

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 Zust Group, LLC (“Zust Group”), on the other hand, with EHA and Zust Group each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the state of California acting 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.

1.2 General Allegations

EHA alleges that Zust Group manufactures, sells, and distributes for sale in California derma roller kits that contain Di(2-ethylhexyl) phthalate (“DEHP”) and that it did 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, the Zust Beauty Derma Roller Kit, that contains DEHP and that is manufactured, sold or distributed for sale in California by Zust Group.

1.4 Notice of Violation

On January 22, 2021, EHA served Zust Group, LLC, Amazon.com Services, LLC, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Zust Group 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 Product.

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

Zust Group 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 Zust Group 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 Zust Group of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Zust Group. This Section shall not, however, diminish or otherwise affect Zust Group'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 thirty (30) 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, Zust Group agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Product that is sold with a health hazard warning as provided for in Section 2.2. Products that were manufactured prior to the Effective Date or supplied to third parties by Zust Group prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

2.2 General Warning Requirements

Zust Group 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product

shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Zust Group that contains one of the following statements:

- 1) **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.
- 2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.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.”

If Zust Group sells Products via an internet website directly to end-user consumers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one of more web pages displayed to a purchased prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

The Parties agree that compliance by Zust Group with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the products.

2.3 Other Warnings

In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Zust Group shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed

in breach of this Agreement. If regulations or legislation are enacted providing that warnings as to DEHP in this product are no longer required, a lack of warning by Zust Group will not thereafter be a breach of this Agreement.

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, Zust Group agrees to pay five hundred dollars (\$500.00) 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, Zust Group shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of three hundred and seventy-five dollars (\$375.00) and (b) Environmental Health Advocates, in the amount of one hundred and twenty-five dollars (\$125.00).

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 ten (10) days of the date this Settlement Agreement is executed by the Parties, Zust Group agrees to pay six thousand five hundred dollars (\$6,500) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Zust Group, and negotiating a settlement. Zust Group's payment shall be delivered in the form of a check payable to Entorno Law, LLP delivered to the following address:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Zust Group

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Zust Group 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 Zust Group and each of its respective parents, subsidiaries, affiliated entities under common ownership, successors and assignees, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased

by Zust Group, and each entity to whom Zust Group directly or indirectly distributed or sold the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, and Amazon.com Services, LLC, (“Releasees”), based on the failure to provide a Proposition 65 warning for the Product manufactured, sold or distributed for sale in California by Zust Group 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 Zust Group 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 manufactured, distributed, sold or offered for sale by Zust Group, before the Effective Date.

4.2 Zust Group’s Release of EHA

Zust Group, 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 this matter, or with respect to the Product.

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 Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Zust Group 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 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.

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 Zust Group:

Josh M. Portman, Esq.
B.J. Kang Law, PC
3135 Mount Vernon Ave.
Alexandria, VA 22305

For EHA:

Noam Glick
Glick Law Group, PC
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: 07/13/2021

Date: 07/13/2021

By: 

By:  Siar Sung

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

ZUST GROUP, LLC