

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EnviroProtect”) and UP Global Sourcing UK Limited (“UP”), with UP and EnviroProtect each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Introduction and General Allegations.

1.2.1 EnviroProtect is a company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 UP employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2.3 EnviroProtect alleges that UP imported, sold, and/or distributed for sale in California, products containing lead, a listed chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity, and failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its products, specifically the Portobello By Design Mug, which EnviroProtect alleged leached lead from the lip and rim area.

1.3 Product Description.

The products covered by this Settlement Agreement are ceramic mugs with surface coatings, including but not limited to the Portobello By Design Mug, SKU# 264747, which are imported, sold and/or distributed for sale in California by UP and through its downstream retailers (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On March 12, 2018, EnviroProtect served UP, Homegoods, Inc., Portobello By Design, TJX Companies, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that these entities had violated Proposition 65. The Notice alleged that the entities had failed to warn their customers and consumers in California of the health hazards associated with exposures to lead from its import, sale and/or distribution of the Covered Products.

EnviroProtect subsequently provided UP with test results in EnviroProtect's possession concerning its allegations. UP provided EnviroProtect with sales data related to the Covered Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission.

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute"). Specifically, EnviroProtect alleges that UP imported, sold or distributed for sale in the state of California the Covered Products, which contained and leached lead from the lip and rim area and the interior of the mug without first providing the clear and reasonable exposure warnings required by Proposition 65. UP denies that such a warning is required under Proposition 65 or any otherwise applicable law.

UP further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by UP of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by UP of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by UP. However, this section shall not diminish or otherwise affect UP's obligations, responsibilities, and duties hereunder.

1.6 **Effective Date.**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 12, 2018.

2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

2.1 **Reformulation Standard.** Commencing on the Effective Date, and continuing thereafter, Covered Products that are imported, manufactured and/or sold or offered for sale or purchase for sale in or into California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to lead if they meet the standard of "Reformulated Products." "Reformulated Products" shall mean that they comply with the standards set forth in the *Brimer v. The Boelter Companies*, San Francisco Superior Court, Case No. CGC-05-440811 Consent Judgment ("Boelter CJ").

2.2 **Warning Option.** Covered Products that do not meet the Boelter CJ standards set forth in Section 2.1 above shall be accompanied by a warning as described in Sections 2.3 and 2.4 below. This warning shall only be required as to Covered Products that UP sells or ships to consumers, retailers, or distributors located in California after the Effective Date. No Proposition 65 warning for lead shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, UP shall be entitled to use, at its discretion such other warning text and/or method of transmission without being deemed in breach of this Agreement.

2.3 **Warning Language.** Where required to meet the criteria set forth in Section 2.2, Defendant shall provide the following warning statements in the following circumstances: When sold or distributed directly to a California end user consumer, or when UP distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California end users or consumers, UP shall provide one of the following warning statements in Section 2.3 (a) and (b) with the unit conspicuously on the package.

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(a) **⚠WARNING:** This product can expose you to chemicals including lead, which are 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.

(b) **⚠WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

- The warning shall be preceded by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline, or where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

2.4 **Sell-Through Period.** Notwithstanding anything else in this Settlement Agreement, Covered Products that were manufactured prior to ninety (90) days after the Effective Date shall be subject to the release of liability pursuant to section 5 of this Settlement Agreement, without regard to when such Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations of UP, or any of its parents, subsidiaries, affiliates, or downstream retailers as set forth in this Settlement Agreement, including but not limited to Section 2, do not apply to these products manufactured prior to ninety (90) days after the Effective Date.

3. **CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

UP shall pay a civil penalty of \$1,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to EnviroProtect. UP shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$750, representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for EnviroProtect, LLC," in the amount of \$250, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The



second 1099 shall be issued to the Kawahito Law Group who shall furnish a W-9 at least five days prior to the due date for payment. The two checks shall totaling \$1,000 shall be sent on or before October 19, 2018 to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Pacific Coast Hwy, Suite 2222
El Segundo, CA 90245

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that EnviroProtect and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to EnviroProtect and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, UP shall pay the total amount of \$15,500 for fees and costs incurred by EnviroProtect as a result of investigating, bringing this matter to the attention of UP, and negotiating a settlement. UP shall make the check payable to "Kawahito Law Group APC" and shall deliver payment on or before October 19, 2018. The Kawahito Law Group shall furnish a W-9 at least five days prior to the due date for payment. All payments shall be made to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
Attn. EnviroProtect v. UP
222 N. Pacific Coast Hwy, Suite 2222
El Segundo, CA 90245

Or by wire transfer to the following account:



5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

This Settlement Agreement is a full, final and binding resolution between EnviroProtect, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees ("Releasers"), on the one hand, and UP, Portobello By Design, Homegoods, Inc., TJX Companies, Inc. and their respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, and each entity to whom and/or UP directly or indirectly distributes or sells the Covered Products, including but not limited to UP's distributors, wholesalers, customers, marketplace hosts, and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of Proposition 65 that was or could have been asserted by EnviroProtect against UP based on the alleged failure to warn about alleged exposures to lead contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by UP (either directly or through any of the Releasees) in California before the Effective Date. This release is provided in EnviroProtect's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, EnviroProtect on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it or they 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 limited to, investigation fees, expert fees and attorneys' fees -- arising with respect to UP's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

5.2 UP's Release of EnviroProtect.

UP on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against EnviroProtect, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by EnviroProtect 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 Covered Products.

5.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovery. EnviroProtect on one hand, and UP, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims release in sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

EnviroProtect and UP each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement 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 Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.



8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For UP: George Gigounas
Nelson Lam
DLA Piper LLP
555 Mission Street, Suite 2400
San Francisco, California 94105

For EnviroProtect: James K. Kawahito
Kawahito Law Group APC
Attn. EnviroProtect v. UP
222 North Pacific Coast Hwy, Suite 2222
El Segundo, CA 90245

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 HEALTH & SAFETY CODE § 25249.7(f)

EnviroProtect and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 10/12/18

Date: 12.10.2018

By: Emilio Zelaya
EnviroProtect LLC

By: [Signature]
UP Global Sourcing UK Limited

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