

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

#### 1.1 Ema Bell and Teavana Enterprises, Inc.

This Settlement Agreement is entered into by and between Ema Bell ("Bell"), Teavana Corporation ("Teavana") and Kashima Trading Co., Ltd ("Kashima"), with Bell, Kashima and Teavana collectively referred to as the "Parties." Bell 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. Teavana employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

#### 1.2 General Allegations

Bell alleges that Teavana and Kashima have manufactured, imported, distributed and/or sold in the State of California tea cups containing lead. Lead is listed under Proposition 65 as a chemical known to cause adverse developmental and reproductive effects.

#### 1.3 Product Description

The product that is addressed by this Settlement Agreement is a tea cup that allegedly contains lead, *10006678 Kotobuki Green Hobnail Tea Cup, 4 oz., UPC# 31692300004*, that is manufactured, imported, distributed, sold and/or offered for sale by Teavana in the State of California (referred to hereinafter as the "Product")

#### 1.4 Notice of Violation

On August 1, 2014, Bell served Teavana and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Teavana, and such others, including public enforcers, with notice that alleged that Teavana was in violation of Proposition 65 for failing to warn consumers and customers that the Product exposed users in California to lead.

No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### 1.5 No Admission

Teavana and Kashima deny the material factual and legal allegations contained in Bell's Notice, and maintains that all products that they sold and distributed in California, including the Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Teavana or Kashima of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Teavana or Kashima of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Teavana and Kashima. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

Notwithstanding Bell's allegations in the Notice, Teavana and Kashima maintain that they have not knowingly manufactured, or caused to be manufactured, the Product for sale in California which is in violation of Proposition 65.

#### 1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall

mean March 16, 2015.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Products**

Commencing on the Effective Date, and continuing thereafter, Teavana and Kashima will not offer for sale in California the tea cup described in paragraph 1.3 above.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Teavana and Kashima shall pay a total of \$2,000.00 in civil penalties in accordance with this Section. The 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 penalty remitted to Bell. Each penalty payment shall be delivered to the addresses listed in Section 3.3 below. Teavana shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not received within two business days of the date they are due.

**3.1 Initial Civil Penalty**

On or before the Effective Date, Teavana shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.2 Payment Procedures**

**3.2.1 Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Bell pursuant to Section 3.1 shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486) pursuant to Section 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at 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

A copy of the checks payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**3.2.2 Issuance of 1099 Forms.** After each penalty payment, Teavana shall issue separate 1099 forms for each payment to Bell, whose address and tax

identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.2.1 above.

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that Bell and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Bell then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation due to Bell and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Teavana shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Teavana's attention, and negotiating a settlement in the public interest. On or before the Effective Date, Teavana shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$33,000.00 for delivery to the following address:

Evan Smith, Esq.  
Brodsky & Smith, LLC  
2 Bala Plaza, Ste. 510  
Bala Cynwyd, PA 19004

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**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Teavana, Kashima and Downstream Customers and Entities**

Bell acting in her own behalf and in the public interest, releases Teavana, Kashima and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Teavana and Kashima directly or indirectly distributes or sells the Product including, but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the lead allegedly contained in the Product that was manufactured, distributed, sold and/or offered for sale by Teavana.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Teavana, Kashima or the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the lead in the Product.

**5.2 Kashima's and Teavana's Release of Bell**

Teavana and Kashima, on behalf of themselves, their 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 to enforce Proposition 65 against it in this matter or with respect to the Product.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, 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.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Teavana and Kashima shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement 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 Teavana and Kashima:

Randall Haimovici  
Shook, Hardy & Bacon  
One Montgomery Tower, Suite 2700  
San Francisco, California 94104-4505

For Bell:

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

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. COUNTERPARTS; 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.

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

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

**11. MODIFICATION**

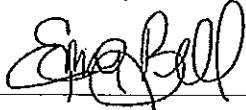
This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

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

AGREED TO:

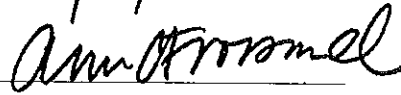
Date: 3/10/15

By: 

Ema Bell

AGREED TO:

Date: 3/31/15

By: 

Teavana Corporation

AGREED TO:

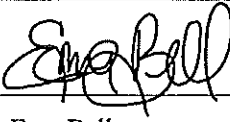
Date: \_\_\_\_\_

By: \_\_\_\_\_

Kashima

AGREED TO:

Date: \_\_\_\_\_

By: 

Ema Bell

AGREED TO:

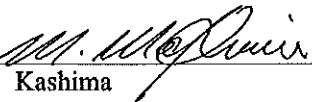
Date: \_\_\_\_\_

By: \_\_\_\_\_

Teavana Corporation

AGREED TO:

Date: March 26, 2015

By: 

Kashima