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8 Attorneys for Plaintiff EnviroProtect, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 ENVIROPROTECT, LLC, in the public
12 interest,

13 Plaintiff,

14 vs.

15 GMA ACCESSORIES, INC., a New York
16 Corporation; T.J. MAXX OF CA, LLC, a
17 California Corporation; and DOES 1 through
18 50, inclusive,

19 Defendants.

Case Number: 22STCV35454

AMENDED
[PROPOSED] STIPULATED CONSENT
JUDGMENT

HEALTH AND SAFETY CODE § 25249.6

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3 **1. INTRODUCTION**

4 **1.1. EnviroProtect, LLC and GMA Accessories, Inc.**

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

8 **1.2. Plaintiff**

9 EP is a limited liability company duly organized and existing in the State of California,
10 which seeks to promote awareness of exposures to toxic chemicals and to improve human health
11 by reducing or eliminating hazardous substances used in consumer products.

12 **1.3. Defendant**

13 Plaintiff alleges that GMA employs ten or more persons and is a person in the course of
14 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
15 California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

16 **1.4. General Allegations**

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

21 **1.5. Product Description**

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

25 **1.6. Notice of Violation**

26 On May 12, 2022, EP served GMA, T.J. Maxx of CA, LLC (“TJ Maxx”), and the requisite
27 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
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3 of distribution with distributors and retailers may continue to be sold-through without
4 reformulation or warning by GMA and "Releasees" (as that defined in Section 5.1, *infra*).

5 **2.3. Warning Language**

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

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10 **⚠ WARNING:** This product can expose you to chemicals including
11 Di-(2-ethylhexyl) phthalate (DEHP), which are
12 known to the State of California to cause cancer,
13 and birth defects or other reproductive harm.
14 www.P65Warnings.ca.gov.

15 **⚠ WARNING:** Cancer and Reproductive Harm -
16 www.P65Warnings.ca.gov.

17 The warning shall contain a yellow triangle with an exclamation point as set forth above.
18 The warning shall be prominently displayed with such conspicuousness as compared with other
19 words, statements, designs, or devices as to render it likely to be read and understood by an
20 ordinary individual under customary conditions before purchase or use. Each warning shall be
21 provided in a manner such that the consumer or user is reasonably likely to understand the
22 Covered Products the warning applies, so as to minimize the risk of consumer confusion. In the
23 event that the Office of Environmental Health Hazard Assessment promulgates one or more
24 regulations applicable to the covered product and the Listed Chemical requiring or permitting
25 warning text and/or methods of transmission different than those set forth above, GMA shall be
26 entitled to use, at its discretion, such other warning text and/or methods of transmission without
27 being deemed in breach of this Consent Judgment, as long as such warning text and methods of
28 transmission comply with OEHHA regulations.

29 **2.4 Internet Warnings**

30 For any Covered Products sold by GMA through the internet, the relevant warnings shall

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3 comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

4 **3. MONETARY PAYMENTS**

5 **3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)**

6 GMA shall pay a total civil penalty of \$3,000, to be apportioned in accordance with
7 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
8 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
9 remaining 25% of the penalty remitted to EP. GMA shall issue two separate checks for the
10 penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State
11 of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the
12 amount of \$2250, representing 75% of the total civil penalty; and (b) one check to "Kawahito Law
13 Group in Trust for EnviroProtect LLC" in the amount of \$750,
14 representing 25% of the total civil penalty. Two separate 1099s shall be issued for the above
15 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814
16 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who shall
17 furnish a W2 at least five calendar days before payment is due.

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

20 James Kawahito, Esq.
21 Kawahito Law Group APC
22 300 Corporate Pointe, Suite 340
23 Culver City, CA 90230

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

25 The Parties acknowledge that EP and its counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee
27 reimbursement issue to be resolved after the material terms of the Consent Judgment had been
28 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

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Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this Consent Judgment. GMA shall reimburse EP and its counsel in the total amount of \$30,000 for all attorney's fees, investigative and consulting costs, and all other expenses of any kind incurred by EP as a result of investigating, bringing this matter to the attention of GMA, negotiating this Consent Judgment, drafting the Complaint, and preparing the necessary briefing to obtain Court 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:

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

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3 the Releasees based on the alleged failure to warn about alleged exposures to DEHP contained in
4 the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale
5 up through the Effective Date by GMA (either directly or through any of the Releasees).

6 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
7 by Defendant with respect to the alleged or actual failure to warn about exposures to DEHP from
8 Covered Products manufactured, imported, sold or distributed for sale by Defendant after the
9 Effective Date.

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

14 **5.2 EP's Individual Release of Claims**

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

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24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
25 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
26 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
27 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
28 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

5.2. GMA’s Release of EP

GMA 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 (or those that could have been taken or 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. COURT APPROVAL

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

7. SEVERABILITY

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

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3 **9. JOINT PREPARATION**

4 The Parties have jointly participated in the preparation of this Consent Judgment and this
5 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or
6 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
7 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
8 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
9 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
10 this regard, the Parties hereby waive California Civil Code § 1654.

11 **10. ENTIRE AGREEMENT**

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

20 **11. NOTICES**

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

25 For GMA: Bao Vu
26 Stoel Rives LLP
27 1 Montgomery Street, Suite 3230
28 San Francisco, CA 94104
bao.vu@stoelrives.com

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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. GMA
300 Corporate Pointe, Suite 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.

12. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment 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.

13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7

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

14. ADDITIONAL POST EXECUTION ACTIVITIES

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

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within 3 calendar days, and EP agrees to take any further action necessary to effectuate such dismissal.

15. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days 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: 7/17/23

Date: 7/17/2023

By: 
EnviroProtect, LLC

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