

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /	
	COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

SETTLEMENT AGREEMENT BETWEEN
MONARCH ACTION LLC AND AVERY ELLE, INC.

MONARCH Action LLC (“MONARCH”) and Avery Elle, Inc. (“Defendant”), (collectively the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle MONARCH’s allegations that Defendant violated the California Health and Safety Code §25249.6 *et seq.* (“Proposition 65”). The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

I. Introduction.

A. MONARCH is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

B. MONARCH alleges that Defendant manufactures, imports, sells, or distributes for sale in the State of California certain vinyl mesh pouch products that contain Di [2-Ethylhexyl] Phthalate (“DEHP”) without first providing a clear and reasonable warning as required by Proposition 65.

C. The products covered by this Settlement Agreement are vinyl mesh pouch products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant to others, including, but not limited to, Avery Elle Aqua Zippered Vinyl Mesh Pouch(es) Item numbers Z2101, Z1901, Z1902, Z1903, and Z1904 (the “Covered Product(s)”).

D. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer.

E. On October 24, 2003, the Governor of California added DEHP to the list of chemicals known to the State to cause reproductive toxicity.

F. These additions took place more than twelve (12) months before MONARCH served its “60-Day Notice of Violation” which is further described below.

G. DEHP is referred to hereinafter as the “Listed Chemical.”

H. On or about March 9, 2023, MONARCH served Defendant, as well as certain relevant public enforcement agencies, with a document entitled “60-Day Notice of Violation”

("Notice") advising of its intent to sue for violations of Proposition 65 arising from or related to Covered Product containing the Listed Chemical.

I. The Notice alleged Defendant violated Proposition 65 by failing to warn consumers in California that use of Covered Product exposed users to the Listed Chemical.

J. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the same allegations against Defendant.

K. Defendant denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Covered Product, are and have been in compliance with all laws.

L. The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as alleged in the Notice and as set forth below concerning the Parties' and the Covered Product' compliance with Proposition 65 (the "Dispute").

M. By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine.

N. Nothing in this Settlement Agreement shall be construed as an admission against interest by any Party of any fact, conclusion of law, issue of law, or violation of law.

O. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by Defendant, its officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for Defendant, or any direct or indirect customer of Defendant who sold or sells the Covered Product, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

P. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that MONARCH or Defendant may have against one another in any other legal proceeding as to allegations unrelated to the Dispute or claims released herein.

II. Release.

A. This Settlement Agreement is a full, final, and binding resolution between MONARCH, individually and *not* in its representative capacity, and:

1. Defendant, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively the "Releasees"), and

2. All entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including Michael's Stores, Inc. ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been, or may in the future be asserted against the Releasees and/or Downstream Releasees regarding exposing persons or failing to warn persons about exposure to the Listed Chemical arising in connection with the Covered Product manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

B. The Parties agree compliance with the terms of this Settlement Agreement by Defendant shall be deemed to be compliance with Proposition 65 by Releasees and Downstream Releasees with respect to any exposures to the Listed Chemical in the Covered Product manufactured, distributed, or sold by Defendant after the Effective Date.

C. The Covered Products subject to this Settlement Agreement are limited to those manufactured by or for Defendant, or imported by or for Defendant, or distributed by or for Defendant, or sold by or for Defendant.

D. MONARCH, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, but not in its capacity as representative of the public, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively the "Claims"), against Releasees and/or

Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Product sold up to the Effective Date, including without limitation to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Product or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Product.

E. MONARCH acknowledges that it is familiar with Section 1542 of the 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.

MONARCH, its past and current agents, representatives, attorneys, successors, and/or assignees, in its individual and *not* representative capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542, *only as it pertains to the Covered Products*, 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.

III. Defendant's Duties.

A. Commencing on the Effective Date, Defendant shall not manufacture, import, sell, or distribute for sale in the State of California any Covered Product unless it either:

1. contains the Listed Chemical in a concentration less than or equal to 1,000 parts per million ("ppm") (0.1%) when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other scientifically reliable methodology for determining the Listed Chemical content in a substance of the form of the Covered Products herein; **or**

2. exhibits a warning in compliance with Proposition 65.

B. For purposes for testing pursuant to Subsection (A)(1), Defendant agrees to only use an accredited laboratory that is not located within the Country of manufacture and/or origin

of the Covered Products unless the product is manufactured and/or originates in Canada, the United States of America, or Mexico.

C. Whenever a clear and reasonable warning is required under Subsection (A)(2) for Covered Product offered for sale in the State of California, it shall state the warning described in Subsection (D) below in such a conspicuous and prominent manner as to be likely to be read and understood by the consumer prior to or at the time of the sale or purchase.

D. The Parties agree that the following warning shall constitute a Compliant Warning for the Listed Chemical in the Covered Product:

the text, “**WARNING:** This product can expose you to chemicals including Di (2-ethylhexyl) phthalate (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.” accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, “**WARNING**” as provided by regulations adopted on or about August 30, 2016

E. The triangular warning symbol specified in Subsection (D) shall be in yellow with a black exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered Product label is not printed against a yellow background.

F. The Parties agree the specifications for Compliant Warnings in this Settlement Agreement comply with Proposition 65 and its regulations as of the Effective Date.

G. The Parties agree that Defendant complies with the warning requirements by placing the Compliant Warning on its product and advising any distributors that the Compliant Warning is required on any downstream online sales, in accordance with 27 CCR § 25602.

H. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

I. Covered Products already in the stream of commerce shall be deemed exempted from the requirements of this section III and shall be permitted to be sold through as previously manufactured, packaged and labeled.

IV. Payments.

A. **Payment from Defendant.** Within fifteen (15) business days of the Effective Date, Defendant shall make the Total Settlement Payment of \$12,000.

B. **Allocation of Payments.** The Total Settlement Payment shall be paid in three (3) separate checks made payable and allocated as follows:

1. **Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to MONARCH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")).

a. Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$1500.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered along with a 1099 as follows: Attn: Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, MS #19B, Sacramento, CA 95812-4010.

b. The MONARCH portion of the civil penalty payment in the amount of \$500.00 shall be made payable to MONARCH and associated with taxpayer identification number 88-0835494. This payment shall be delivered along with a 1099 to MONARCH, 573 N OLIVE STREET, VENTURA, CA 93001.

2. **Attorney's Fees and Costs.** A reimbursement of MONARCH's attorney's fees and costs in the amount of \$10,000.00 payable to the "Greenbaum Law Firm," and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Greenbaum Law Firm, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406, along with a 1099 for the same amount.

V. Reporting of the Settlement Agreement. MONARCH shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

VI. Execution in Counterparts and Facsimile. This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

VII. Entire Agreement. This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

VIII. Modification of Settlement Agreement. Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

IX. Application of Settlement Agreement.

A. This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, MONARCH and the Releasees and Downstream Releasees identified in Section 2, Subsection (2)(A) above.

B. Defendant's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 by the Releasees and Downstream Releasees with regard to the Listed Chemical in the Covered Product.

X. Notification Requirements.

A. Any notice required or permitted shall be effective if sent via email, unless one of the Parties requests notice in another method, to the following designees:

For MONARCH:

Daniel N. Greenbaum, Esq.

Email: dgreenbaum@greenbaumlawfirm.com

For Avery Elle:

Michael J. Gleason, Esq.

Email: mgleason@hahnlaw.com

B. Any Party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

XI. Severability. If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

XII. Governing Law.

A. The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

B. This Settlement Agreement shall have no application to Covered Products which are not sold to California consumers.

C. If Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Defendant shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, any Covered Product that are so affected.

D. The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties.

E. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel.

F. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

XIII. Authorization.

A. Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented and legally bind that Party.

B. The undersigned have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

C. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

Dated: Sep 21, 2023

MONARCH

By: Sayward Halling
Sayward Halling (Sep 21, 2023 10:55 PDT)

Dated: 9/20/2023

AVERY ELLE, INC.

By: By Jamie Gracy
President Avery Elle Inc.







_AveryElleSettlementAgreement

Final Audit Report

2023-09-21

Created:	2023-09-21
By:	Daniel Greenbaum (dgreenbaum@greenbaumlawfirm.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAACmO7q4gAwooYoXCugZT7_pBqdd8iFpbt

"_AveryElleSettlementAgreement" History

-  Document created by Daniel Greenbaum (dgreenbaum@greenbaumlawfirm.com)
2023-09-21 - 5:49:16 PM GMT- IP address: 76.93.114.87
-  Document emailed to sayward@monarchaction.com for signature
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-  Email viewed by sayward@monarchaction.com
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-  Signer sayward@monarchaction.com entered name at signing as Sayward Halling
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-  Document e-signed by Sayward Halling (sayward@monarchaction.com)
Signature Date: 2023-09-21 - 5:55:43 PM GMT - Time Source: server- IP address: 172.222.161.155
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