

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA” or “Plaintiff”), on the one hand, and Rubies II, LLC (“Rubies” or “Defendant”), on the other hand, with EHA and Rubies each sometimes individually referred to as a “Party” and collectively as the “Parties.” EHA alleges that it is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that Rubies 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Rubies manufactures, imports, sells, and/or distributes for sale in California, face paint and costume cosmetic products that contain diethanolamine (“DEA”). EHA further alleges that Defendant does so without first providing a warning required by Proposition 65 and its implementing Regulations. DEA is a chemical listed pursuant to Proposition 65

1.3 Product Description

The products covered by this Settlement Agreement are defined as face paint costume related cosmetic products, including but not limited to Halloween Express Zombie Ooze, Glow in the Dark Cream Makeup, and Rubies Red Cream Makeup (“Covered Products”), that are manufactured, imported, sold and/or distributed for sale in California by Rubies.

1.4 Notices of Violation

On or about October 12, 2024 and November 8, 2024, EHA served Rubies, the California Attorney General, and certain other public enforcement agencies with three 60-Day Notices of Violation of Proposition 65 (the “Notices”). The Notices alleged that Rubies had violated Proposition 65 by failing to sufficiently warn consumers in California concerning alleged exposures to DEA

contained in Covered Products. To the best of the parties' knowledge, no public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notices.

1.5 No Admission

Rubies enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notices, and any other claim by Plaintiff concerning alleged DEA in the Covered Products, and solely to avoid prolonged and costly litigation. Rubies denies the material factual and legal allegations contained in the Notices, maintains that it is not a person in the course of doing business that is subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and distributed in California, including the Covered Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by Rubies of any fact, finding, issue of law, or violation of law, including but not limited to any fact or conclusion of law suggesting or demonstrating that Rubies has sold any products in California, or that it has violated Proposition 65, or that it is a person in the course of doing business for purposes of Proposition 65; nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by Rubies of any of the above, such being specifically denied by Rubies. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Rubies may have in this or any other future legal proceedings, including Rubies's position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by Rubies solely for purposes of settling, compromising, and resolving issues disputed in the Notices. However, this Section 1.5 shall not diminish or otherwise affect the Parties' 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 this Settlement Agreement is executed by the Parties.

1.7 Compliance Date

For the purposes of this Settlement Agreement, the term “Compliance Date” shall mean 90 days after the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation or Product Warnings

As of the Compliance Date, Rubies shall not manufacture, import, distribute, sell, or offer the Covered Products for sale in the State of California unless: (i) the Covered Products are Reformulated Products pursuant to Section 2.2; or (ii) Rubies provides a clear and reasonable warning pursuant to Section 2.3. The Parties agree and intend that Rubies’ compliance with the terms of this Settlement Agreement shall constitute compliance by Rubies with Proposition 65 with respect to actual or alleged exposures to DEA from the Covered Products. As used in this Section 2, “distribute for sale in California” means to directly ship Covered Products into California or to sell Covered Products to a distributor Rubies knows will sell Covered Products in California.

2.2 Reformulation Standard


On and after the Compliance Date, Rubies agrees not to distribute, sell or offer for sale in California any Covered Products that contain triethanolamine (“TEA”) which is the source of DEA in the Covered Products, or any other ingredients that Rubies has actual knowledge will reach a concentration of 10 parts per million (“ppm”) of DEA in the Covered Products, unless the Covered Products contain a Proposition 65 warning as set forth in Section 2.3 below. Rubies shall be entitled to rely on its own or supplier testing to determine compliance with the Reformulation Standard.

2.3 General Warning Requirements

Commencing on the Compliance Date, Rubies agrees that any Covered Product manufactured for sale in California that is not reformulated pursuant to paragraph 2.1 shall contain a “clear and reasonable” Proposition 65 safe harbor warning. Rubies agrees that each Proposition 65 warning shall be placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be seen, 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 understands to which specific Covered Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable Proposition 65 DEA warning for the Covered Products shall consist of a product-specific warning via one or more of the following methods: (1) A warning directly affixed or contained in/on the product's labeling or tag; (2) A posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product; (3) Any electronic device or process that automatically provides the warning to the purchaser (not applicable to internet purchases, which are subject to the provisions of § 25602(b)) or (4) A short-form warning on the labeling that complies with the content requirements set forth in 27 Cal. Code of Regs. §§ 25603(b) and 25603(a). Specifically, pursuant to § 25603(a) – (d), one of the following statements shall be utilized:

- 1)  “WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:” This product can expose you to chemicals including diethanolamine (“DEA”), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.


OR

SHORT FORM

- 2)  “WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”: Cancer risk from exposure to Diethanolamine (“DEA”). See- www.P65Warnings.ca.gov


OR

SHORT FORM

- 3)  “WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:” Can expose you to Diethanolamine (“DEA”), a carcinogen. See www.P65Warnings.ca.gov.

OR

SHORT FORM ON
A PRODUCT
MANUFACTURED/
LABELED PRIOR
TO 1/1/28,
REGARDLESS OF
DATE OF SALE

- 4)  WARNING: Cancer- www.P65Warnings.ca.gov

The triangle above shall be yellow on the warning statement except that where the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the warning text, in a size no smaller than the height of the word, "WARNING." A short-form warning provided on a Covered Product must be in a type size that complies with Cal. Code Regs Tit. 27, § 25601(c). In no case shall a warning statement displayed on the Covered Product's packaging appear in a type size smaller than 6-point type. Where a sign, labeling, or label as defined in Section 256001.1 is used to provide a warning that includes "consumer information" about a product in a language other than English, the warning must also be provided in that language in addition to English.

As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold by Rubies online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must be provided via one of the following methods: (1) A warning on the product display page; (2) A clearly marked hyperlink using the word "WARNING" or the words "CA WARNING" or "CALIFORNIA WARNING" on the product display page that links to the warning; or (3) An otherwise reasonably conspicuously displayed warning provided to the purchaser prior to completing the purchase. For purposes of this section, a warning is not prominently displayed if the purchaser must search for it in the general content of the website. These requirements extend to any websites under the exclusive control of Rubies where Covered Products are sold into California, and any third party websites where Rubies controls the content of the Covered Product listing. In addition, Rubies shall instruct any third-party website to which it directly sells its Covered Products, if it has the ability to do so, to include the same online warning, as set forth above, as a condition of selling the Covered Products in California.

There shall be no obligation for Rubies to provide a warning for Covered Products that entered the stream of commerce prior to the Compliance Date, and the Section 4 release applies to all such Covered Products.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission

applicable to the Covered Products and the chemical at issue, which are different than those set forth above, Rubies shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to DEA in this product are no longer required, a lack of warning by Rubies will not thereafter be a breach of this Agreement.

Nothing in this Settlement Agreement is intended to prevent Rubies from providing any other Proposition 65 safe harbor warning for other listed chemicals that may be contained in Covered Products so long as the safe harbor warning also covers DEA in the Covered Products if the Covered Products do not meet the DEA reformulation standard under this Settlement Agreement.

2.4 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

2.5 Most Favored Nations Provision

EHA represents and warrants that as of the Effective Date, it has not entered into any settlement agreement with any other party nor has any court entered any judgment that sets forth a reformulation standard for DEA that is higher (less strict) than the one set forth herein. If, after the Effective Date, EHA, or another private or public enforcer, enters into any settlement agreement and/or a court enters any judgment in any Proposition 65 enforcement action over exposure to DEA that imposes a different, higher (less strict) reformulation standard from that set forth in this Settlement Agreement, the Parties agree Section 2.1 of this Settlement Agreement is automatically modified to conform with the obligations or injunctive relief provided in such later agreement or judgment. If, after the Effective Date, a court enters any judgment in any Proposition 65 enforcement action that determines that no Proposition 65 warnings premised on exposure to DEA for Covered Products are required, the Parties agree that the obligations in Section 2.1 of this Settlement Agreement will immediately and automatically end.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, Rubies agrees to pay two thousand dollars (\$2,000) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty amount retained by EHA. Rubies shall issue two separate checks for the initial civil penalty payment to: (a) “OEHHA”; and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$1,500 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$500 to EHA, due fourteen (14) days after the Effective Date.

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Rubies agrees to pay twenty-one thousand dollars (\$21,000) for all attorney's fees and expenses, including but not limited to all fees and expenses incurred in investigating, testing, consulting with experts, bringing this matter to the attention of Rubies, and negotiating this settlement in the public interest. The twenty-one thousand dollars (\$21,000) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP as one payment of \$21,000, due fourteen (14) days after the Effective Date.

All payments required under this Section shall be payable to Entorno Law, LLP and delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.3 Tax Documentation

Rubies agrees to provide a completed IRS 1099 Form for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Rubies cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Rubies receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf, and Rubies, for all claims that can or could have been asserted by EHA, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Rubies and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, to whom or from whom Rubies directly or indirectly obtains and/or distributes or sells the Covered Products, including but not limited to Rubies' suppliers, downstream distributors, wholesalers, customers, retailers (including but not limited to Walmart Inc. and its affiliates and Halloween Express LLC), franchisees, cooperative members, licensors, and licensees (collectively "Releasees") from all

claims for violations of Proposition 65 based on actual or alleged exposure to DEA from Covered Products manufactured, imported, distributed, or sold prior to the Compliance Date as set forth in the Notices. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposures to DEA from Covered Products as set forth in the Notices.

In further consideration of the promises and agreements herein contained, EHA on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Rubies and the Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, including, but not limited to, investigation fees, expert fees and attorney's fees arising under Proposition 65 with respect to the alleged or actual failure to provide Proposition 65 warnings about exposures to DEA in the Covered Products manufactured, distributed, sold or offered for sale by Rubies, before the Compliance Date.

4.2 Rubies' Release of EHA

Rubies, on its own behalf, and on behalf its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

4.3 No Other Known Claims or Violations

EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged violations of Proposition 65 by Defendant or for which Rubies bears legal responsibility other than those that are fully resolved by this Settlement Agreement.

4.4 California Civil Code Section 1542; Mutual Release of Known and Unknown Claims

It is possible that other claims not known to the Parties, including but not limited to those arising out of the facts alleged in the Notice and relating to products manufactured, imported, distributed, and/or sold by Rubies and its affiliates through the Compliance Date, will develop or be discovered. EHA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees only, and Rubies on behalf of itself and its affiliates, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims for products manufactured, imported, distributed, and/or sold by or for Rubies and/or its affiliates up through the Compliance Date. The Parties acknowledge that the claims released in this Section 4. may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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.

Rubies and EHA, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them 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 they may lawfully waive such rights or benefits pertaining to the released matters. Rubies and EHA each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.5 Deemed Compliance with Proposition 65

The Parties agree that compliance by Rubies with this Settlement Agreement constitutes compliance with Proposition 65 with respect to any actual or alleged exposure to DEA from use of the Covered Products.

5. **PUBLIC BENEFIT**

It is the Parties' understanding that the commitments Rubies has agreed to herein, and actions to be taken by Rubies under this Settlement Agreement, 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 the Parties that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Rubies' alleged failure to provide a Proposition 65 warning concerning actual or alleged exposure to DEA prior to use of the Covered Products it has manufactured, imported, distributed, sold, or offered for sale in California, or will manufacture, import, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Rubies is in material compliance with the terms of this Settlement Agreement.

6. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held 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 apply within the State of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable as to DEA in the Covered Products, Rubies shall no longer be required to comply with Section 2 of this Settlement Agreement.

8. **ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. EHA shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if Rubies demonstrates that it has complied

with the requirements of Sections 2 and 3. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

9. **NOTICE**

Unless otherwise specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier; and (iv) with a copy by email.

For Rubies:

Alexis N. Mueller or current General Counsel
Rubies II, LLC
603 Sweetland Avenue
Hillside, NJ 07205-1799
amueller@adpopulumllc.com

With Copy to:

J. Robert Maxwell
Rogers Joseph O'Donnell
311 California Street, 10th fl
San Francisco, CA 94104
JMaxwell@rjo.com

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

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.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA agrees to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

12. MODIFICATION

12.1 This Settlement Agreement may be modified only by written agreement of the Parties or as set forth herein.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

14. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

AGREED TO:

AGREED TO:

Date: 2/24/26

Date: 02/20/2026

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: Thomas Jones
Thomas Jones (Feb 20, 2026 15:24:53 EST)
RUBIES II, LLC