

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Hector Velarde ("Velarde"), on his own behalf and in his capacity as representative of the estate of Karen Calacin ("Calacin's Estate"), Ema Bell ("Bell") (collectively, "Citizen Enforcers"), and Fashion Accessory Bazaar, LLC ("FAB"). Together, Citizen Enforcers and FAB are collectively referred to as the "Parties." Velarde, Calacin's Estate, and Bell are individuals who reside in the State of California, and who seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. FAB is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65").

1.2 General Allegations. The Citizen Enforcers allege that FAB has manufactured, imported, distributed, offered for sale, and/or sold in the State of California (1) Camp Rock bags, and (2) 2Boom Headphones that contain Di(2-ethylhexyl)phthalate ("DEHP") without providing a clear and reasonable Proposition 65 warning. On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to the State to cause developmental and male reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are accessory bags and headphones with elevated levels of DEHP (the "Products") that have been manufactured, imported, distributed, offered for sale, and/or sold in California by FAB, including, but not limited to, the *Disney Camp Rock Accessory Bag*, RN#97208, Aahs# 197074-C, and the *2Boom Headphones with backpack – ear cushion to headphone*, UPC# 6 88955 85143 6 (on backpack), K512285B-EOSA-031516 9 (on headphones), RN#97208 (on headphones), KAB9885143 (on backpack), K512188A-JX-011716 (on backpack).

1.4 Notices of Violation. On August 15, 2017, Bell served FAB, Fashion Accessory Bazaar, LLC t/a Starpoint, The TJX Operating Companies, Inc. t/a T.J. Maxx (“T.J. Maxx”), EOS Sales, Inc., EOS Sales, Inc. t/a 2 Boom, 2Boom (EOS Sales, Inc., EOS Sales, Inc. t/a 2 Boom and 2Boom are collectively referred to as “EOS”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*” (the “August Notice”). Similarly, on June 5, 2017, Calacin served FAB Starpoint, LLC, FAB Starpoint Licensing, LLC, Disney Enterprises, Inc. and Disney Enterprises, Inc. t/a Camp Rock (“Disney”), , Bhasin Enterprises, Inc., Bhasin Enterprises, Inc. d/b/a aahs (“AAHS”) and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*” (the “June Notice”). On March 14, 2018, Bell served FAB Starpoint, LLC, FAB Starpoint Licensing, LLC, FAB, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*” (the “Notice”), alleging the same violations alleged in both the August Notice and the June Notice. The August Notice and the June Notice were subsequently withdrawn on May 1, 2018 and are no longer viable or valid. The Notice provided FAB and others, including public enforcers, with notice of the Citizen Enforcers’ allegations that FAB was in violation of California Health & Safety Code § 25249.6, for failing to warn consumers and customers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. FAB denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products FAB manufactured, imported, distributed, offered for sale, and/or sold in California, including the Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by FAB of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by FAB of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by FAB. However, this Paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the

allegations in the Notice, FAB maintains that it has not knowingly manufactured, imported, distributed, offered for sale, and/or sold, or caused to be manufactured, imported, distributed, offered for sale, and/or sold, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by all Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter, FAB shall not manufacture or order from any supplier any Products intended for retail sale in California that contain DEHP on any component to which consumers are exposed in excess of 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Products are accompanied by a warning that complies with Article 6 of Title 27 of the California Code of Regulations. Products manufactured, imported, distributed, offered for sale, and/or sold by FAB before the Effective Date of this Settlement Agreement may sell through without a warning even if not Reformulated Products. For Products manufactured until August 30, 2018, the warning shall consist of either:

- (a) The statement: "WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm."; or
- (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline to the left of the word "**WARNING:**" in bold, all capital letters, followed by the statement "This product can expose you to chemicals including di(2-ethylhexyl)phthalate, 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;" or (2) a warning consisting of a symbol that is a black exclamation point in a yellow equilateral triangle with a bold black outline to the left of the word "**WARNING:**" in bold, all capital letters, followed by the statement "Cancer and Reproductive Harm - www.P65Warnings.ca.gov."¹

¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other transmission format is being printed using the color yellow for purposes of other language, symbols, or designs.

(c) For Products manufactured on and after August 30, 2018, either warning set forth in Paragraph 2.1(b) shall be used.

2.2 The warning provided pursuant to Paragraph 2.1 shall be affixed to or printed on the Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed 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 of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

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

In complete resolution of all claims raised or that could have been raised in the Notice, FAB shall pay a total of \$2,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the Civil Penalty remitted to the Citizen Enforcers.

3.1 **Civil Penalty.** Within ten (10) business days of the Effective Date, FAB shall issue three (3) separate checks for the Civil Penalty payment to: (a) "OEHHA" in the amount of \$1,500.00; (b) "Brodsky & Smith, LLC in Trust for Calacin's Estate" in the amount of \$250.00; and (c) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$250.00. The Civil Penalty payments shall be delivered to the addresses identified in Paragraph 3.2, below.

3.2 **Payment Procedures.**

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to the Citizen Enforcers, pursuant to Paragraph 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC

Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Paragraph 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** FAB agrees to provide the Citizen Enforcers' counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to the Citizen Enforcers, to be delivered to the address provided in Paragraph 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** FAB agrees to provide a completed IRS 1099 for its payments to, and the Citizen Enforcers agree to provide completed IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Estate of Karen Calacin" whose address and tax identification number shall be provided by counsel for the Citizen Enforcers within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) "Ema Bell" whose address and tax identification number shall be provided by counsel for the Citizen Enforcers within five (5) days after this Settlement Agreement is fully executed by the Parties;

(iii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Paragraph 3.2(a)(i); and

(iv) "Office of Environmental Health Hazard Assessment," 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that the Citizen Enforcers and their counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to the Citizen Enforcers and their counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, FAB shall reimburse the Citizen Enforcers' counsel for fees and costs incurred as a result of investigating, bringing this matter to FAB's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, FAB shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$22,000.00, for delivery to the address identified in Paragraph 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of FAB and Downstream Customers and Entities. This Settlement Agreement is a full, final, and binding resolution between the Citizen Enforcers, each acting on their own behalf, and FAB, Fashion Accessory Bazaar, LLC t/a Starpoint, FAB Starpoint Licensing, LLC and FAB Starpoint, LLC (collectively, "Released Entities") of any violations of Proposition 65 that were or could have been asserted by the Citizen Enforcers or on behalf of their past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide clear and reasonable warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby release Released Entities and their current owners, parents, subsidiaries, affiliated entities, sister and related companies, shareholders, marketplaces, directors, officers, agents, employees, attorneys, predecessors, successors, and assigns, (collectively, the "Releasees") and each

entity to whom Releasees directly or indirectly provide, distribute, or sell the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including, but not limited to, T.J. Maxx, EOS, AAHS, Disney, and each of their respective subsidiaries, affiliates, current owners, parents, franchisees, cooperative members, and licensees (collectively, the "Downstream Releasees"), from all claims for violations of Proposition 65 or any other statutory or common law claims that have been, could have been, or may in the future be asserted, based on Releasees' and Downstream Releasees' alleged failure to warn about exposures to the chemical DEHP that is contained in the Products.

In further consideration of the promises and agreements contained herein, and for the payments to be made pursuant to Sections 3 and 4 above, the Citizen Enforcers, each on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including, without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including, without limitation, all attorneys' fees, expert fees, investigation fees, and costs), damages, losses, liabilities, fines, penalties, and demands against any of the Releasees and Downstream Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Products or any failure by Releasees and Downstream Releasees to warn about exposures the chemical DEHP in the Products.

5.2 FAB's Release of the Citizen Enforcers. FAB, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assigns, hereby waives any and all claims against the Citizen Enforcers, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by the Citizen Enforcers and/or their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 California Civil Code § 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 Products will develop or be

discovered. The Citizen Enforcers, each on behalf of herself only, on one hand, and FAB, on the other hand, acknowledge that this 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 released in Paragraphs 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.

The Citizen Enforcers and FAB each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by FAB with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

5.5. Public Benefit. It is FAB's understanding that the commitments it has agreed to herein, and actions to be taken by FAB under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Code Regs. tit. 11, § 3201. As such, it is the intent of FAB that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to FAB failure to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, imported, distributed, offered for sale, and/or sold in California, or will manufacture, import, distribute, offer for sale, and/or sell in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that FAB is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to DEHP and/or the Products, FAB shall provide written notice to the Citizen Enforcers of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified) mail, return receipt requested; or (ii) overnight or two-day courier on any Party by the other Party to the following addresses:

For FAB:

Malcolm Weiss
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

For the Citizen Enforcers:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .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)

The Citizen Enforcers agree to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: _____ June 15, 2018

By: _____

Hector Velarde,
on behalf Estate of Karen Calacin

By: _____

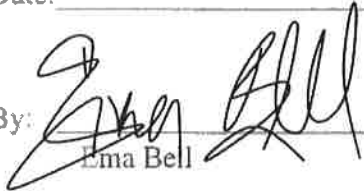
Steve Russo
Fashion Accessory Bazaar, LLC

AGREED TO:

AGREED TO:

Date: 6/20/18

Date: _____

By:  _____
Ema Bell

By: _____
Hector Velarde