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ALAMEDA COUNTY
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By Nancy A. Rose
NANCY ROSE, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

EMA BELL, Plaintiff, vs. STANLEY BLACK & DECKER, INC., Defendant.	Case No. RG16809883 ~~[PROPOSED]~~ **CONSENT JUDGMENT** Judge: Sandra Bean Dept.: 301 Hearing Date: July 11, 2016 Hearing Time: 2:30 PM Reservation #: R- 1743965

1. **Introduction**

1.1 On June 3, 2015, Erna Bell ("Bell") served The Black & Decker Corporation, Black & Decker (U.S.), Inc. (collectively, "Stanley Black & Decker"), Wal-Mart Stores, Inc. ("Wal-Mart"), and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*" (the "Notice"). The Notice provided Stanley Black & Decker and such others, including public enforcers, with notice that alleged that Stanley Black & Decker was in violation of California Health & Safety Code § 25249.6 ("Proposition 65"), for failing to warn consumers and customers that the hoses in Black & Decker Flex Cordless Flexible Vacs exposed users in California to the chemical Diisononyl phthalate (DiNP). No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.2 **Products Covered by this Consent Judgement.** The products covered by this Consent Judgment are those products with a household flexible vacuum hose including but not limited to the 16V Max Lithium Flex w/ Floor Head, the 20V Max Lithium Ion Flex Vac, the 20V Lithium Flex Floor Head, the 12V Automotive Flex Vac and the Flex Cordless Flexible Vac, hereinafter the "Products."

1.3 On April 1, 2016, Bell filed a Complaint for Civil Penalties and Injunctive Relief ("Complaint") in Alameda County Superior Court, Case No. RG16809883, against Stanley Black & Decker alleging violations of Proposition 65.

1.4 Stanley Black & Decker is a corporation that employs more than ten persons under California Health and Safety Code §25249.6 and offered the Product for sale within the State of California.

1.5 Bell's Complaint alleges, among other things, that Stanley Black & Decker sold the Product in California and/or to California citizens, that the Product contains DiNP, and that the resulting exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons to chemicals known to the State of California to cause cancer without first providing a clear and reasonable warning to such individuals.

1.6 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Stanley Black & Decker as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of the allegations contained in the Complaint.

1.7 The parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the parties as alleged in the Complaint for the purpose of avoiding prolonged litigation. By execution of this Consent Judgment, Stanley Black & Decker does not admit any violation of Proposition 65 and specifically denies that it has committed any such violation. Nothing in this Consent Judgment shall be construed as an admission by Stanley Black & Decker of any fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by Stanley Black & Decker of any fact, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that Stanley Black & Decker may have in any other future legal proceeding. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Stanley Black & Decker under this Consent Judgment.

1.8 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that the Consent Judgment is entered by the Court.

2. Injunctive Relief

2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter, Stanley Black & Decker shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3. Stanley Black & Decker and its downstream retailers shall have no obligation to label Product that entered the stream of commerce prior to ninety (90) days after the Effective Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in compliance with the standard set forth below in section 2.2.

2.2 "Reformulated Product" shall mean Product that contains less than or equal to 1,000 parts per million ("ppm") of DiNP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

2.3 Commencing ninety (90) days after the Effective Date, Stanley Black & Decker shall, for all Product it sells or distributes and which is intended for sale in California, and which is not a Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) below. The warning 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales

(i) Product Labeling. Stanley Black & Decker shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by Stanley Black & Decker or any person selling the Product that states:

[PROPOSITION 65] WARNING:
This product contains a chemical known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used.

(ii) Point of Sale Warnings. Alternatively, Stanley Black & Decker may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Product. Such instruction sent to Stanley Black & Decker customers shall be sent by certified mail, return receipt requested.

[PROPOSITION 65] WARNING:
This product contains chemicals known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used.

2.4 The warning requirements set forth in Section 2.3 shall not apply to any Reformulated Product.

3. Entry of Consent Judgment

3.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of this Consent Judgment, Bell and Stanley Black & Decker waive their respective rights to a hearing or trial on the allegations of the Bell Complaint and 60-Day Notice.

3.2 In the event that the Attorney General objects or otherwise comments on one or more provisions of this Consent Judgment, Bell and Stanley Black & Decker agree to take reasonable steps to satisfy such concerns or objections.

4. Matters Covered By This Consent Judgment

4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent Judgment is a final and binding resolution between Plaintiff Bell, acting on her own behalf, and on behalf of the public and in the public interest, and Defendant Stanley Black & Decker, and shall have preclusive effect such that no other person or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the Notice.

4.2 **Plaintiff's Release of Additional Claims.** As to Plaintiff Bell for and in her individual capacity only, this Consent Judgment shall have preclusive effect such that she shall not be permitted to pursue and/or take any action with respect to any other statutory or common law claim, to the fullest extent that any of the foregoing were or could have been asserted by her against Stanley Black & Decker, including any and all downstream retailers of the Product including but NOT limited to Wal-Mart, based on their exposure of persons to DiNP in the Product, or their failure to provide a clear and reasonable warning of exposure to such individuals or, as to alleged exposures to DiNP in the Product, any other claim based on whole or in part on the facts alleged in the Complaint and the Notice, whether based on actions committed by Stanley Black & Decker or its downstream retailers of the Product including but NOT limited to Wal-Mart. As to alleged exposures to DiNP in the Product, compliance with the terms of this Consent Judgment is deemed sufficient to satisfy all obligations concerning, compliance by Stanley Black & Decker and Wal-Mart with the requirements of Proposition 65 with respect to the Product, and

any alleged resulting exposure.

As to alleged exposures to DiNP in the Product, Bell acting in her individual capacity waives all rights to institute any form of legal action, and releases all claims against Stanley Black & Decker, Wal-Mart (including their parents, subsidiaries or affiliates, and assigns of any of them, who may use, maintain, distribute or sell the Product) whether under Proposition 65 or otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Product, including but not limited to any exposure to, or failure to warn with respect to, DiNP in the Product (referred to collectively in this Section as the "Claims"). In furtherance of the foregoing, as to alleged exposures to DiNP in the Product, Bell waives any and all rights and benefits which she now has, or in the future may have, conferred upon her with respect to the Claims by virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Bell understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if Bell suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Product, including but not limited to any exposure to, or failure to warn with respect to exposure to, DiNP in the Product, Bell will not be able to make any claim for those damages against Stanley Black & Decker.

4.3 **Stanley Black & Decker's Release of Plaintiff Bell.** Stanley Black & Decker, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Bell, her attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Bell and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against Stanley Black &

Decker in this matter.

5. Enforcement of Judgment

5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties hereto. The parties may, by noticed motion or order to show cause before the Superior Court of Alameda County, giving the notice required by law, enforce the terms and conditions contained herein. In any proceeding brought by either party to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this Consent Judgment.

6. Modification of Judgment

6.1 This Consent Judgment may be modified only by written agreement of the parties upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon an entry of a modified Consent Judgment by the Court.

6.2 Should any court enter final judgment in a case brought by Bell or the People involving the Product that sets forth standards defining when Proposition 65 warnings will or will not be required ("Alternative Standards"), or if the California Attorney General's office otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not intended for the purpose of soliciting further input or comments) of Alternative Standards applicable to the products that are of the same general type and function as the Product and constructed from the same materials, Stanley Black & Decker shall be entitled to seek a modification of this Consent Judgment on sixty (60) days' notice to Bell so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment. Bell shall not unreasonably contest any proposed application to effectuate such a modification provided that the Product for which such a modification is sought are of the same general type and function as those to which the Alternative Standards apply.

7. **Settlement Payment**

7.1 In settlement of all the claims referred to in this Consent Judgment, and without any admission of liability therefore, Stanley Black & Decker shall make the following monetary payments:

7.1.1 Stanley Black & Decker shall pay a total of $7,500.00 in civil penalties in accordance with this Section. The civil penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil penalty remitted to Bell.

7.1.2 Within seven (7) business days of the Effective Date, Stanley Black & Decker shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of $5,625.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of $1,875.00. Payment owed to Bell pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

Payment 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 address(es):

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

A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address

set forth above as proof of payment to OEHHA.

7.1.3 In addition to the payment above, Stanley Black & Decker shall pay $57,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Bell's attorneys' fees and costs, including any investigation and laboratory costs or expert fees, incurred in the course of bringing the Bell action, and in enforcing Proposition 65, including without limitation, preparation of the 60-Day Notice letter and discussions with the office of the Attorney General. Payment shall be made within seven (7) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in section 7.1.2, above.

8. Notices

8.1 Any and all notices between the parties provided for or permitted under this Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Stanley Black & Decker:

James M. Loree
Chief Operating Officer and President
Stanley Black & Decker, Inc.
1000 Stanley Drive
New Britain, CT 06053

-and-

Kevin Crisp, Esq.
Haight Brown & Bonesteel LLP
555 South Flower Street
Forty-Fifth Floor
Los Angeles, CA 90071

For Bell:

Evan J. Smith
BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212

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.

9. Authority to Stipulate

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

10. Counterparts

10.1 This Stipulation may be signed in counterparts and shall be binding upon the parties hereto as if all said parties executed the original hereof.

11. Retention of Jurisdiction

11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

12. Service on the Attorney General

12.1 Bell shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the parties so that the Attorney general may review this Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the Attorney General to the terms of this Consent Judgment, the parties may then submit it to the Court for Approval.

13. Entire Agreement

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

14. Governing Law and Construction

14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

15. Court Approval

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: 5/17/16

By: Ema Bell

Ema Bell

Dated: _____

By: _____

Theodore C. Morris,
Stanley Black & Decker, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

_____
Judge of Superior Court

15. Court Approval

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: _____

By: _____
Ema Bell

Dated: May 17, 2016

By: _____
Theodore C. Morris,
Stanley Black & Decker, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 7-11-16

Judge of Superior Court
Sandra K. Bean