

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 Evry Jewels Inc., a Canadian Corporation (“**Evry Jewels**”), with CAPA and Evry Jewels 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. Evry Jewels is alleged to be 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 Evry Jewels manufactures, imports, sells, and distributes for sale in California storage pouches containing Di(2-ethylhexyl)phthalate (“**DEHP**”), including but not limited to, *2 Piece Mystery Bundle*, without providing the health hazard warning that CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.* or the related regulations at Cal. Code Regs. tit. 27, § 25102, *et seq.* (“**Proposition 65**”). Storage pouches 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 cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On January 18, 2024, CAPA alleges that it served Evry Jewels, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Evry Jewels violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. Upon information and

belief, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Evry Jewels 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 Evry Jewels of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Evry Jewels' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

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

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Evry Jewels 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, if any, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain DEHP, contain DEHP in a maximum concentration of less than 0.1 percent (1,000 parts per million) 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-C1001.09.3 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

Within seven (7) business days of the Effective Date, an officer of Evry Jewels 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 Evry Jewels for sale to (a) consumers in California directly including through its own website, and via affiliated websites or a third party website, if any, to consumers located in California, and (b) customers with nationwide distribution and e-commerce websites, if any, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, Evry Jewels shall provide a copy of a 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, if not cured within five (5) business days of CAPA’s written request to cure.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Evry Jewels agrees to pay a civil penalty of \$7,500 within ten (10) business days of the Effective Date. Evry Jewels’ 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. Evry Jewels shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$5,625; and (b) “Center for Advanced Public Awareness” in the

amount of \$1,875. 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 ten (10) business days of the Effective Date, Evry Jewels agrees to issue a check in the amount of \$23,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Evry Jewels' 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 Evry Jewels

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Evry Jewels, 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 Evry Jewels, its parents, subsidiaries (including Evry Jewels Inc., a Delaware Corporation), affiliated entities under

common ownership, and directors, officers, employees, attorneys, and each entity to whom Evry Jewels directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, online marketplaces, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to warn under Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Evry Jewels 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 waives 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 Products manufactured, distributed, sold and/or offered for sale by Evry Jewels, before the Effective Date (collectively, “**Claims**”), against Evry Jewels and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) to upstream entities that manufactured the Products or any component parts thereof, or any distributors or suppliers that sold the Products or any component parts thereof to Evry Jewels nor (b) to Releasees who have been instructed by Evry Jewels to provide a compliant Proposition 65 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 Products sold or provided by Evry Jewels.

4.2 Evry Jewels’ Release of CAPA

Evry Jewels, 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 Evry Jewels 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 Evry Jewels 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 Evry Jewels:

Sherry Jackman, Esq.
Sedina Banks, Esq.
Greenberg Glusker LLP
2049 Century Park East, Suite 2600
Los Angeles, CA 90067

For CAPA:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
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, 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 or by order of a court of competent jurisdiction.

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: September 11, 2024

By: 

Linda DeRose-Droubay
Executive Director
Center for Advanced Public Awareness

AGREED TO:

9/11/2024 | 1:48 PM PDT

Date: _____

By:  Signed by:
Jason Katz
E9C6A8C9E2D541E

Jason Katz, CEO
Evry Jewels Inc., a Canadian Corporation