

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand, and Heat Makes Sense, Inc. dba Eva NYC (“EVA”) on the other hand, with EVA and EP each individually referred to as a “Party” and collectively as the “Parties.”

#### 1.2 Introduction.

1.2.1 EP is a limited liability company duly organized and existing in the State of California, which alleges that it 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 EVA and/or Nordstrom, Inc. (“Nordstrom”), employ ten or more persons, and EP alleges that EVA 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 EVA imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical listed pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. EP further alleges that EVA failed to provide the 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 EVA NYC Hair Dryers, including but not limited to UPC 810905031746, which were imported, sold and/or distributed for sale in California by EVA (“Covered Products”).

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

On May 11, 2021, EP served EVA, Nordstrom and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), related to the Covered Products, alleging that EVA and Nordstrom violated Proposition 65. The Notice alleged that EVA and Nordstrom failed to warn their consumers in California of exposures to DEHP from the Covered Products.

The Parties subsequently exchanged information about EP's allegations and the sales of 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 them concerning the Parties' and the Covered Products' compliance with Proposition 65. Specifically, EP alleges that EVA imported, manufactured, sold or distributed for sale in the state of California, Covered Products which contained DEHP without first providing the clear and reasonable warning required by Proposition 65. EVA denies that such a warning is required under Proposition 65 or any otherwise applicable law.

EVA 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 EVA 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 EVA of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by EVA. This Section shall not, however, diminish or otherwise affect EVA'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: REFORMULATED PRODUCTS

2.1 **Reformulation Standard.** Commencing on the Effective Date, and continuing thereafter, Covered Products that EVA 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, 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. However, as of the Effective Date, EVA may not distribute or sell new Covered Products in California that are not Reformulated Products , or that do not 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 are sold or shipped to consumers in California after the Effective Date, or that are sold or shipped to retailers or distributors for sale to California consumers. No Proposition 65 warning for DEHP shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3 **Warning Language.** Commencing on the Effective Date, EVA shall ensure that any unreformulated Covered Products that it sells or ships to California consumers, or distributors or retailers who offer Covered Product for sale in California, include a clear and reasonable warning. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

**⚠ 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](http://www.P65Warnings.ca.gov).

OR

**⚠ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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, EVA 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

2.4 **Accessible Component.** The term “Accessible Component” shall mean any component of the Covered Product that could be touched by a person during ordinary use.

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

EVA 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. EVA 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 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 or wire transfer. Instructions will be provided separately upon request.

**4. REIMBURSEMENT OF FEES AND COSTS**

EVA shall pay the total amount of \$16,500 for all fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of EVA, and negotiating a settlement. EVA shall wire the funds (instructions will be provided upon request) or make payment by check payable to "Kawahito Law Group APC." The payment schedule shall be as follows: The first payment of \$8,500 shall be made within shall 10 days of the Effective Date. A second payment of \$4,000 shall be made on or before November 15, 2021. A third and final payment of \$4,000 shall be made on or before December 15, 2021. The payments shall be sent 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 EVA 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, employees, representatives, attorneys, successors and/or assignees, releases EVA, Nordstrom, and each of their respective 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 EVA with the Covered Products, and each entity to which EVA directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to Nordstrom, and both of their 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 in California before the Effective Date. This Release shall also cover any Covered Products that were in the stream of commerce prior to the Effective. 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 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, employees, 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, EVA and Releasees that it or they may have including, without limitation, all actions, causes of action, claims, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, remedies, expenses, investigative fees, expert fees, and attorneys' fees, of any kind or nature whatsoever, whether in law or in equity, 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 EVA or Releasees.

EP expressly waives and relinquishes any and all rights and benefits which it or the Releasees may have under, or which may be conferred on them by California Civil Code section 1542 of any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters; Civil Code section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
SUSPECT TO EXIST IN HIS OR 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 THE RELEASED PARTY.

**5.3 Public Benefit.**

It is EVA'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 EVA that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to EVA 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 EVA is in material compliance with this Settlement Agreement.

**5.4 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.

**6. 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.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and without regard to its conflicts of laws principles.

**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 the designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to EVA: Eva.Nyc  
300 Meserole Street  
Brooklyn, NY 11206

with a copy to: Matthew I. Kaplan  
Tucker Ellis, LLP  
515 S. Flower Street, 42nd Floor  
Los Angeles, CA 90071  
[matthew.kaplan@tuckerellis.com](mailto:matthew.kaplan@tuckerellis.com)

For Notices to EP: EnviroProtect, LLC.  
3142 W. 59<sup>th</sup> Pl.  
Los Angeles, CA 90043  
Email: [enviroprotectca@gmail.com](mailto:enviroprotectca@gmail.com)

with a copy to: James K. Kawahito, Esq.  
Kawahito Law Group APC  
Attn. EP v. EVA  
222 N. Pacific Coast Hwy., Suite 2222  
El Segundo, CA 90245  
[jkawahito@kawahitolaw.com](mailto: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; 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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*



**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 signed by the Parties.

**12. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**13. INTERPRETATION**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

**14. 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:**

Date: 10/4/21

By: Emilio Salas  
EnviroProtect, LLC

**AGREED TO:**

Date: 10/4/2021

By: Bradley Rothschild  
Heat Makes Sense, Inc. dba Eva NYC