

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ZULILY, LLC

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Zulily, LLC (“Zulily”). APS&EE and Zulily shall hereinafter collectively be referred to as the “Parties”.

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that Zulily is a company in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that Zulily sold the “Misoya” tissue box holders identified as 95219023 red ‘enjoy your life’ A31-AL2014 manufactured by the Cangnan County Boen Bag Making Factory (“Vendor”) (hereinafter the “Products”), in the State of California causing users in California to be exposed to unsafe levels of Di (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”, and collectively with DEHP, the “Listed Chemicals”) without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP is listed by the State of California as known to cause cancer and reproductive toxicity; DBP is listed as known to cause birth defects and other reproductive harm.

1.2.2 On February 10, 2022, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Zulily and the various

public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

Zulily denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Zulily has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Zulily but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

2. INJUNCTIVE RELIEF AND REFORMULATION

2.1 Reformulation

As of the Effective Date, Zulily shall not sell or distribute for sale Products in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP or DBP ("Reformulated Products"), or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2. Zulily is entitled to rely on testing or representations provided by its supplier(s) or vendor(s) with respect to the content of the Products/Reformulated Products.

2.2 Clear And Reasonable Warnings

2.2.1 For any Products that are not Reformulated Products, online sales of such Products by Zulily shall be accompanied by a clear and reasonable warning on

zulily.com pursuant to Section 2.2.2. Zulily shall instruct the Vendor to provide a clear and reasonable warning for Products shipped to California delivery addresses via labels on the Product or packaging, package inserts, or a packing slip. Zulily shall provide one of the following warning statements:

“WARNING: This product can expose you to chemicals, including DEHP, which are 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.”

“WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product 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”. As an alternative to the above warnings, Zulily may comply with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment.

2.2.2 A Product that is sold by Zulily on the internet (e.g., via zulily.com) to persons located in California shall provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. If Zulily provides Products to a downstream entity to sell on the internet, Zulily shall include an instruction that the entity comply with the warning requirements of this section.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Zulily shall pay a total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of

California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$250.00) for APS&EE.

Zulily shall issue these payments collectively as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

3.2 Reimbursement Of APS&EE’s Fees And Costs

Zulily shall reimburse APS&EE’s reasonable experts’ and attorneys’ fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement, in the amount of eleven thousand five hundred dollars (\$11,500.00). Accordingly, Zulily shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of twelve thousand five hundred dollars (\$12,500.00), which includes the civil penalty described in Section 3.1, within fifteen (15) business days of the Effective Date. Wire instructions have been exchanged between the Parties’ counsel.

4. RELEASES

4.1 APS&EE’s Release Of Zulily

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Zulily, its parents, subsidiaries, affiliates, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its direct and indirect suppliers and downstream distributors, retailers, and franchisees (collectively “Released Parties”), from any claims for alleged violations of Proposition 65 related to the Products sold by Zulily before and up to the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3.1 and 3.2 above, APS&EE, on behalf of itself and its past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have, including

without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of the alleged or actual exposure to the Listed Chemicals from use of the Products.

4.2 Zulily's Release Of APS&EE

Zulily, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Zulily in this matter. If any Released Party should institute any such action, then APS&EE's release of said Released Party in this Agreement shall be rendered void and unenforceable.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides 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.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the

discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

<p>TO ZULILY: Zulily, LLC Attn. General Counsel 2601 Elliott Avenue, Suite 200 Seattle, WA 98121</p> <p>With a copy to: Jeff Parker, Esq. Sheppard Mullin 333 South Hope St., 43rd Floor Los Angeles, CA 90071</p>	<p>TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their

respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: 8/3/2022

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 

By: VP & General Counsel
Authorized Representative of Zulily, LLC