

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand and Enchante Accessories, Inc. (“ENCHANTE”) on the other hand, with ENCHANTE 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 ENCHANTE and/or Ross Stores, Inc. (“Ross”) employs ten or more persons, and EP alleges that ENCHANTE 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 ENCHANTE supplied certain products to Ross pursuant to a written Vendor Agreement. EP alleges that ENCHANTE 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 ENCHANTE and Ross failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products. ENCHANTE and Ross have denied these allegations, as set forth in Paragraph 1.5 below.

1.3 Product Description.

The products covered by this Settlement Agreement are the ENCHANTE Art Sketchbooks, SKU# 400218171224, which were manufactured or distributed by ENCHANTE and offered for sale by Ross in California. (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On May 26, 2021, EP served Ross, and the requisite public enforcement agencies with a 60-Day Notice of Violation related to the Covered Products, alleging that ENCHANTE and Ross violated Proposition 65. On July 1, 2021 EP issued a new 60-Day Notice of Violation (the "Notice") to add ENCHANTE. The Notice alleged that ENCHANTE and 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.

EP subsequently provided ENCHANTE with test results in EP's possession concerning its allegations. ENCHANTE provided EP with 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.

ENCHANTE and Ross deny the material, factual, and legal allegations contained in the Notice and maintain that all of the products that they have imported, manufactured and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by ENCHANTE or Ross 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 ENCHANTE or Ross of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ENCHANTE or Ross. This Section shall not, however, diminish or otherwise affect ENCHANTE'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: REFORMULATION AND WARNINGS

As of the Effective Date, ENCHANTE shall manufacture, distribute, import, or otherwise offer for sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless the Covered Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. Covered Products that were supplied to third parties by ENCHANTE 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.

2.1 Reformulation Standard. Commencing on the Effective Date, and continuing thereafter, Covered Products that ENCHANTE 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, ENCHANTE may not distribute or sell new Covered Products in California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3

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.

2.3 Warning Language

Where required, ENCHANTE shall provide Proposition 65 warnings on the Covered Product's label as follows:

2.3.1 ENCHANTE may use either of the following warning statements in full compliance with this Section:

(a) WARNING: This product can expose you to chemicals including 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

(b) WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov

2.3.2 If ENCHANTE uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. 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."

2.3.3 The requirements for warnings, set forth in subsection 2.3.1 above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

2.3.4 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, ENCHANTE 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.

2.3.5 If Proposition 65 warnings for DEHP should no longer be required, ENCHANTE shall have no further obligations pursuant to this Settlement Agreement.

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

ENCHANTE shall pay a civil penalty of \$1,000 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. ENCHANTE 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 \$750.00 representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for EnviroProtect” in the amount of \$250, 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 14 day 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, ENCHANTE shall pay the total amount of \$18,000 for fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of ENCHANTE, and negotiating a settlement. ENCHANTE 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 14 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 ENCHANTE 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 ENCHANTE and Ross of any violation of Proposition 65 that was or could have been asserted by EP against ENCHANTE 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 ENCHANTE with the Covered Products, and each entity to which ENCHANTE 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 ENCHANTE (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 do not comply with Section 2 of the Agreement. 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 ENCHANTE 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 failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by ENCHANTE 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 ENCHANTE's Release of EP.

ENCHANTE 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 ENCHANTE: Enchante Accessories, Inc.
 144 East 34th Street
 New York, NY 10016

with a copy to: Carol R. Brophy, Esq.
 Steptoe & Johnson LLP
 1 Market Street, Steuart Tower, Suite 1800
 San Francisco, CA 94105
 cbrophy@steptoe.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

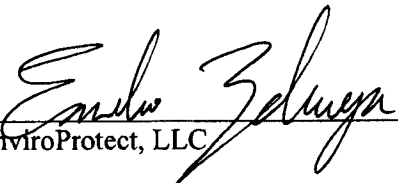
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: 11-8-21

Date: 11/8/2021

By: 
EnviroProtect, LLC

By: 
Enchante Accessories, Inc.