

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Deluxity Inc. (“Deluxity”), on the other hand, with EHA and Deluxity each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that Deluxity employs ten or more individuals 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 § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

EHA alleges that Deluxity manufactures, sells, and distributes for sale in California, handbags that contain Di(2-ethylhexyl) phthalate (“DEHP”) and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to, Deluxity’s Cross Body Handbag (“Products”), that contain DEHP and that are manufactured, sold or distributed for sale in California by Deluxity.

#### **1.4 Notice of Violation**

On March 20, 2020, EHA served Deluxity, Ross Stores, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Deluxity violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

## **1.5 No Admission**

Deluxity denies the material, factual, and legal allegations in the Notice and maintains that all of the product it sold and/or distributed for sale 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 Deluxity 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 Deluxity of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Deluxity. This Section shall not, however, diminish or otherwise affect Deluxity'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 ninety (90) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

Commencing on the Effective Date, and continuing thereafter, Deluxity agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California Products that are sold with a health hazard warning as provided for in Section 2.2.

### **2.2 General Warning Requirements**

Deluxity agrees that each warning shall be prominently placed 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 before purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Deluxity that contains the following 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, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. 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". The same warning shall be posted on any websites where Products are sold into California.

### **2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date., which Products are expressly subject to the releases provided in Section 4.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Deluxity agrees to pay two thousand two hundred and fifty dollars (\$2,250.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Deluxity shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand six hundred and eighty-seven dollars and fifty cents (\$1,687.50) and (b) Environmental Health Advocates, Inc., in the amount of five hundred and sixty-two dollars and fifty cents (\$562.50).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section 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

All penalty payments owed to EHA shall be sent to:

Samantha Dice  
Environmental Health Advocates  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, Deluxity agrees to pay twenty thousand two hundred and fifty dollars (\$20,250.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Deluxity, and negotiating a settlement. Deluxity's payment shall be delivered in the form of two checks: (1) one check for ten thousand one hundred and twenty-five dollars (\$10,125.00) payable to "Glick Law Group"; and (2) one check for ten thousand one hundred and twenty-five dollars (\$10,125.00) payable to Nicholas & Tomasevic LLP."

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

Noam Glick  
Glick Law Group  
225 Broadway, Suite 1900  
San Diego, CA 92101

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

Deluxity agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to

provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Deluxity cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Deluxity receives the requisite W-9 forms from EHA's counsel.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 EHA's Release of Deluxity**

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Deluxity of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Deluxity and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products were purchased by Deluxity, and each entity to whom Deluxity directly or indirectly distributes or sells the Products, including, but not limited to, Ross Stores Inc., Deluxity's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in the Products manufactured, sold or distributed for sale in California by Deluxity before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Deluxity and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in the Products manufactured, distributed, sold or offered for sale by Deluxity, before the Effective Date.

##### **4.2 Deluxity's Release of EHA**

Deluxity, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its

attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **4.3 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 Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Deluxity on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, 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.**

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held 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.

#### **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 Deluxity Inc.:

Cameron Hopkins  
Law Offices of Cameron A. Hopkins  
865 South Figueroa Street, Suite 1388  
Los Angeles, CA 90017

For EHA:

Jake Schulte  
Nicholas & Tomasevic, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

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)**

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

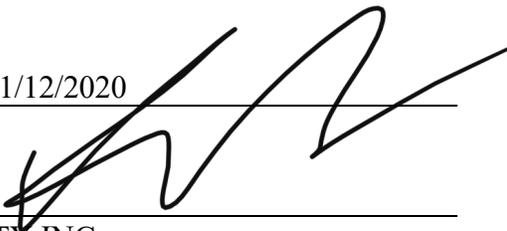
**AGREED TO:**

**AGREED TO:**

Date: 11/10/2020

Date: 11/12/2020

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
DELUXITY INC.