

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 B2 Fashions Inc. (“B2 Fashions”), on the other hand, with EHA and B2 Fashions each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving 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. Plaintiff alleged that B2 Fashions employs ten or more individuals (which B2 Fashions denies), and 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that B2 Fashions manufactures, sells, and distributes for sale in California, makeup palettes that contain Asbestos and that it does so without first providing the health hazard warning required by Proposition 65. Asbestos 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, Face One Sunset in Hawaii Eyeshadow & Blush Palette (“Covered Products”), that contains Asbestos and that is manufactured, sold or distributed for sale in California by B2 Fashions.

1.4 Notice of Violation

On May 27, 2021, EHA served B2 Fashions, 99 Cents Only Stores LLC, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that B2 Fashions and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to Asbestos from the Covered Products.

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

B2 Fashions 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by B2 Fashions 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 B2 Fashions of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by B2 Fashions. This Section shall not, however, diminish or otherwise affect B2 Fashions' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean fourteen (14) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Testing Using Transmission Electron Microscopy

Commencing on or before the Effective Date, B2 Fashions shall not manufacture any Covered Products unless: (1) the Covered Products have a warning pursuant to section 2.2; and/or (2) each lot of the Covered Products, or each lot of the talc ingredient of the Covered Products, is tested by transmission electron microscopy ("TEM") for asbestos concentration at a laboratory accredited to perform TEM testing for the presence of asbestos and is below the laboratory's reporting limit. For purposes of complying with this Section 2.1, B2 Fashions may rely on a certificate of analysis provided by the supplier of either the talc ingredient for the Covered Products or the Covered Product, provided said certificate indicates non-detect of asbestos using TEM. Covered Products' compliance with the standard set forth in this section constitutes compliance with Proposition 65 as to asbestos.

2.2 General Warning Requirements

B2 Fashions 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* Covered Products 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 Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered Product sold in California by B2 Fashions that contains the following statements:

- 1) **⚠️ WARNING:** This product can expose you to chemicals including Asbestos, 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.

- 2) **⚠️ WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.gov

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement 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 prior to sale. If the warning statement is displayed on the Covered Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any websites under the exclusive control of B2 Fashions where Covered Products are sold into California.

(i) Changes in Warning Regulations or Statutes

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, B2

Fashions 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 Asbestos in this product are no longer required, a lack of warning by B2 Fashions will not thereafter be a breach of this Agreement. B2 Fashions shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1.

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, B2 Fashions agrees to pay one thousand dollars (\$1,000.00) 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 fourteen (14) days of the date this Settlement Agreement is executed by the Parties, B2 Fashions shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of seven-hundred and fifty dollars (\$750.00) and (b) Environmental Health Advocates, Inc., in the amount of two-hundred and fifty dollars (\$250.00).

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 fourteen (14) days of the date this Settlement Agreement is executed by the Parties, B2 Fashions agrees to pay fourteen thousand dollars (\$14,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of B2 Fashions' negotiating a settlement. The fourteen thousand dollars (\$14,000.00) in Attorney's Fees and Costs shall be paid in payments as follows:

- One payment of one thousand dollars (\$1,000.00), due fourteen (14) days after this Agreement is fully executed. The remaining thirteen payments of one thousand dollars (\$1,000.00) each, to be issued on or before the first calendar day of each month beginning September 1, 2022.



3.3 Payment Address

All payments required under this Section shall be delivered to:

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

3.4 Tax Documentation

B2 Fashions agrees to provide an accounting statement 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 B2 Fashions cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after B2 Fashions receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of B2 Fashions

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and B2 Fashions 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 B2 Fashions and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Covered Products was purchased by B2 Fashions and each entity to whom B2 Fashions directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including but not limited to 99 Cents Only Stores, ("Releasees"), based on the failure to warn about exposures to Asbestos required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by B2 Fashions before the Effective Date, as alleged in the Notice. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from B2 Fashions to include a warning as set forth above in section 2.2, do not include such a warning.

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 B2 Fashions 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 Asbestos required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by B2 Fashions, before the Effective Date.

4.2 B2 Fashions' Release of EHA

B2 Fashions, 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

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 Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and B2 Fashions 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. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

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; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For B2 Fashions:

Mr. Fred Paduano
B2 Fashions, Inc.
13025 Rue Jean-Grou
Montreal, Quebec
H1A 3N6
Canada

With copies to:

Carol R. Brophy, Esq.
Angela M. Sousa, Esq.
Steptoe & Johnson LLP
One Market Plaza
Spear Tower, Suite 3900
San Francisco, CA 94105

For EHA:

Noam Glick, Esq.
Entorno Law, LLP
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.

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.

10. 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).

11. MODIFICATION

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

12. AUTHORIZATION

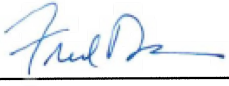
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: 07/08/2022

Date: July 8th 2022

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
B2 FASHIONS INC.