

SETTLEMENT AGREEMENT

AG Notice Nos. 2025-00673

1. INTRODUCTION

1.1 Epps and Wayfair LLC

This settlement agreement (Settlement Agreement) is entered into by and between Jay Epps and Wayfair LLC (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. Wayfair employs ten or more persons. Epps alleges that Wayfair is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, 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 for sale in California the products defined in subsection 1.3 below to (a) California consumers or (b) non-California consumers for which the products are shipped to an address in California (collectively, “Customers”), and that it does so without providing the online health hazard warning he contends is required by Proposition 65 for consumer exposures to toluene. Epps further alleges that notwithstanding Settling Entity’s asserted compliance with on-product labeling (and further, inclusion of an MSDS in the packaging) providing the health hazard warning he contends is required by Proposition 65 for consumer exposures to toluene, Settling Entity’s website warning is not compliant with such requirements for on-line sales to California addresses. Toluene is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are clear and colored furniture wax containing toluene, specifically limited to those branded, supplied or made by Briwax International Inc., which were offered for sale by the Settling Entity on wayfair.com hereinafter the “Product” or “Products.” A list of the covered furniture wax products is attached hereto as Exhibit A.

1.4 Notice of Violation

On February 28, 2025, Epps served the Settling Entity, and the requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that the noticed entities violated Proposition 65 when they failed to warn consumers with California addresses that purchase the Product through on-line sales that the clear and colored furniture wax branded, supplied or made by Briwax International Inc., expose users to toluene. 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 No Admission

The Settling Entity denies the material, factual and legal allegations contained in the Notice and maintains that all Products that were manufactured, sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as either a waiver or admission by the Settling Entity 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 the Settling Entity 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 February 20, 2026. The term “Compliance Date” shall refer to March 31, 2026.

2. **INJUNCTIVE RELIEF: WARNINGS**


2.1 Injunctive Relief

(a) Wayfair agrees, promises, and represents that, by the Compliance Date, to the extent it ships or sells Products in California, Wayfair will either:

(1) provide the Section 2.1(b) warning on each Product's online product page on wayfair.com by (i) Wayfair applying the Section 2.1(b) warning itself, or (ii) Wayfair instructing vendors and third-party sellers of the Products to fulfill their existing contractual obligation by providing the Section 2.1(b) warning on each Product's online product page on wayfair.com and Wayfair confirming to Epps that prompt placement of the Section 2.1(b) warning on each Product's online product page were placed on wayfair.com by the Compliance Date; or

(2) cease allowing the Products to be offered for sale in California on wayfair.com.

(b) The warnings required by Section 2.1(a) shall be provided in a conspicuous and prominent manner such that they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase:

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

Wayfair may alternatively use a short-form warning (Short-Form Warning) language so long as it is allowed under Proposition 65's implementing regulations. For Products manufactured and labeled after January 1, 2028, the Short-Form Warning shall consist of the following statement:

 **WARNING:** Risk of reproductive harm from exposure to toluene. See www.P65Warnings.ca.gov

(c) Wayfair shall notify in writing all vendors and third-party sellers of the Products of the legal requirement to provide the Section 2.1(b) warning statement for each Product online,

and that the California Attorney General requires that vendors and third-party sellers of the Products that are subject to Proposition 65 also apply the Section 2.1(b) warning statement, or a Proposition 65 compliant warning, directly on the packaging of the Products. Wayfair shall not be responsible or liable for failures of any vendors or third-party sellers of the Products to fulfill their independent Proposition 65 obligations.

(d) To the extent that the product information for any of the Products appears in a foreign language (e.g., if a potential purchaser chooses to review wayfair.com's website in Spanish, using wayfair.com's translation feature), the Proposition 65 warning shall appear in the same foreign language.

(e) The Parties understand and agree that some Products may be offered for sale on wayfair.com without the Section 2.1 warning, if the shipping address entered by a customer is not in California, and that the lack of a warning under such circumstances is not a breach of this Settlement Agreement or a violation of Proposition 65.

2.2 Option to Delist

On or before the Compliance Date, the Settling Entity may, at its option, comply with the injunctive commitments set forth in subsection 2.1 above by delisting a Product such that the item is then unavailable for online sale 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 subsection 2.1 prior to the date of such relisting.

2.3 Products in the Stream of Commerce

The Injunctive Relief requirements in this Section 2 shall not apply to Product in the stream of commerce as of the Compliance Date.

2.4 Right to Cure (No Assignment or Transfer of Claims)

As of the time of this Settlement Agreement, neither Epps nor his counsel have any specific knowledge of the presence of any other Products listed to be sold and to be shipped to an address in California 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 Wayfair based on the Notice or the subject matter of the Notice. 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, his agents, or his attorneys identify any Product for sale on wayfair.com to consumers in California, which they believe is not in compliance with this Settlement Agreement, Epps agrees to advise Wayfair of such alleged breach in the manner set forth in Section 7, and provide Wayfair with forty-five (45) calendar days (calculated from the date written notice is provided electronically) to cure any alleged violation, including by providing a Proposition 65 warning or taking action to ensure that the product is not sold to any purchaser with a shipping address in California. Such notice to Wayfair shall contain information sufficient for Wayfair to identify the product(s) and the product's seller, which shall include the listing number, the name of the product, a screenshot of the product's online listing, and at least a summary explanation as to why Epps believes it is a Product not in compliance.

If the alleged non-compliance is cured within the forty-five (45) calendar days, then Wayfair shall: (i) not be deemed in breach or violation of Proposition 65 based on the Notice, or in breach of this Settlement Agreement in any respect; (ii) Epps shall take no further action to enforce Proposition 65 based on the Notice or this Settlement Agreement; (iii) Epps shall not be entitled to seek or recover any civil penalties; (iv) Epps and his counsel shall not be entitled to seek or recover any attorneys' fees or costs, or any other available remedies arising from or relating to the alleged failure to comply with Proposition 65 or the terms of this Settlement Agreement; and (v) the matter shall be deemed to be resolved by and between Wayfair and Epps as to such products.

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 \$4,000 in civil fines. 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 the Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount paid to and retained by Epps. The assessment of fines is based upon, among other statutory factors, the number of furniture wax sold and shipped to consumers in California during the relevant period as disclosed to Epps by Wayfair.

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. The reimbursement shall cover all fees and costs incurred by Epps investigating, bringing this matter to the Settling Entity's attention and negotiating a settlement for the claims alleged in the Notice in furtherance of the public interest for the Products. For all work performed in connection with the claims alleged in the Notice through the mutual execution of this agreement, the Settling Entity shall reimburse Epps' counsel \$28,500.

3.3 Payment

All payments required under this Settlement Agreement shall be delivered to Epps' counsel within thirty (30) calendar days after the Effective Date, subject to Epps and Epps' counsel completing any reasonably necessary tax and compliance documentation to enable the Settling Entity to complete the payment which the Parties acknowledge has already been transmitted. For non-electronic payments, the Settling Entity shall provide three checks made payable as follows: (a) "OEHHA" in the amount of \$3,000; (b) "Jay Epps" in the amount of \$1,000; and (c) "Chanler, LLC" in the amount of \$28,500. For electronic payment, Epps'

counsel shall send the respective portions of the penalties paid by the Settling Entity to OEHHA and Epps.

If payment is to be made by mail, the Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number.

3.3 Payment Address

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

If payment is made through an automatic electronic transfer, such information shall be provided to the Settling Entity by Epp's counsel.

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 its 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 the Settling Entity and each of its parents, subsidiaries, affiliated entities under common ownership, including without limitation, directors, officers, employees, attorneys, as well as any distributors or other sellers of the Settling Entity's Products (releasees), based on their failure to warn about alleged exposures to toluene contained in the Products. This release is expressly limited to Products sold and/or offered for sale for shipment to consumers with a California address on wayfair.com before the Compliance Date and to such Products brought into California by those purchased by consumers with a non-California address.

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 under Proposition 65 with respect to toluene in the Products against the Settling Entity and the releasees in connection with the Notice. 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

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 (or those that could have been taken or 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. This release is expressly limited to such actions or statements made prior to the Effective Date.

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 2.1 through 2.3 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, notices, and service of process required to be 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:

Erik K. Swanholt
Foley & Lardner LLP
555 S Flower St
Suite 3300
Los Angeles, CA 90071
eswanholt@foley.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.

AGREED TO:

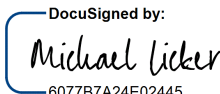
Date: March 6, 2026

By: 

Jay Epps

AGREED TO:

Date: March 6, 2026

By: 

DocuSigned by:
Michael Licker
6077B7A24E02445

Name: Michael Licker

Title: Head of Litigation and Investigations
Wayfair LLC

EXHIBIT A

<i>PRODUCT NAME</i>
Briwax - Original - 16 oz, A - CLEAR
Briwax - Original - 16 oz, B – LIGHT BROWN
Briwax - Original - 16 oz, C – DARK BROWN
Briwax - Original - 16 oz, D – ANTIQUE MAHOGANY
Briwax - Original - 16 oz, E – GOLDEN OAK
Briwax - Original - 16 oz, F – EBONY
Briwax - Original - 16 oz, G – RUSTIC PINE
Briwax - Original - 16 oz, H – TUDOR BROWN
Briwax - Original - 16 oz, I – MID-BROWN / DARK OAK
Briwax - Original - 16 oz, J – TEAK
Briwax - Original - 16 oz, K – NEW SLATE GREY
Briwax - Original - 16 oz, L – NEW SILVER GREY
Briwax - Original - 3.5 Liter, M – CLEAR
Briwax - Original - 3.5 Liter, N – EBONY
Briwax - Original - 3.5 Liter, O – LIGHT BROWN
Briwax - Original - 3.5 Liter, P – DARK BROWN
Briwax - Original - 3.5 Liter, R – ANTIQUE MAHOGANY
Briwax - Original - 3.5 Liter, S – GOLDEN OAK
Briwax - Original - 3.5 Liter, T – TUDOR BROWN
Briwax - Original - 3.5 Liter, U – MID BROWN / DARK OAK
Briwax - Original - 3.5 Liter, V – TEAK
Briwax - Original - 3.5 Liter, X – RUSTIC PINE