

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Ema Bell ("Bell"), Gabriel Espinosa ("Espinosa"), Precila Balabbo ("Balabbo") (collectively, "Citizen Enforcers"), and The TJX Operating Companies, Inc. ("TJX"). Together, Bell, Espinosa, Balabbo and TJX are collectively referred to as the "Parties." Bell, Espinosa and Balabbo are individuals that 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. Citizen Enforcers allege that TJX is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. ("Proposition 65").

**1.2 General Allegations.** Citizen Enforcers allege that TJX has imported, distributed and/or sold in the State of California (a) Ecobeauty cosmetic bags/totes (b) Ollie & Olivia cosmetic bags/totes, (c) Jo & Jo Australia cosmetic bags/totes, and (d) Ardin cosmetic bags/totes that contain di(2-ethylhexyl) phthalate (DEHP) without providing a requisite Proposition 65 exposure 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 cause reproductive toxicity.

**1.3 Product Description.** The products covered by this Settlement Agreement are cosmetic bags/totes sold under the following trade names – Ecobeauty, Ollie & Olivia, Jo & Jo Australia, and Ardin Australia (the "Products") - that have been imported, distributed, offered for sale and/or sold in California by TJX, that contain DEHP.

**1.4 Notices of Violation.** On September 27, 2018 (Bell), May 2, 2018 (Balabbo), May 7, 2018 (Balabbo), and May 29, 2018 (Espinosa), Citizen Enforcers caused to be served on TJX and various public enforcement agencies documents entitled "Notice of Violation of California Health & Safety Code § 25249.5, et seq." (collectively, the "Notices"). The Notices provided TJX and such others, including public enforcers, with notice that alleged that TJX was in violation of California

Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notices.

**1.5 No Admission.** TJX denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all products that are being or have been sold and distributed by TJX in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by TJX 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 TJX of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by TJX. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by TJX, its officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for TJX, or any direct or indirect customer of TJX who sold or sells the Products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, TJX maintains that it has not knowingly manufactured, or caused to be manufactured, 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 the Parties.

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

**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, TJX shall direct that any Products that TJX directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For

purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product. Products obtained by TJX through its vendor before the Effective Date may sell through without a warning even if they contain DEHP in excess of 0.1% (1,000 ppm).

**2.2 Reformulation Standard.** "Reformulated Products" shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

**2.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that TJX manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for TJX to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

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

**⚠ WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), 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) **Alternative Warning:** TJX may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) ("**Alternative Warning**") as follows:

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

**2.4 A Warning or Alternative Warning** provided pursuant to § 2.3 must print the word "**WARNING:**" in all capital letters and in bold font, followed by a colon. 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 that if the sign or label for the Products does not use the color

yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "WARNING:". The warning shall be affixed to or printed on the Products' 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, or designs 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.

**2.5 Compliance with Warning Regulations.** TJX shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date. In the event that OEHHA promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, TJX shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, TJX may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations. If Proposition 65 warnings for DEHP should no longer be required, TJX shall not have any further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, TJX shall direct payment to be made by H&H Asia, Ltd. through its indemnification obligation and cause payment in the amount of \$3,000.00 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 Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted

to Citizen Enforcers. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, TJX shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d).

**3.1 Civil Penalty.** Within ten (10) days of the Effective Date, TJX shall direct payment to be made by H&H Asia, Ltd. through its indemnification obligation and cause to be issued four (4) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; (b) "Brodsky & Smith, LLC in Trust for Gabriel Espinosa" in the amount of \$250.00, (c) "Brodsky & Smith, LLC in Trust for Precila Balabbo" in the amount of \$250.00; and (d) "Brodsky & Smith, LLC in Trust for Ema Bell" in the amount of \$250.00. The Civil Penalty payments shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

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

(i) All payments owed to Citizen Enforcers, pursuant to § 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 § 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.** TJX agrees to provide Citizen Enforcers' counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Citizen Enforcers, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** The Parties agree that each recipient of payments shall bear responsibility for any and all tax obligations, including reporting obligations, arising from such payments.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that 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 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 agreement. Under these legal principles, TJX shall reimburse Citizen Enforcers' counsel for fees and costs incurred as a result of investigating and bringing this matter to TJX's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, TJX direct payment to be made by H&H Asia, Ltd. through its indemnification obligation and cause issuance of a check payable to "Brodsky & Smith, LLC" in the amount of \$27,000.00 for delivery to the address identified in § 3.2(a)(i), above.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of TJX, Downstream Customers, Upstream Vendors and Entities.** This Settlement Agreement is a full, final and binding resolution between Citizen Enforcers, each acting on their own behalf, and TJX, of any violation of Proposition 65 that was or could have been asserted by Citizen Enforcers or on behalf of their past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to

DEHP contained in the Products. Without limiting the generality of the foregoing, Releasors hereby release any such claims against (a) TJX; (b) H&H Asia, Ltd.; (c) each of TJX's downstream and/or upstream distributors, manufacturers, suppliers, wholesales, vendors, licensors, retailers, franchisees and dealers; and (d) the parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees of (a) and (b) (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemical DEHP.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Citizen Enforcers, each on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that they 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, and investigation fees, and costs), damages, losses, liabilities and demands against any of the 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.

**5.2 TJX's Release of Citizen Enforcers.** TJX, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against 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 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. Citizen Enforcers each on behalf of herself only, on one hand, and TJX, 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 §§ 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.

Citizen Enforcers and TJX 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 TJX with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

**5.5. Public Benefit.** It is TJX's understanding that the commitments it has agreed to herein, and actions to be taken by TJX 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. Admin. Code tit. 11, § 3201. As such, it is the intent of TJX that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to TJX's failure (or failure of any Releasee) to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale 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 TJX 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 the Products, TJX shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected. This Settlement Agreement shall have no application to Products which are not sold to California consumers.

**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 TJX:

Kimberly F. Rich  
BAKER & McKENZIE LLP  
1900 N. Pearl Street, Suite 1500  
Dallas, Texas 75201

For 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)

Citizen Enforcers agree to comply with the reporting requirements referenced in 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.

13. 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:**

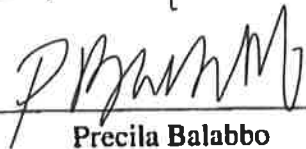
Date: \_\_\_\_\_

By: \_\_\_\_\_

Gabriel Espinosa

**AGREED TO:**

Date: 4-9-19

By: 

Precila Balabbo

**AGREED TO:**

Date: 4/4/2019

By: 

Tyler C. Sparrow  
Sr. Attorney, Litigation & Regulatory Counsel  
The TJX Companies, Inc.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

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)

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13. 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: 4/10/19

Date: \_\_\_\_\_

By:   
Gabriel Espinosa

By: \_\_\_\_\_  
Precila Balabbo

**AGREED TO:**

**AGREED TO:**

Date: 4/4/2019

Date: \_\_\_\_\_

By: 

By: \_\_\_\_\_

Tyler L. Sparrow  
Sr. Attorney, Litigation & Regulatory Counsel  
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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: \_\_\_\_\_

By: \_\_\_\_\_

Gabriel Espinosa

By: \_\_\_\_\_

Precila Balabbo

AGREED TO:

AGREED TO:

Date: 4/4/2019

Date: 4/19/19

By: \_\_\_\_\_

  
Tyler R. Sparrow  
Sr. Attorney, Litigation & Regulatory Counsel  
The TJX Companies, Inc.

By: \_\_\_\_\_



The TJX Operating Companies, Inc.

Erna Bell