

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand and Zeal Concept, Inc. (“ZCI”) on the other hand, with ZCI 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 ZCI and/or TJ Maxx of CA, LLC (“TJ Maxx”) employs ten or more persons, and EP alleges that ZCI 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 ZCI supplied certain products to TJ Maxx pursuant to a written Vendor Agreement. EP alleges that ZCI 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 ZCI and TJ Maxx 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 ZCI Pens and Cases, which were imported, sold and/or distributed for sale in California by ZCI (“Covered Products”).

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

On November 8, 2021, EP served ZCI, TJ Maxx and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that ZCI and TJ Maxx violated Proposition 65. The Notice alleged that ZCI and TJ Maxx 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 ZCI with test results in EP’s possession concerning its allegations. ZCI 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. Specifically, EP alleges that ZCI 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. ZCI denies that such a warning is required under Proposition 65 or any otherwise applicable law.

ZCI 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 ZCI 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 ZCI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ZCI. This Section shall not, however, diminish or otherwise affect ZCI’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, ZCI shall ensure that all Covered 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, ZCI 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)**

ZCI 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. ZCI 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 ZCI with a W-9 within five business days after the Effective Date. The payment shall be delivered within ten (10) business days after ZCI's receipt of the W-9 referenced in this Section 3 to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
300 Corporate Pointe Ste. 340  
Culver City, CA 90230

Payment may also be made by wire or ACH transfer. Instructions shall be provided by separate email.

#### **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, ZCI shall pay the total amount of \$17,000 for fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of ZCI, and negotiating a settlement. ZCI shall wire the funds or make payment by check payable to "Kawahito Law Group APC." Payment shall be made within ten (10) business days after ZCI's receipt of the W-9 referenced in this Section 4 and delivered to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
300 Corporate Pointe Ste. 340  
Culver City, CA 90230

To allow for the issuance of a timely payment to be rendered pursuant to the above, EP shall provide ZCI with a completed IRS Form W-9 for the Kawahito Law Group APC within five business days of the Effective Date.

#### **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 parents, subsidiaries, agents, members, representatives, attorneys, successors and/or assignees, releases ZCI and TJ Maxx of any violation of Proposition 65 that was or could have been asserted by EP against ZCI, 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 ZCI with the Covered Products, and each entity to which ZCI directly or indirectly distributes, shipped or sold the Covered Products, including, but not limited to TJ Maxx 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 ZCI (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 ZCI 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 ZCI 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 ZCI's Release of EP.**

ZCI 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 in the course of investigating claims or seeking to enforce Proposition 65 against ZCI solely in this matter with respect to the Covered Products.

## **5.3 Public Benefit.**

It is ZCI's contention that the commitments it has agreed to herein, and actions to be taken by ZCI 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 ZCI that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to ZCI 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 ZCI is in material compliance with this Settlement Agreement

## **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:

ZCI: Barbara Berwick  
Senior Vice President  
Zeal Concept, Inc.  
3540 Toringdon Way, Suite 200  
Charlotte, NC 28277

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

with a copy to: James K. Kawahito  
Kawahito Law Group APC  
Attn. EP v. D&C  
300 Corporate Pointe Ste. 340  
Culver City, CA 90230  
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: 4/7/22

Date: \_\_\_\_\_

By: *Emilio Zelaya*  
EnviroProtect, LLC

By: \_\_\_\_\_  
Zeal Concept, Inc.



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**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: April 5, 2022

By: \_\_\_\_\_  
EnviroProtect, LLC

By:  \_\_\_\_\_  
Zeal Concept, Inc.