

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC ("EP") on the one hand and Jingdong E-Commerce (Trade) Hong Kong Corporation Limited, including the e-commerce store Joy Buy which it operates ("JD" or "Settling Entity"), with JD and EP each individually referred to as a "Party" and collectively as the "Parties."

1.2 Introduction and General Allegations.

1.2.1 EP is a limited liability 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 EP alleges that JD employs ten or more persons, and EP alleges that JD 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 EP alleges that JD imported, sold, offered for sale, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate ("DEHP"), a chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. EP further alleges that JD failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

1.3 Product Description.

The products covered by this Settlement Agreement are the Yover Gel Pens (UPC # X001D6VOVZ), which EP alleges were imported, sold, offered for sale, and/or distributed for sale in California by JD, including through the website Walmart.com ("Covered Products").



1.4 60 Day Notice of Violation and Exchange of Information.

On September 3, 2020, EP served Shanghai Yover Stationery Co., Ltd, Inc. ("Shanghai Yover"), Walmart Inc. ("Walmart"), and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), related to the Covered Products, alleging that Shanghai Yover and Walmart violated Proposition 65. The Notice alleged that Shanghai Yover and Walmart had failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the import, sale and/or distribution of the Covered Products. JD enters into this Settlement Agreement pursuant to its obligation to indemnify Walmart with respect to the Notice.

EP subsequently provided JD with test results in EP's possession concerning its allegations. JD provided EP 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, EP alleges that JD imported, manufactured, sold, offered for sale, or distributed for sale in the state of California, Covered Products which contained DEHP without first providing the clear and reasonable exposure warning required by Proposition 65. JD denies EP's allegations, including that such a warning is required under Proposition 65 or any otherwise applicable law.

JD and Walmart further deny the material, factual, and legal allegations contained in the Notice. JD maintains that all of the products that it has imported, manufactured and/or sold, offered for sale, 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 JD or Walmart 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 JD of any fact, finding, conclusion, issue of law, or violation of law, such being specifically



denied by JD. This Section shall not, however, diminish or otherwise affect JD's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice and/or its compliance with this Settlement Agreement, JD maintains that it has not knowingly or intentionally caused exposures to chemicals in violation of Proposition 65. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations contained in the Notice or with respect to any other future legal proceedings, except as otherwise provided herein.

1.6 Effective Date.

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

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Standard.

Commencing on the Effective Date, and continuing thereafter, Covered Products that JD imports, distributes, ships to be sold, or offers for sale or purchase in or into California, or sells in California shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP if the Products meet the standard of "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance ("Reformulation Standard"). Covered Products currently in the channels of distribution with distributors and retailers may continue to be sold-through, and there shall be no obligation for JD to reformulate or provide an exposure warning for Covered Products that were manufactured and/or entered into the stream of commerce prior to the Effective Date. However, as of the Effective Date, JD may not distribute, sell, or offer for sale new Covered Products in California unless they are Reformulated Products or unless they contain the warnings set forth in Paragraph 2.3.



2.2 Warning Option.

Covered Products that do not meet the Reformulation Standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that JD sells, distributes, ships out, or offers for sale to consumers, retailers, or distributors in California on or after the Effective Date. No Proposition 65 warning for DEHP shall be required as to any Covered Products that were manufactured and/or entered into the stream of commerce prior to the Effective Date.

2.3 Warning Language and Methods.

Commencing on the Effective Date, JD shall ensure that any Covered Products that do not meet the Reformulation Standard that it ships to California retailers or offers for sale in California or to California consumers include a clear and reasonable warning. The warning shall use language similar to the warnings below:

⚠ **WARNING:** This product can expose you to chemicals including Di-(2-ethylhexyl) phthalate (DEHP), 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.

OR

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

The warning shall be prominently displayed 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. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, JD shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement.



For Covered Products which JD sells, distributes, or offers for sale to or through in-store retail outlets located in California, the warning shall be affixed to or printed on such Covered Products' packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is 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.

If JD sells, distributes, or offers for sale Covered Products via an internet website to consumers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears in a manner permitted under 27 Cal. Code Regs. §25602(b). This includes presentation of the aforementioned warning language or of a clearly marked hyperlink using the word "**WARNING**" either: (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the same page as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser prior to purchase.

2.4 Accessible Component.

The term "Accessible Component" shall mean any component of the Covered Product that could be touched by a person during reasonably foreseeable use.

2.5 Compliance with Proposition 65.

The Parties agree that JD shall be deemed to be in compliance with this Settlement Agreement, and with Proposition 65, by either of the following options: (1) reformulating pursuant to § 2.1 of this Settlement Agreement; or (2) warning pursuant to §§ 2.2 and 2.3 of this Settlement Agreement, or alternatively and at its discretion by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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

In settlement of all claims referred to in this Settlement Agreement, JD 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 OEHHA and the remaining 25% of the



penalty remitted to EP. JD 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" in the amount of \$125, representing 25% of the initial civil penalty. The payment shall be delivered on or before forty-five days after 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

Payment may also be made by wire or ACH or wire transfer. Instructions will be provided separately upon request.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that EP 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 EP 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, JD shall pay the total amount of \$16,500 for fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of JD, and negotiating a settlement. JD shall wire the funds (instructions will be provided upon request) or make payment by check payable to "Kawahito Law Group APC." The payment shall be delivered on or before forty-five days after 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



To allow for the issuance of a timely payment to be rendered pursuant to the above, EP shall provide JD with a completed IRS Form W-9 for the Kawahito Law Group APC at least five business days prior to payment.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

EP, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees ("Releasors"), releases JD and Walmart of any violation of Proposition 65 that was or could have been asserted by EP against JD and/or Walmart, and their respective parents, subsidiaries, owners, affiliated entities that are under common ownership, directors, officers, shareholders, marketplaces, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensees, licensors, each manufacturer or other entity supplying JD with the Covered Products, and each entity to or through which JD directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to Walmart (including the website Walmart.com), and JD and/or Walmart's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their respective parents, subsidiaries, owners, affiliated entities, directors, officers, shareholders, marketplaces, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensees, and licensors (collectively "Releasees") for any and all claims based on their alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by JD and/or Walmart (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Covered Products that were in the stream of commerce prior to the Effective Date. However, as of the Effective Date, no new Products shall be shipped to or distributed in California that are not Reformulated Products or contain the warnings set forth in Sections 2.2 and 2.3. This release is provided in EP's individual capacity and on behalf of the Releasors, and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, EP, on behalf of itself and on behalf of Releasors, also hereby covenants not to sue and waives any rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims



against JD and Releasees that it or they may have, of any nature, character or kind, whether known or unknown, suspected or unsuspected, including, without limitation, all actions and causes of action in law and in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by JD or Releasees.

5.2 JD's Release of EP.

JD on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against EP, its attorneys and other representatives, for any and all actions taken or statements made by EP 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 Public Benefit.

It is JD's contention that the commitments it has agreed to herein, and actions to be taken by JD 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 JD that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to JD and/or the Releasees relating to the Covered Products they have manufactured, distributed, sold, or offered for sale in California and that are subject to this Settlement, such private party action would not confer a significant benefit on the general public provided that JD is in material compliance with this Settlement Agreement.

6. GOVERNING LAW AND ENFORCEMENT OF SETTLEMENT AGREEMENT

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. For purposes of this Settlement Agreement only, Jingdong E-Commerce (Trade) Hong Kong Corporation Limited ("JD") stipulates that the Superior Court of California in and for the County of Los Angeles shall have personal jurisdiction over it for the limited and sole purpose of an action to enforce the terms of this



Settlement Agreement, brought without joinder of other claims, and that venue for such an action is proper in said court. The Parties agree that this Settlement Agreement shall not be construed as a consent to personal jurisdiction or venue in any other context; nor to waive, abridge or otherwise affect any challenge to jurisdiction or venue in any other context; and JD reserves all defenses to jurisdiction and venue in all contexts other than an action to enforce the terms of this Settlement Agreement brought without joinder of other claims. The Parties further agree that this Settlement Agreement shall not be construed to waive, abridge or otherwise affect, in any way, the jurisdictional, venue or other defenses of any entity other than Jingdong E-Commerce (Trade) Hong Kong Corporation Limited. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Covered Products, then JD shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

7. 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, 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.

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; (c) a recognized overnight courier; or (d) by email to designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to JD:

Erika Schulz, Esq.

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Blank Rome LLP
2029 Century Park East
6th Floor
Los Angeles, CA 90067

For Notices to EP:

EnviroProtect, LLC.
3142 W. 59th Pl.
Los Angeles, CA 90043
Email: enviroprotectca@gmail.com

with a copy to:

James K. Kawahito, Esq.
Kawahito Law Group APC
Attn. EP v. JD
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245
jkawahito@kawahitolaw.com

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; 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)

EP and its 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.



13. 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.

AGREED TO:

AGREED TO:

Date: February 24, 2021

Date: March 2, 2021

By: Emilio Zelaya

EnviroProtect, LLC

By: Guan Ling

Jingdong E-Commerce (Trade) Hong Kong
Corporation Limited



