

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EnviroProtect”) and Enchante Accessories, Inc. (“Enchante”), with Enchante 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 EnviroProtect alleges that Enchante 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 Enchante 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 Love Mug, which EnviroProtect alleged leached lead from the lip and rim area.

1.3 Product Description.

The products covered by this Settlement Agreement are the ceramic Love Mugs, SKU# 400171820771, which were imported, sold and/or distributed for sale in California by Enchante and through its downstream retailers (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On August 10, 2018, EnviroProtect served Ross Stores, 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 Enchante with test results in EnviroProtect's possession concerning its allegations. Enchante 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. Specifically, EnviroProtect alleges that Enchante 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. Enchante denies that such a warning is required under Proposition 65 or any otherwise applicable law.

Enchante 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 Enchante 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 Enchante of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Enchante. However, this section shall not diminish or otherwise affect Enchante's obligations, responsibilities, and duties hereunder.

1.6 Effective Date.

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

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 ceramicware reformulation standards set forth in Section 2.3.2 of 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 Enchante 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 warnings and/or methods of transmission different than those set forth above, Enchante 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 Enchante 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, Enchante shall provide one of the

following warning statements in Section 2.3 (a) and (b) with the unit conspicuously on the package.

(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 against a yellow background, 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 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 Enchante, 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 the Effective Date.

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

Enchante shall pay a civil penalty of \$500, 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. Enchante 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 \$375, representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for EnviroProtect, LLC.," in the amount of \$125, 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 \$500 shall be sent within 10 days of the Effective Date 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, Enchante shall pay the total amount of \$12,750 for fees and costs incurred by EnviroProtect as a result of investigating, bringing this matter to the attention of Enchante, and negotiating a settlement. Enchante shall make the check payable to "Kawahito Law Group APC" and shall deliver payment within 10 days of the Effective Date. 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. Enchante
222 N. Pacific Coast Hwy, Suite 2222
El Segundo, CA 90245

Wire Instructions can be provided upon request.

5. RELEASE OF ALL CLAIMS

5.1 Release of Enchante, Downstream Customers, and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, EnviroProtect, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all

claims relating to the Products, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), (a) Enchante, (b) each of Enchante's downstream distributors (including but not limited to Ross Stores, Inc), wholesalers, cooperative members, customers, owners, purchasers, users, and their parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (c) Enchante's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

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 Enchante's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

5.2 Enchante's Release of EnviroProtect.

Enchante 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 discovered. EnviroProtect on one hand, and Enchante, 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 related to the Covered Products, 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 Enchante 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 Enchante: Carol Brophy
One Market Street
Steuart Tower, Suite 1800
San Francisco, CA 94105

For EnviroProtect: James K. Kawahito
Kawahito Law Group APC
Attn. EnviroProtect v. Enchante
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:

Date:

By: _____

EnviroProtect, LLC

AGREED TO:

Date: Jan 8 2019

By: _____

Enchante Accessories, Inc.

AGREED TO:

AGREED TO:

Date: 1/8/19

Date:

By: Emilio Zelaya
EnviroProtect, LLC

By: _____
Enchante Accessories, Inc.