# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC ("EP") on the one hand and Boley International (HK) Limited ("BOLEY") on the other hand, with BOLEY 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 BOLEY and/or Walmart Inc. ("Walmart") employs ten or more persons, and EP alleges that BOLEY 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 BOLEY supplied certain products to Walmart for sale in California. 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 BOLEY and Walmart 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 BOLEY Spark Magnetic Letters and Numbers Sets (UPC 084495755805), which were imported, sold and/or distributed for sale in California by BOLEY ("Covered Products").

1.4 **60 Day Notice of Violation and Exchange of Information.**

On December 17, 2020, EP served Walmart and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), related to the Covered Products, alleging that Walmart violated Proposition 65. The Notice alleged that Walmart 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.

BOLEY assumed the defense of the matter as the manufacturer of the Product. 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 BOLEY 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. BOLEY denies that such a warning is required under Proposition 65 or any otherwise applicable law.

BOLEY 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 BOLEY 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 BOLEY of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by BOLEY. This Section shall not, however, diminish or otherwise affect BOLEY'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, BOLEY 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, CPSC-CH-C1001-09.4 or equivalent methodologies for the purpose of determining DEHP content in a solid substance ("Reformulation Standard"). Covered Products manufactured or assembled on or before the Effective Date may continue to be sold-through without regard to whether they comply with this Section.

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)

BOLEY 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. BOLEY 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 within 10 business days of 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 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, BOLEY 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 BOLEY, and negotiating a settlement. BOLEY 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 within 10 business days of the Effective Date 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 BOLEY 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 BOLEY and Walmart of any violation of Proposition 65 that was or could have been asserted by EP against BOLEY 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 BOLEY with the Covered Products, and each entity to which BOLEY directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to Walmart 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 BOLEY (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 BOLEY 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 BOLEY 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 **BOLEY's Release of EP.**

BOLEY 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. However, 30 days before any action is filed to enforce this Settlement Agreement, the enforcing party shall provide written notice to the other of its claims and opportunity to settle such claims out of court.

## 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 email and: (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:

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|---|---|
| For BOLEY: | Greg Sperla<br>DLA Piper LLP (US)<br>400 Capitol Mall, Suite 2400<br>Sacramento, CA 95819<br>Greg.sperla@us.dlapiper.com |
| For EP: | EnviroProtect, LLC.<br>3142 W. 59th Pl.<br>Los Angeles, CA 90043 |
| with a copy to: | James K. Kawahito<br>Kawahito Law Group APC<br>Attn. EP v. D&C<br>222 N. Pacific Coast Hwy., Suite 2222<br>El Segundo, CA 90245<br>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: 8/9/21 | Date: 8/13/21 |
| By: Emilio Zaluza | By: |
| EnviroProtect, LLC | Boley International (HK) Limited |

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