulation Standard**

For purposes of this Agreement, “Lead Free Products” are defined as those Products:

(a) containing no more than 0.0025% or 25 parts per million (“ppm”) Lead in any 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 state agencies for the purpose of determining Lead content in a solid substance 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”); and

(b) yielding a test result of no more than 0.5 microgram of Lead 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.

If the decoration is tested after it is affixed to the Product, the percentage of the Lead by weight must relate only to the decorating materials and must not include any quantity of Lead attributable to non-decorating material (e.g., glass substrate).

### **2.3 Certification of Compliance with Reformulation Standard**

On or before the thirtieth (30<sup>th</sup>) day after the Effective Date, an officer of Amazing Shine shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by Amazing Shine for sale to (a) consumers in California directly including through its own website, affiliated websites or a third party website, and (b) customers with locations in California, nationwide distribution, or e-commerce platforms, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, Amazing Shine shall provide a recent test result performed after the date of the Notice, showing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated Products. Failure to comply with this section shall render this agreement null and void.

### **2.4 Customer Notification**

No later than the Effective Date, Amazing Shine shall send a letter, electronic or otherwise (“**Notification Letter**”) to each retailer or distributor with locations in California, nationwide distribution or e-commerce platform to whom Amazing Shine supplied 1,000 or more Products between August 3, 2020 and the August 3, 2023 who has any remaining inventory of the Products, , for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain Lead, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products sold

in or shipped to California must have (a) an On-Product Warning and (b) and Internet Warning which states:

**⚠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).

**2.4.1 On Product Warning.** The Notification Letter shall advise that the On Product Warning must be attached to a label on the packaging of each Product expressly referring to the Product before it is sold in the California market or shipped to a customer in California and shall supply the warning requirements, pursuant to this Section 2(a) as follows. The warning 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. If the customer is a retailer or distributor of the Products, the Notification Letter shall include an example of the warning with the forgoing statement.

**2.4.2 Internet Warning.** The Notification Letter shall advise Products sold through e-commerce platforms 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(b) as follows. The Internet warnings must be prominently displaying 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.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Amazing Shine agrees to pay a civil penalty of \$15,000 within five (5) business days of the Effective Date. Amazing Shine' 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. Amazing Shine shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$11,250; and (b) “**Center for Advanced Public Awareness**” in the amount of \$3,750. 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, Amazing Shine agrees to issue a check in the amount of \$21,500 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to Amazing Shine' 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 Release of Amazing Shine

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Amazing Shine, 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 Amazing Shine, its directors, officers, employees, attorneys, and each entity to whom Amazing Shine 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 about alleged exposures to Lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Amazing Shine 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 Lead in the Products manufactured, distributed, sold and/or offered for sale by Amazing Shine, before the Effective Date (collectively, "**Claims**"), against Amazing Shine 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 Amazing Shine, nor (b) downstream to Releasees who have been instructed by Amazing Shine, pursuant to Section 2.4, 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 Amazing Shine’ Products.

**4.2 Amazing Shine’ Release of CAPA**

Amazing Shine, 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 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 Products, then Amazing Shine 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 Amazing Shine from its obligation to comply with any pertinent state or federal law or regulation.

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**7. NOTICE**

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing sent by email, where address is provided, and either (i) first-class registered or certified mail or (ii) a recognized courier to any Party by the other at the following addresses:

For Amazing Shine:

Eun Suk Kim, CEO  
Amazing Shine Nails, Inc.  
13163 Flores Street  
Santa Fe Springs, CA 90670

For CAPA:

Laralei Paras, Esq.  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
laralei@sevenhillsllp.com

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**

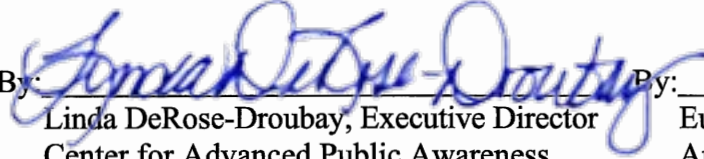
The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Agreement.

**AGREED TO:**

Date: August 5, 2024

**AGREED TO:**

Date: July 25 2024

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

By:   
Eun Suk Kim, Chief Executive Officer,  
Amazing Shine Nails, Inc.