

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”), Ecological Alliance, LLC, a California limited liability company (“Alliance”) and Anthony Ferreiro (“Ferreiro”), collectively the “Citizen Enforcers”, and Parlux Fragrances, LLC (“Parlux”), with the Citizen Enforcers and Parlux each individually referred to as a “Party” and collectively as the “Parties.”

Parlux is the licensee to various licensors for brands including, but not limited to Paris Hilton, Rihanna, and Kenneth Cole, which brands were used with PVC Totes containing body mists distributed by Parlux affiliate Quality King Fragrance, Inc. d/b/a Quality Fragrance Group (“QFG”). and offered for sale by retailers, including Burlington Stores, Inc. (“Burlington”) and Bloomingdale’s The Outlet Store, LLC (“Bloomingdale’s”).

Citizen Enforcers seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

Citizen Enforcers allege that Parlux 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 General Allegations

Citizen Enforcers allege that Parlux manufactures, sells, and distributes for sale in California, PVC Totes containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Citizen Enforcers allege that Parlux failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are PVC totes containing DEHP that are manufactured, sold, or distributed for sale in California by Parlux affiliate QFG including, but not limited to, the PVC totes sold with: (i) *Paris Hilton Body Mist Fragrance Collection*; UPC: 8 83991 17171 9; (ii) *Kenneth Cole Body Mists*; UPCs: 883991171702 and 883991171665; and (iii) *Nude by Rihanna Body Mist Fragrance Collection Case*, UPC: 883991171733 (hereinafter collectively referred to as the “Products”).

1.4 Notices of Violation

On December 2, 2019, Ferreiro served Rihanna brand licensor Roraj Trade, LLC (“Roraj”), Burlington, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Ferreiro Notice”), alleging that Roraj and Burlington violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. Parlux was subsequently identified as the licensee of the Products and entered into negotiations with Citizen Enforcers as indemnitor to Burlington to resolve the claims concerning the Products.

On December 20, 2019, Donaldson served Parlux, Perfumania, Inc., Burlington and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Donaldson Notice”), alleging that Parlux, Perfumania and Burlington violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the Products.

On January 24, 2020, Alliance served Kenneth Cole Consumer Direct, LLC (“Kenneth Cole”), Bloomingdale’s, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Alliance Notice”), alleging that Kenneth Cole and Bloomingdale’s violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. Parlux was subsequently identified as the licensee of the Products and

entered into negotiations with Citizen Enforcers as indemnitor to Bloomingdale's to resolve the claims concerning the Products.

The December 2, 2019, December 20, 2019 and January 24, 2020 notices shall hereinafter be referred to as the "Notices."

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

Parlux denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Parlux 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 Parlux of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Parlux. This Section shall not, however, diminish or otherwise affect Parlux's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 26, 2020.

2. INJUNCTIVE RELIEF

2.1 As of the Effective Date, Parlux shall not distribute for sale, sell or offer the Products for sale in the State of California unless they are Reformulated Products as defined in Section 2.2 below or bear a clear and reasonable warning as set forth in Section 2.3. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products.

2.2 Reformulation Standards


“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.3 Product Warnings

As of the Effective Date, all Products for sale in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, containing one of the following statements:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This bag can expose you to 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

OR

WARNING : This bag can expose you to 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.



A warning provided pursuant to this Section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol 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 and 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Parlux agrees to pay, no later than the Effective Date, \$6,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson, Alliance, and Ferreiro. Parlux will provide its civil penalty payment, on or before the Effective Date, in four checks as follows: (1) “OEHHA” in the amount of \$4,500; (2) “Audrey Donaldson” in the amount of \$500; “Ecological Alliance, LLC” in the amount of \$500; and “Anthony Ferreiro” in the amount of \$500.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Citizen Enforcers and their counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Parlux expressed a desire to resolve Citizen Enforcers’ fees and costs. The Parties reached an accord on the compensation due to Citizen Enforcers’ counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Parlux will provide its attorneys’ fee payment, on or before the Effective Date, in three checks payable as

follows: (1) “Voorhees & Bailey, LLP” in the amount of \$14,000; (2) “Custodio & Dubey LLP” in the amount of \$8,750; and (3) “Brodsky & Smith, LLC” in the amount of \$8,750.

3.3 Payment Addresses

The payment to OEHHA under this Settlement Agreement shall be delivered to the following address, with a copy emailed to counsel for Citizen Enforcers.

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

The payments to Donaldson and Voorhees & Bailey, LLP under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

The payments to Alliance and Custodio & Dubey LLP under this Settlement Agreement shall be delivered to the following address:

Custodio & Dubey LLP
448 S. Hill St., Suite 615
Los Angeles, CA 90013

The payments to Ferreiro and Brodsky & Smith, LLC under this Settlement Agreement shall be delivered to the following address:

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

Counsel for Citizen Enforcers shall provide W-9s for their respective clients and firms to Parlux. Voorhees & Bailey shall provide the W-9 for OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1 Citizen Enforcers' Release of Proposition 65 Claims

Citizen Enforcers, each acting on their own behalf, and *not* on behalf of the public, release Parlux and QFG, their respective parents, subsidiaries, affiliated entities under common ownership or control, directors, officers, agents employees, attorneys, and each entity to whom OFG directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, licensors, and licensees, including specifically Perfumania, Burlington, Kenneth Cole, Bloomingdale's, and Roraj (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DEHP in the Products.

4.2 Citizen Enforcers' Individual Release of Claims

Citizen Enforcers, each in their individual capacity only and *not* in their representative capacities, provide a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Citizen Enforcers of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Parlux or QFG prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to QFG.

4.3 Parlux's Release of Citizen Enforcers

Parlux, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Citizen Enforcers and their attorneys and other representatives, for any and all

actions taken or statements made by Citizen Enforcers and their attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

6. 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Parlux may provide written notice to Citizen Enforcers of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. 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 Parlux:

Bernard Gehlhar, Esq.
Burke, Williams & Sorensen, LLP
1 California Street, Suite 3050
San Francisco, CA 94111

For Alliance

Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
Los Angeles, CA 90013

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

For Ferreiro

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

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.

8. 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.

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

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f) and shall report this settlement under Donaldson's Notice to Parlux.

10. MODIFICATION

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

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11. 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: _____, 2020

By: _____
AUDREY DONALDSON

AGREED TO:

Date: _____, 2020

By: _____
PARLUX FRAGRANCES, LLC

AGREED TO:

Date: June, 3, 2020

By: Anthony Ferrero
ANTHONY FERRERO

AGREED TO:

Date: _____, 2020

By: _____
ECOLOGICAL ALLIANCE, LLC

11. 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: 6/2, 2020

By: 
AUDREY DONALDSON

AGREED TO:

Date: _____, 2020

By: _____
PARLUX FRAGRANCES, LLC

AGREED TO:

Date: _____, 2020

By: _____
ANTHONY FERREIRO

AGREED TO:

Date: 6/3, 2020

By: 
ECOLOGICAL ALLIANCE, LLC

11. **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: _____, 2020

By: _____
AUDREY DONALDSON

AGREED TO:

Date: 6-2, 2020

By: Ally R. Pabian
PARLOUX FRAGRANCES, LLC
General Counsel

AGREED TO:

Date: _____, 2020

By: _____
ANTHONY FERREIRO

AGREED TO:

Date: _____, 2020

By: _____
ECOLOGICAL ALLIANCE, LLC