

1 JAMES KAWAHITO (SBN 234851)
2 KAWAHITO LAW GROUP APC
3 300 Corporate Pointe, Suite 340
4 Culver City, CA 90230
5 Telephone: (310) 746-5300
6 Facsimile: (310) 593-2520
7 Email: jkawahito@kawahitolaw.com

8 Attorneys for Plaintiff EnviroProtect, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

9 ENVIROPROTECT, LLC, in the public
10 interest,

11 Plaintiff,

12 vs.

13 GMA ACCESSORIES, INC., a New York
14 Corporation; T.J. MAXX OF CA, LLC, a
15 California Corporation; and DOES 1 through
16 50, inclusive,

17 Defendants.

Case Number: 22STCV35454

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

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1. INTRODUCTION

1.1. EnviroProtect, LLC and GMA Accessories, Inc.

This Consent Judgment is entered into by and between plaintiff EnviroProtect, LLC (“EP” or “Plaintiff”) and defendant GMA Accessories, Inc. (“GMA” or “Defendant”) with GMA and EP each individually referred to as a “Party” and collectively as the “Parties.”

1.2. Plaintiff

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.

1.3. Defendant

Plaintiff alleges that GMA employs ten or more persons 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 section 25249.6 *et seq.* (“Proposition 65”).

1.4. General Allegations

EP alleges that GMA has manufactured, sold, and/or distributed for sale in California, certain products described more specifically below containing Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical listed by the State of California under Proposition 65, without providing a required Proposition 65 warning. DEHP shall be referred to hereinafter as the “Listed Chemical.”

1.5. Product Description

Hair accessories and their packaging, including the Charlotte Hair Elastics and Storage Bags, manufactured, imported, sold and/or distributed for sale in California by GMA (“Covered Products”).

1.6. Notice of Violation

On May 12, 2022, EP served GMA, T.J. Maxx of CA, LLC (“TJ Maxx”), and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that GMA and

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3 TJ Maxx violated Proposition 65. The Notice alleged that GMA and TJ Maxx failed to warn its
4 customers and consumers in California that the Covered Products contain DEHP.

5 **1.7. Complaint**

6 On November 8, 2022, Plaintiff, who was and is acting in the interest of the general public
7 in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
8 County of San Francisco against GMA and Does 1 through 50, alleging violations of Health &
9 Safety Code §25249.6 based on the alleged exposures to DEHP contained in the Covered Products
10 sold by GMA.

11 **1.8. No Admission**

12 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
13 were raised or that could have been raised in the Notice, arising out of the facts and/or conduct
14 alleged therein. GMA denies the material, factual and legal allegations contained in EP’s Notice
15 and the Complaint, including, but not limited to, those GMA expressly challenged in these
16 proceedings. GMA enters into this Consent Judgment solely to avoid the inherent cost and
17 uncertainty related to litigation. GMA maintains that all products, including but not limited to the
18 Covered Products, that it has manufactured, imported, sold and/or distributed for sale in
19 California have always been and are in compliance with all applicable laws, regulations, and
20 standards, and are completely safe for their intended use. Nothing in this Consent Judgment shall
21 be construed as an admission by GMA of any fact, finding, conclusion, issue of law, or violation
22 of law, nor shall compliance with this Consent Judgment constitute or be construed as an
23 admission by GMA of any fact, finding, conclusion, issue of law, or violation of law, such being
24 specifically denied by GMA. However, this section shall not diminish or otherwise affect
25 GMA’s obligations, responsibilities, and duties hereunder.

26 **1.9. Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, and in compromise and settlement, the Parties
28 stipulate that: (1) this Court has jurisdiction over GMA as to the allegations contained in the

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3 Complaint; 2) that venue is proper in the County of Los Angeles; and 3) that this Court has
4 jurisdiction to enter and enforce the provisions of this Consent Judgment.

5 **1.10. Effective Date**

6 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
7 which the Court approves this Consent Judgment, including any unopposed tentative ruling
8 granting approval of this Consent Judgment.

9 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

10 **2.1. Reformulation Standard and Schedule**

11 1.1 Commencing on the Effective Date, and continuing thereafter, Covered Products
12 that are imported, manufactured and/or sold or offered for sale or purchase for sale in or into
13 California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition
14 65 warning requirements with respect to DEHP if they meet the standard of "Reformulated
15 Products." "Reformulated Products" shall mean Covered Products with accessible components
16 containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible
17 component when analyzed pursuant to Environmental Protection Agency testing methodologies
18 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state
19 agencies for the purpose of determining DEHP content in a solid substance ("Reformulation
20 Standard"). Notwithstanding the preceding, Covered Products manufactured prior to the Effective
21 Date or currently in the channels of distribution with distributors and retailers may continue to be
22 sold-through without reformulation or warning by GMA and "Releasees" (as that defined in
23 Section 5.1, *infra*).

24 **2.2. Warning Option**

25 Covered Products that do not meet the warning exemption standard set forth in Section 2.1
26 above shall be accompanied by a warning as described in Section 2.3 below. Notwithstanding the
27 preceding, Covered Products manufactured prior to the Effective Date or currently in the channels
28 of distribution with distributors and retailers may continue to be sold-through without
reformulation or warning by GMA and "Releasees" (as that defined in Section 5.1, *infra*).

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2.3. Warning Language

Covered Products manufactured after the Effective Date for sale in California that do not qualify as Reformulated Products shall contain a Proposition 65 warning affixed to the packaging, labeling, or directly on each Product. The warning shall state either:

▲ 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. www.P65Warnings.ca.gov.

▲ WARNING: Cancer and Reproductive Harm - 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 the Covered Products 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, GMA shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Consent Judgment, as long as such warning text and methods of transmission comply with OEHHA regulations.

3. MONETARY PAYMENTS

3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)

GMA shall pay a total civil penalty of \$3,000, 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. GMA shall issue two separate checks for the

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3 penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State
4 of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the
5 amount of \$2250, representing 75% of the total civil penalty; and (b) one check to "Kawahito Law
6 Group in Trust for Center for Advanced Public Awareness, Inc.," in the amount of \$750,
7 representing 25% of the total civil penalty. Two separate 1099s shall be issued for the above
8 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814
9 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who shall
10 furnish a W2 at least five calendar days before payment is due.

11 The payments shall be delivered to EP's counsel at the following address within ten days
12 of the Effective Date of this Consent Judgment:

13 James Kawahito, Esq.
14 Kawahito Law Group APC
15 300 Corporate Pointe, Suite 340
16 Culver City, CA 90230

17 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

18 The Parties acknowledge that EP and its counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee
20 reimbursement issue to be resolved after the material terms of the Consent Judgment had been
21 settled. The Parties reached an accord on the compensation due to EP and its counsel under
22 general contract principles and the private attorney general doctrine codified at California Code of
23 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
24 Consent Judgment. GMA shall reimburse EP and its counsel in the total amount of \$30,000 for all
25 attorney's fees, investigative and consulting costs, and all other expenses of any kind incurred by
26 EP as a result of investigating, bringing this matter to the attention of GMA, negotiating this
27 Consent Judgment, drafting the Complaint, and preparing the necessary briefing to obtain Court
28 approval of the Consent Judgment. GMA shall make the check payable to "Kawahito Law Group
APC" and shall deliver payment within ten days of the Effective Date to:

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James Kawahito, Esq.
Kawahito Law Group APC
Attn. EP v. GMA
300 Corporate Pointe, Suite 340
Culver City, CA 90230

To allow for the issuance of a timely payment pursuant to the above, EP shall provide GMA with a completed IRS Form W-9 for the Kawahito Law Group APC upon request.

5. RELEASE OF CLAIMS

5.1. Release of GMA

This Consent Judgment is a full, final and binding resolution and judgment between EP, on behalf of itself and “in the public interest” as that phrase is understood pursuant to Health & Safety Code Section 25249.7, and its past and current agents, representatives, attorneys, successors and/or assignees (the “Releasers”), on the one hand, and GMA, its parent, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, licensees, and each entity to whom GMA directly or indirectly distributes or sells the Covered Products, including but not limited to TJ Maxx, its parents, subsidiaries, and affiliate companies, and other downstream retailers, distributors, wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors, licensees, and the successors and assigns of any of them (“Releasees”), on the other hand, of any violation of Proposition 65 that was or could have been asserted by EP on behalf of itself and the public interest, as defined above, against GMA or the Releasees based on the alleged failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by GMA (either directly or through any of the Releasees).. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to the alleged or actual failure to warn about exposures to DEHP from Covered Products manufactured, imported, sold or distributed for sale by Defendant after the Effective Date.

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3 The Parties further intend this Consent Judgment to provide, to the fullest extent allowed
4 by law, res judicata and collateral estoppel protection for GMA and each of the Releasees against
5 any and all claims relating to the allegations of violations of Proposition 65 in the Notice, whether
6 brought by EP in its own capacity or in the public interest, as defined above, or by an entity in
7 privity with EP.

8 **5.2 EP's Individual Release of Claims**

9 EP, in its individual capacity only and *not* in its representative capacity, and on behalf of
10 its past and current agents, principals, attorneys, predecessors, successors, assignees and heirs
11 hereby also provides a release to GMA and the Releasees, which shall be effective as a full and
12 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind,
14 whether known or unknown, suspected or unsuspected, arising out of the Covered Products
15 manufactured, imported, distributed or sold by GMA before the Effective Date. EP further
16 acknowledges that it is familiar with Civil Code section 1542, which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
18 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
19 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
21 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
22 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

23 EP, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
24 assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or
25 which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state
26 or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive
27 such rights or benefits pertaining to the released matters herein.

28 **5.2. GMA's Release of EP**

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3 GMA on behalf of itself, its past and current agents, representatives, attorneys, successors,
4 and/or assignees, hereby waives any and all claims against EP, its attorneys and other
5 representatives, for any and all actions taken or statements made (or those that could have been
6 taken or made) by EP and its attorneys and other representatives, whether in the course of
7 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
8 respect to the Covered Products.

9 **6. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and
11 shall be null and void if, for any reason, it is not approved and entered by the Court.

12 **7. SEVERABILITY**

13 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
14 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
15 not be adversely affected.

16 **8. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California and apply within the State of California. In the event that Proposition 65 is repealed,
19 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
20 then GMA may provide Plaintiff with written notice of any asserted change in the law, and shall
21 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
22 that, the Covered Products are so affected.

23 **9. JOINT PREPARATION**

24 The Parties have jointly participated in the preparation of this Consent Judgment and this
25 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or
26 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
27 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
28 agrees that any statute or rule of construction providing that ambiguities are to be resolved against

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3 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
4 this regard, the Parties hereby waive California Civil Code § 1654.

5 **10. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
9 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
10 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
11 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
12 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
13 waiver unless set forth in writing between the Parties.

14 **11. NOTICES**

15 Unless specified herein, all correspondence and notice required to be provided pursuant to
16 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
17 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
18 or (c) a recognized overnight courier on any Party by the other at the following addresses:

19 For GMA: Bao Vu
20 Stoel Rives LLP
21 1 Montgomery Street, Suite 3230
22 San Francisco, CA 94104
bao.vu@stoelrives.com

23 For EP: EnviroProtect, LLC.
24 3142 W. 59th Pl.
Los Angeles, CA 90043

25 with a copy to: James K. Kawahito
26 Kawahito Law Group APC
27 Attn. EP v. GMA
300 Corporate Pointe, Suite 340
28 Culver City, CA 90230
jkawahito@kawahitolaw.com

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3 Any Party may, from time to time, specify in writing to the other a change of address to
4 which all notices and other communications shall be sent.

5 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

6 This Consent Judgment may be executed in counterparts and by facsimile or portable
7 document format (PDF) signature, each of which shall be deemed an original, and all of which,
8 when taken together, shall constitute one and the same document.

9 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

10 EP and his attorneys agree to comply with the reporting form requirements referenced in
11 California Health and Safety Code Section 25249.7(f).

12 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

13 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
14 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
15 obtaining such approval, EP shall be responsible for preparing the motion to approve the Consent
16 Judgment. GMA and their respective counsel agree to mutually employ their best efforts to
17 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
18 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
19 include at a minimum, cooperating in Plaintiff's drafting and filing of any papers in support of the
20 required motion for judicial approval. Upon judicial approval of this Consent Judgment, EP
21 agrees to file a dismissal as to all causes of action against all named Defendants with prejudice
22 within 3 calendar days, and EP agrees to take any further action necessary to effectuate such
23 dismissal.

24 **15. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the parties and
26 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
27 of any party and entry of a modified consent judgment by the Court. The Attorney General shall
28 be served with notice of any proposed modification to this Consent Judgment at least fifteen days

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in advance of its consideration by the Court. To the extent either party alleges a breach of this Consent Judgment, written notice shall be provided to the party in alleged breach and the Parties shall thereafter meet and confer for at least 30 days to try to informally resolve the dispute before either Party files a motion to enforce.

16. AUTHORIZATION

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: June 5, 2023

Date: _____

By: 
EnviroProtect, LLC

By: _____
GMA Accessories, Inc.

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in advance of its consideration by the Court. To the extent either party alleges a breach of this Consent Judgment, written notice shall be provided to the party in alleged breach and the Parties shall thereafter meet and confer for at least 30 days to try to informally resolve the dispute before either Party files a motion to enforce.

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The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: _____

By: _____
EnviroProtect, LLC

AGREED TO:

Date: 6/15/2023

By:  _____
GMA Accessories, Inc.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT