

SETTLEMENT AGREEMENT

AG Notice Nos. 2024-02373

1. INTRODUCTION

1.1 Parties

This settlement agreement (Settlement Agreement) is entered into by and between Jay Epps (Epps) and Etsy, Inc. (Settling Entity) with Epps and the Settling Entity referred to as the “Parties.” Epps is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. The Settling Entity has 10 or more employees and Epps contends that the Settling Entity falls within the scope of California Health & Safety Code §§ 25249.5, *et seq.* (Proposition 65).

1.2 General Allegations

Epps alleges that the Settling Entity distributes, retails and/or otherwise facilitates the sale in California of the products defined below, and that it does so without providing the health hazard warning he contends is required by Proposition 65 for consumer exposures to lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, and birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are art pigments containing lead, hereinafter the “Product” or “Products.”

1.4 Notice of Violation

On June 14, 2024, Epps asserts that he served Etsy, Inc. and the requisite public enforcement agencies with a 60-Day Notices of Violation (“Notice”), alleging that Etsy violated

Proposition 65 when it failed to warn customers or consumers in California that the Products expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 Etsy's Position; No Admission

The Settling Entity denies the material, factual and legal allegations contained in the Notice and maintains that all Products that were sold and distributed in California have been and are in compliance with all laws. The Settling Entity's position is that all items sold on its marketplace are listed and sold by third-party sellers, and further contends that it has no obligations under Proposition 65 to provide warnings on any third-party sellers' Products. The Settling Entity further asserts that it is not a retailer and has no retail location in California or anywhere in the world. Nothing in this Settlement Agreement shall be construed as either a waiver or admission by Etsy, Inc. and each of its respective parents, subsidiaries, affiliates, past and current agents, directors, officers, employees, representatives, attorneys, successors, assignees, and/or anyone else acting on their behalf (collectively "Etsy") of any fact, finding, issue of law or violation of law, in this or any other matter; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Etsy of any fact, finding, conclusion, issue of law or violation of law. This subsection shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 13, 2024. The term "Compliance Date" shall refer to December 20, 2024.

2. **INJUNCTIVE RELIEF: WARNINGS OR REFORMULATION**

2.1 Injunctive Relief

Pursuant to the terms set forth below, with respect to Products offered for sale by Etsy's third-party sellers to customers in California, the Settling Entity, at its option, agrees to either: (a) require its third-party sellers of the Products to list for sale only Reformulated Products; (b) require its third-party sellers of Products sold on etsy.com to provide clear and reasonable Proposition 65 warnings for the Products as set forth in subsection 2.3, below and/or Etsy will ensure the Product listings for sale on etsy.com display clear and reasonable Proposition 65 warnings; or (c) delist the Products offered for sale from etsy.com as set forth in subsection 2.4. The Parties understand and agree that some Product listings may appear on etsy.com that contain no warning, but are not available for sale to California consumers (sales cannot be completed) and that this complies with this subsection 2.1(c). Nothing in this paragraph, or anything else in this Settlement Agreement, requires Etsy or its sellers to place warnings on, remove, or take other compliance measures with respect to Products or listings that are not covered by Proposition 65.

2.2 Reformulation Standards


A "Reformulated Product" is a Product that contains lead in concentrations that do not exceed 90 parts per million, equivalent to 0.009%, analyzed pursuant to U.S. Environmental Protection Agency (EPA) methodologies 3050B and 6010C or any equivalent methods or tests utilized by any California or federal agency to determine lead content in a solid substance

2.3 Clear and Reasonable Warnings (Products Sold Online)


Each warning for the Products subject to this Settlement Agreement shall be prominently placed 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 of purchase or use.

(a) Warning. The warning shall consist of the following or statement

(Warning):

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

or

 **WARNING:** This product can expose you to chemicals including lead, 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.

(b) Short-Form Warning. Etsy and/ or its sellers on etsy.com may use the following short-form warning in any Product listing that requires a warning, as set forth in this subsection 2.3 (Short-Form Warning), so long as it is allowed under Proposition 65's implementing regulations:

 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

or

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

If any of the Products (other than Reformulated Products) are offered for sale on etsy.com to California consumers after the Compliance Date, such Product listings shall contain a warning (as set forth above) which is displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory. When a warning is required, the Proposition 65 warning (or a clearly and reasonably marked hyperlink to the warning using “⚠ Warning” or “⚠ Product Warning”) may appear either: (a) on the Product listing page (i.e., a page where the Product’s image, price and the add-to-cart button are displayed); (b) on the same page as the order confirmation for the Products (e.g., review cart URL); or (c) during the checkout process for any shipment recipient with a California address.

2.4 Option to Delist

On or before the Compliance Date, Etsy may, at its option, comply with the injunctive commitments set forth in subsection 2.3 above by delisting a Product such that the item is then unavailable for shipment to an address in California. If it does so, the previously delisted Product may be reinstated for sale online to California consumers if it complies with subsections 2.1 through 2.3 prior to the date of such relisting.

2.5 Right to Cure

As of the time of this Settlement Agreement, neither Epps nor his counsel have any specific knowledge of the presence of any other product listings not previously disclosed to the Settling Entity as of the Effective Date on the site operated by Etsy that, in their opinion, fail to comply with Proposition 65’s warning requirement. Epps represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against Etsy. Epps further warrants that neither he nor his agents

or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Settlement Agreement.

To the extent Epps identifies any Products in the future, which he believes are not in compliance with Proposition 65 or this Settlement Agreement, Epps agrees to advise Etsy of such potential violation in the manner set forth in Section 7, and provide Etsy with 45 calendar days (calculated from the date notice is provided electronically) to either (a) cure any alleged violation, (b) provide a Proposition 65 warning in connection with the Product(s), or (c) take other action to ensure that the Product is not sold in California.

Such notice to Etsy shall contain information sufficient for Etsy to identify the Product and the seller of the Product, including without limitation, the Etsy listing URL, the name of the Product, and/or the seller shop name of the Product as well as a screenshot of the Product's online listing. If the alleged non-compliance is cured, Epps shall take no further action to enforce Proposition 65 or this Settlement Agreement with respect to the alleged failure to comply with Proposition 65 or the terms of this Settlement Agreement, and the matter shall be deemed to be resolved. Further, so long as Etsy cures the alleged non-compliance relating to a Product subject to this Settlement Agreement within the 45 days, Etsy shall not be in breach or violation of this Settlement Agreement in any respect. In the event Epps advises Etsy of any alleged non-compliant Product as discussed herein, Epps shall not be entitled to financial remuneration, provided Etsy timely remedies the non-compliant Product as discussed herein.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Fines

Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims alleged in the Notice, the Settling Entity agrees to pay a total of \$6,000 in civil fines on behalf of the sellers

of the Products. This payment will be allocated in accordance with Health & Safety Code §25249.12(c)(1) and (d), with 75% of the penalty amount paid to OEHHA and the remaining 25% of the penalty amount paid to and retained by Epps.

The Settling Entity will deliver its civil penalty payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is delivered to Epps' counsel on or before on or before the Effective Date, subject to Epps and Epps' counsel completing any reasonably necessary tax and compliance documentation to enable Etsy to complete the payment. For non-electronic payments, the Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$4,500; and (b) "Jay Epps" in the amount of \$1,500. Thereafter, Epps' counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Epps.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Epps and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, the Settling Entity expressed a desire to resolve Epps' fees and costs. The Parties then negotiated a resolution of the compensation due to Epps' counsel under general contract principles, Proposition 65 implementing regulation for fee awards at 11 California Code of Regulations § 3201 and/or the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement, the Settling Entity shall reimburse Epps' counsel \$30,000. The Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is received by

Epps' counsel on or before the Effective Date, in the form of a check payable to "Chanler, LLC," subject to Chanler, LLC completing any reasonably necessary tax and compliance documentation to enable Etsy to complete the payment. The reimbursement covers all fees and costs of any kind incurred by Epps and his counsel investigating, bringing this matter to the Settling Entity's attention and negotiating a settlement of the matter for the Products in furtherance of the public interest.

3.3 Payment Address and Effect of Non-Payment

All non-electronic payments required by this Settlement Agreement shall be delivered to the following address:

Chanler, LLC
Attn: Proposition 65 Controller
72 Huckleberry Hill Road
New Canaan, CT 06840

4. **CLAIMS COVERED AND RELEASED**

4.1 Epps' Release of the Settling Entity

This Settlement Agreement is a full, final and binding resolution between Epps, as an individual (and not on behalf of the public, yet furthers the public's health interest), and the Settling Entity, of any violation of Proposition 65 that was or could have been asserted by Epps on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Etsy and each of its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (together, "Releasees"), based on their failure to warn about alleged exposures to lead contained in the Products that were sold and/or offered for sale in California before the Effective Date. In further consideration of the promises and agreements herein contained, Epps as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,

hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 exclusively, investigation fees, expert fees, and attorneys' fees, arising from or relating to the Products, under Proposition 65, against the Settling Entity, the sellers of the Products (limited to sales made on etsy.com), and the Releasees. Nothing in this subsection, therefore, shall affect Epps' right to commence an action under Proposition 65 against the Settling Entity and its Releasees that do not involve the Products covered by this Settlement Agreement. Epps represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against the Settling Entity. Epps further warrants that neither he nor his agents or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Settlement Agreement.

4.2 The Settling Entity's Release of Epps

The Settling Entity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Epps and his attorneys and other representatives, for any and all actions taken or statements made by Epps and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notice or Products.

5. **SEVERABILITY**

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

6. GOVERNING LAW & ENFORCEMENT

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. Nothing in this Settlement Agreement shall be interpreted to relieve the Settling Entity from any obligation to comply with any pertinent state or federal law. The Parties agree that if the OEHHA changes its warning regulations affecting subsections 2.3 through 2.5 above, then the Settling Entity may either conform with the revised law or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow. In doing so, the Settling Entity will be in compliance with this Settlement Agreement as long as it continues to fulfill any warning obligations unaffected by such new changes. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then the Settling Entity shall provide written notice to Epps of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notices provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first class (registered or certified mail) return receipt requested; or (c) sent by overnight courier; and (d) electronically transmitted to one party by the other party at the following addresses:

For the Settling Entity:

Etsy, Inc.
Attn: Legal Department
Etsy, Inc.
117 Adams Street
Brooklyn, NY 11201-1401
legal@etsy.com

With a copy to:

William F. Tarantino, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
wtarantino@mof.com

For Epps:

Proposition 65 Coordinator
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840
clifford@chanlerLLC.com

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

8. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Epps agrees to comply with the reporting requirements referenced in Health & Safety Code §25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agreed to all of the terms and conditions contained herein.

<p>AGREED TO:</p> <p>Date: November _____, 2024</p> <p>By: _____ Jay Epps</p>	<p>AGREED TO:</p> <p>Date: November <u>22</u>, 2024</p> <p>Signed by:  By: _____ 8B7EF4ED1F3B434... Allie Droz Director, Assistant General Counsel Etsy, Inc.</p>
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