

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 Ross Stores, Inc. (“Ross”), on the other hand, with EHA and Ross each individually referred to as a “Party” and collectively as the “Parties.” EHA is a California corporation acting in the interest of the general public. EHA seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Ross 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”) for purposes of this Settlement Agreement.

1.2 General Allegations

EHA alleges that Ross sells or 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 product covered by this Settlement Agreement is defined as, and expressly limited to, Chateau International Cross Body Handbag with style number PD91728 that is distributed and/or manufactured by Chateau International, Inc., and sold or offered for sale in California by Ross (“Product(s)”).

1.4 Notice of Violation

On March 4, 2020, EHA served Ross, Chateau International, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Ross violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from 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 against Ross.

1.5 No Admission

Ross denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Ross 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 Ross of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Ross. This Section shall not, however, diminish or otherwise affect Ross'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 sixty (60) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

As of the Effective Date, Ross shall not knowingly purchase Products for sale into California unless the Products are (1) Reformulated Products pursuant to Section 2.1; or (2) contain appropriate warnings as described below in Section 2.2.

2.1 Reformulated Standard


"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 other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

2.2 Warning Language


As of the Effective Date, all Products requiring a warning pursuant to Section 2, shall bear a clear and reasonable warning pursuant to this Section. The warning will be prominently placed with such conspicuousness when 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 of use. 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, tag, or shelf sign and contain one of the following statements:

(a) **Warning:**

 **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.

(b) **Short Form Warning:**

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

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 Covered Product does not use the color yellow, the symbol may be in black and white.

For any warnings provided pursuant to this Settlement Agreement, Defendant shall be deemed to be in compliance its terms by either adhering to Section 2.2 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.

2.3 Sell-Through Period

Products purchased for sale prior to the Effective Date shall be subject to release of liability pursuant to this Settlement Agreement, without regard to when such Product was, or is in the future, distributed or sold to customers in California. As a result, the obligation of Ross, or any Releasees (if applicable), does not apply to Product purchased for sale prior to the Effective Date.

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, Ross agrees to pay two thousand dollars (\$2,000.00) 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 fifteen (15) business days of the date this Settlement

Agreement is executed by the Parties or receipt of W-9 forms from the appropriate payees, whichever is later, Ross shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand five hundred dollars (\$1,500.00) and (b) Environmental Health Advocates, in the amount of five hundred dollars (\$500.00).

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:

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 fifteen (15) business days of the date this Settlement Agreement is executed by the Parties or receipt of W-9 forms from the appropriate payees, whichever is later, Ross agrees to pay eighteen thousand dollars (\$18,000) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Ross, and negotiating a settlement. Ross's payment shall be delivered in the form of two checks: (1) one check for nine thousand dollars (\$9,000.00) payable to "Glick Law

Group”; and (2) one check for nine thousand dollars (\$9,000.00) payable to “Nicholas & Tomasevic LLP.”

3.3 Payment Addresses

All payments required under this Section shall be delivered:

The Glick Law Group Payment to:

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

The Nicholas & Tomasevic, LLP Payment to:

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

3.4 Tax Documentation

Ross 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 Ross cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Ross receives the requisite W-9 forms from EHA’s counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA’s Release of Ross

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Ross 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 Ross and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and each entity to whom Ross directly or indirectly distributed or sold the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on the failure to warn about exposures to DEHP in the Product purchased for sale in California by Ross 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 Ross 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 Product purchased for sale by Ross, before the Effective Date.

4.2 Ross's Release of EHA

Ross, 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 or otherwise seeking to enforce Proposition 65 against it in connection with the Product.

4.2 EHA's Release of Known and Unknown Claims

EHA, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, in its respective individual capacity only and not in its representative capacity, provides a general release of the Releasees herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products. EHA acknowledges that it is familiar with Section 1542 of the California Civil Code, and waives any and all benefits which EHA now has, or in the future have under Section 1542, 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.

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 to the extent it is in accordance with the parties' intent in entering into this Settlement Agreement.

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 Ross:

General Counsel of Ross Stores, Inc.
1372 Broadway
New York, NY 10018

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower St. 41st Floor
Los Angeles, CA 90071

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:

Date: March 25, 2021

By: 

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 4-5-2021

By: 

ROSS STORES, INC.