

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ASOS US
SALES LLC, ASOS US, INC., ASOS PLC, AND ASOS CO. INC.**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”), on the one hand, and ASOS US Sales LLC, ASOS US, Inc., ASOS PLC, and ASOS Co. Inc. (collectively, “ASOS”), on the other hand. APS&EE and ASOS shall hereinafter collectively be referred to as the “Parties”.

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that each ASOS entity is a company in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that ASOS sold Glamorous cognac half moon shoulder bag BA3395 AG (hereinafter the “Products”) in the State of California causing users in California to be exposed to Di (2-ethylhexyl) Phthalate (“DEHP”), without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and reproductive toxicity.

1.2.2 On August 20, 2019, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to ASOS and the various public enforcement agencies regarding the alleged violation of Proposition 65 with

respect to the Products. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.3 No Admissions

ASOS denies the material, factual, and legal allegations in APS&EE's Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been, and are, in compliance with all laws, and that ASOS has not violated Proposition 65. Nothing in this Agreement shall be construed as an admission by ASOS of any fact, finding, issue of law, or violation of law, or of liability by ASOS; nor shall compliance with this Agreement constitute or be construed as an admission by ASOS of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by ASOS, but to the contrary as a compromise of claims that are expressly contested and denied. However, this Section 1.3 shall not diminish or otherwise affect the Parties' obligations, duties, and responsibilities under this Agreement. Notwithstanding the allegations in the Notice, ASOS maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party's counsel.

2. INJUNCTIVE RELIEF AND REFORMULATION

2.1 Reformulation

As of the 60th day after the Effective Date, and continuing thereafter, Products

that ASOS manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) contain no more than 1,000 parts per million (0.1%) of DEHP (“Reformulated Products”), or (b) be distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.3.

2.2 Reformulated Products Defined

Reformulated Products are Products containing DEHP in concentrations of less than 1,000 parts per million in each accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. 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 (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance. The Parties agree that Reformulated Products containing DEHP in a concentration of less than 1,000 parts per million shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.

2.3 Clear And Reasonable Warnings

2.3.1 For any Product offered for sale to California consumers following the 60th day after the Effective Date, that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. ASOS shall provide the following warning statements:

“WARNING: 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.

If ASOS has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may include the bracketed phrase in the

warning statement. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

2.3.2 Each unit shall carry said warning directly on each unit, its tag, or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by ASOS on the internet to customers located in California, shall satisfy the warning requirements of this section if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) by hyperlink on the same web page on which a Product is displayed and/or described; (c) on the same page as the price for the Product; or (d) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

2.3.3 Compliance with Warning Regulations. The Parties agree that ASOS shall be deemed to be in compliance with the warning provisions of this Settlement Agreement by either adhering to §§ 2.3.1 and 2.3.2 of this Settlement Agreement or by complying with the safe harbor warning regulations promulgated by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, ASOS shall pay a total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the

remaining 25% (\$250.00) for APS&EE.

ASOS shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$750.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$250.00. ASOS shall remit the payments within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE’s Fees And Costs

ASOS shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, ASOS shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of fifteen thousand dollars (\$15,000.00). ASOS shall remit the payment within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASE OF ALL CLAIMS

4.1 APS&EE’s Release Of ASOS

This Settlement Agreement is a full, final and binding resolution between APS&EE and ASOS, and APS&EE hereby releases any such claims against ASOS and its parents, subsidiaries, affiliated companies under common ownership or control, shareholders, members, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom ASOS directly or indirectly distributes or sells the Products, downstream distributors, wholesalers, customers, retailers, and licensors

(collectively, the “Releasees”), from all claims of violation of Proposition 65 regarding the failure to warn on Products sold by ASOS prior to the 60th day after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to § 3 above, APS&EE, on behalf of itself, its 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 it 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, but only to the extent that such legal action or claims arise under Proposition 65 with respect to failure to warn on Products sold by ASOS prior to the 60th day after the Effective Date.

4.2 ASOS’s Release Of APS&EE

ASOS, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against ASOS in this matter. If any Releasee should institute any such action, then APS&EE’s release of said Releasee in this Agreement shall be rendered void and unenforceable.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR

HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

4.4 Deemed Compliance with Proposition 65

Compliance by ASOS with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Di (2-ethylhexyl) Phthalate in the Products.

4.5 Public Benefit.

It is the Parties' understanding that the commitments ASOS has agreed to herein, and actions to be taken by ASOS 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 the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to ASOS' failure to provide a warning concerning exposure to DEHP prior to use of 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 ASOS is in material compliance with this Settlement Agreement.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, should any part or

provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, 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.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws 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, ASOS shall provide written notice to APS&EE 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.

7. NOTICE

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or by: (i) first-class (registered or certified mail); or (ii) overnight or two-day courier on any party by the other party to the following addresses:

TO ASOS: Will Wagner, Esq. Greenberg Taurig LLP 1201 K Street, Suite 1100 Sacramento, California 95814	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
--	--

8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

APS&EE agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

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

11. **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 Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.


AGREED TO:

Date: 3/18/20

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 18 MARCH 2020

By: 
Authorized Representative of ASOS US Sales LLC,
ASOS US, Inc., ASOS PLC, and ASOS Co. Inc.