

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand and Townley, Inc. (“TOWNLEY”) on the other hand, with TOWNLEY 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 TOWNLEY and/or Ross Stores, Inc. (“Ross”) employs ten or more persons, and EP alleges that TOWNLEY 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 TOWNLEY supplied certain products to Ross pursuant to a written Vendor Agreement. EP alleges that BOLEY imported, sold, and/or distributed the Covered Products, as defined below, for sale in California 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 TOWNLEY and Ross 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 TOWNLEY Little Pony Backpack (SKU 400221036480), which were imported, sold and/or distributed for sale in California by TOWNLEY (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On February 5, 2021, EP served TOWNLEY, Ross and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that Ross violated Proposition 65. The Notice alleged that Ross had failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Products.

TOWNLEY assumed the defense of the matter as the manufacturer of the Product. EP subsequently provided TOWNLEY with test results in EP’s possession concerning its allegations. TOWNLEY provided EP with its own test reports and 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 TOWNLEY imported, manufactured, sold 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. TOWNLEY denies that such a warning is required under Proposition 65 or any otherwise applicable law.

TOWNLEY further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, manufactured and/or sold and 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 TOWNLEY 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 TOWNLEY of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by TOWNLEY. This Section shall not, however, diminish or otherwise affect TOWNLEY’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 the date the Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: STANDARD FOR COVERED PRODUCTS

2.1 Standard for Covered Products. Commencing on the Effective Date, and continuing thereafter, TOWNLEY shall ensure that all Products that it imports, manufactures, 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 with respect to DEHP on the basis that the Covered Products contain 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. However, as of the Effective Date, TOWNLEY may not distribute or sell new Covered Products in California that do not meet the Reformulation Standard.

2.2 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.

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

TOWNLEY 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 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to EP. TOWNLEY 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. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who shall furnish a W-9 at least five business days before payment is due. The payment shall be delivered on or before August September 1, 2021 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 transfer. Instructions will be provided 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, TOWNLEY 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 TOWNLEY, and negotiating a settlement. TOWNLEY shall wire the funds (instructions will be provided upon request). or make payment by check payable to “Kawahito Law Group APC.” Payment shall be made in three installments as follows: The first payment of \$8,500 shall be made on or before September 1, 2021; the second payment of \$4,000 shall be made on or before October 1, 2021; and the third payment of \$4,000 shall be made on or before November 1, 2021. and delivered 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 TOWNLEY 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, releases TOWNLEY and Ross of any violation of Proposition 65 that was or could have been asserted by EP against TOWNLEY its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying TOWNLEY with the Covered Products, and each entity to which TOWNLEY directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to Ross and any other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (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 TOWNLEY (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. This release is provided in EP's individual capacity 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, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against TOWNLEY and Releasees that it or they may have including, without limitation, all actions, and causes of action, 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 TOWNLEY or Releasees.

The Parties intend the above release to be a full, final accord and satisfaction and release of each released claim set forth above with respect to the Covered Products. In furtherance of this intention, EP acknowledges it is familiar with California Civil Code Section 1542, which is set forth below, and waives and relinquishes all of the rights and benefits it has, or may have under this statute with respect to the Covered Products.

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.

5.2 TOWNLEY's Release of EP.

TOWNLEY 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.

6. ENFORCEMENT OF SETTLEMENT AGREEMENT.

Any party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

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.

8. 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.

9. 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 TOWNLEY: Diane Sherman
Law Offices of Diane B. Sherman
1801 Century Park East, Suite 1200
Los Angeles, CA 90067
ds@shermanlaw.com

with a copy to: Abie Safdieh
Townley, Inc.
10 West 33rd St., Suite 418
New York, NY 10001
abie@townleygirl.com

For EP: EnviroProtect, LLC.
3142 W. 59th Pl.
Los Angeles, CA 90043

with a copy to: James K. Kawahito
Kawahito Law Group APC
Attn. EP v. D&C
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.

10. 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.

11. 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).

12. MODIFICATION

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

13. 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:

AGREED TO:

Date: 8-26-21

Date: _____

By: *Emilio Zelaya*
EnviroProtect, LLC

By: _____
Townley, Inc.

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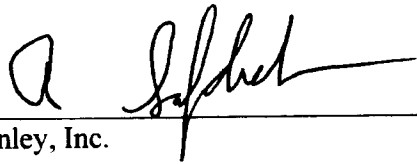
AGREED TO:

Date: _____

By: _____
EnviroProtect, LLC

AGREED TO:

Date: 8/25/2021

By: 
Townley, Inc.