

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand, and Jahie PTY LTD. (“JAHIE”) on the other hand, with JAHIE and EP each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Introduction.

1.2.1 EP is a limited liability company duly organized and existing in the State of California, which alleges that it 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 JAHIE employs ten or more persons, and EP alleges that JAHIE 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 JAHIE imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical listed pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. EP further alleges JAHIE failed to provide the warning required by Proposition 65 for exposures to DEHP from the Covered Products.

1.2.4 JAHIE denies all factual allegations and maintains that all products it has sold and distributed in California, including the Covered Products, have been, and are in, compliance with all laws, including Proposition 65.

1.3 Product Description.

The products covered by this Settlement Agreement are the badminton sets, including the Are You Game Badminton Set (SKU# 043441903) and the Summer Days Giant Badminton Set (SKU# 731938), which were imported, sold and/or distributed for sale in California by JAHIE (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On July 11, 2023, EP served JAHIE, TJ Maxx of CA, LLC (“TJ Maxx”), Marshalls of MA, Inc. (“Marshalls”) and the requisite public enforcement agencies with two 60-Day Notices of Violation (“Notices”), related to the Covered Products, alleging that JAHIE, TJ Maxx and Marshalls violated Proposition 65. The Notices alleged that JAHIE, TJ Maxx and Marshalls failed to warn their consumers in California of exposures to DEHP from the Covered Products.

The Parties subsequently exchanged information about EP’s allegations and the sales of 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 Notices.

1.5 No Admission.

The Parties enter into this Settlement Agreement to settle disputed claims between them concerning the Parties’ and the Covered Products’ compliance with Proposition 65. Specifically, EP alleges that JAHIE sold or distributed for sale in the state of California, Covered Products which contained DEHP without first providing the clear and reasonable warning required by Proposition 65. JAHIE denies that such a warning is required under Proposition 65 or any otherwise applicable law.

JAHIE further denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has sold and/or 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 JAHIE 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 JAHIE of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by JAHIE. This Section shall

not, however, diminish or otherwise affect JAHIE' 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, or upon receipt of W-9 forms from the appropriate payees, whichever is later.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Commencing on the Effective Date, and continuing thereafter, Covered Products that JAHIE 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, and be exempt from any Proposition 65 warning requirements with respect to DEHP if the Products meet the standard of "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 1,000 parts per million (0.1% by weight) 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, JAHIE may not distribute or sell new Covered Products in California that are not Reformulated Products, or that do not contain the warnings set forth in Paragraph 2.3.

2.2 **Warning Option.** Covered Products that do not meet the Reformulation Standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that are sold or shipped to consumers in California after the Effective Date, or that are sold or shipped to retailers or distributors for sale to California consumers. No Proposition 65 warning for DEHP

shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3 **Warning Language.** Commencing on the Effective Date, JAHIE shall ensure that any Covered Products that it sells that is not reformulated under section 2.1, to California consumers, distributors, or retailers who offer Covered Product for sale in California, include a clear and reasonable warning. The warning shall include a triangle with a yellow body and black exclamation point and be affixed to the packaging or labeling using the language in the warnings below:

△ **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.

OR

△ **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 to which specific Product 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, JAHIE shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement

2.4 **Internet Warnings.** For any Covered Products sold by JAHIE through the internet, the relevant warnings shall comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

2.5 **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)

JAHIE shall pay a civil penalty of \$1,500 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. JAHIE 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 \$1,125 representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for EnviroProtect" in the amount of \$375 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 a W-9 at least five business days before payment is due. The payment shall be delivered within fifteen (15) business days of the Effective Date, or upon JAHIE's receipt of the appropriate W-9 forms, whichever is later, to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
6080 Center Dr., Suite 210
Los Angeles, CA 90045

Payment may also be made by wire or ACH or wire transfer. Instructions will be provided separately upon request.

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, JAHIE shall pay the total amount of \$21,500 for all fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of JAHIE, and

negotiating a settlement. JAHIE shall wire the funds (instructions will be provided upon request) or make payment by check payable to "Kawahito Law Group APC." The payment shall be delivered within fifteen (15) business days of the Effective Date, or upon JAHIE's receipt of the appropriate W-9 forms, whichever is later, to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
6080 Center Dr., Suite 210
Los Angeles, CA 90045

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

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 agents, employees, representatives, attorneys, successors and/or assignees, releases JAHIE and each of its respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, and each entity to which JAHIE directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to its parents, subsidiaries, and affiliates, and any downstream distributors, wholesalers, customers, retailers (including but not limited to, The TJX Companies, Inc., its parents, subsidiaries, and affiliates), 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 in California before the Effective Date. This Release shall also cover any Covered Products that were manufactured or already in the stream of commerce prior to the Effective Date. However, as of the Effective Date, no new Covered Products shall be distributed in California that are not Reformulated Products or contain the

warnings set forth in Sections 2.2 and 2.3. 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, employees, 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, JAHIE and Releasees that it or they may have including, without limitation, all actions, causes of action, claims, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, remedies, expenses, investigative fees, expert fees, and attorneys' fees, of any kind or nature whatsoever, whether in law or in equity, for any and all claims arising under Proposition 65 related to the Covered Products, 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 JAHIE or Releasees.

EP expressly waives and relinquishes any and all rights and benefits which it or the Releasees may have under, or which may be conferred on them by California Civil Code section 1542 of any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the Covered Products; Civil Code section 1542 states:

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 **JAHIE's Release of EP.**

JAHIE 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, 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.

5.3 Public Benefit.

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

5.4 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. Before commencing any action to enforce this Settlement Agreement, a Party must provide written notice of the alleged breach, including all facts and documents supporting same. The parties then agree to work in good faith to address the alleged breach prior to filing suit. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

6. 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.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and without regard to its conflicts of laws principles.

8. NOTICES

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; (c) a recognized overnight courier; or (d) by email to the designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to JAHIE:

Jahie PTY LTD
144 Fletcher Street
Woollahra, NSW 2025 Australia

with a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 Flower St 41st floor
Los Angeles, CA 90071
Jeff.margulies@nortonrosefulbright.com

For Notices to EP:

EnviroProtect, LLC.
3142 W. 59th Pl.
Los Angeles, CA 90043
Email: enviroprotectca@gmail.com

with a copy to:

James K. Kawahito, Esq.
Kawahito Law Group APC
Attn. EP v. JAHIE
6080 Center Dr., Suite 210
Los Angeles, CA 90045
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.

9. 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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

10. 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).

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement signed by the Parties.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

13. INTERPRETATION

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

14. 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: 3/13/24

Date:

By: Emilio Lopez
EnviroProtect, LLC

By: _____
JAHIE PTY LTD.

14. 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:

Date: 15th March 2024

By: _____
EnviroProtect, LLC

By:  _____
JAHIE PTY LTD.