

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Martha Velarde, Home Dynamix, LLC a/k/a Home Dynamics, LLC a/k/a Emerem Trading Co., Inc., & Linoleum City, Inc.

This Settlement Agreement is entered into by and between Martha Velarde ("Velarde"), Home Dynamix, LLC a/k/a Home Dynamics, LLC a/k/a Emerem Trading Co., Inc. ("Home Dynamix") and Linoleum City, Inc. ("Linoleum City"). Home Dynamix and Linoleum City are collectively referred to as the "Defendants." Together, Velarde and the Defendants are collectively referred to as the "Parties." Velarde is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Defendants employ ten or more persons and are considered persons 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 Allegations and Factual Background

Velarde alleges that Defendants have distributed and/or sold in the State of California Aldi Deco style Vinyl Floor Tile, UPC# 0 41498 143663, Item# 5366, Pattern No: 273D, Lot Number: 25.11.2011, Quantity: 30 Tiles, Size: 12" x 12" (30sq. ft), Gauge: 1.2mm products ("Products") containing Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

Defendant Home Dynamix contends that it did not knowingly and intentionally violate Proposition 65 as to the sale of the Products, which were imported by or on behalf of Aldi, the company that owns the brand name. On or about September 13, 2011, Home Dynamix arranged for Aldi to take delivery of the Products at a third party warehouse in Los Angeles, California after the Products cleared customs. On or about January 30,

2012, Aldi's carrier picked up all but 243 boxes of the Products and transported them out of state. Aldi refused to pick up the remaining boxes and did not take delivery of them.

Subsequently, in order to mitigate its damages for breach of contract by Aldi, Home Dynamix sold the remaining boxes to Linoleum City. Home Dynamix and Linoleum City contend that they were never aware of the presence of DEHP in the Products. Over approximately three years, only about 163 boxes have been sold with 80 boxes still remaining.

Home Dynamix and Linoleum City do not admit any liability and agree to resolve this matter to avoid litigation. Further, Home Dynamix contends that the statute of limitations has run on any violation as to Home Dynamix. Plaintiff does not admit that the statute of limitations on any of her claims has run. Linoleum City contends that it provided adequate warnings as required by posting such warnings in its store. Plaintiff does not admit that she was warned by Linoleum City.

Home Dynamix and Linoleum City are not in a current business relationship with Aldi. The only Products ever sold or distributed by Defendants were the 243 boxes mentioned above.

1.3 Product Description

The products addressed by this Settlement Agreement are the following, (a) Aldi Deco style Vinyl Floor Tile, UPC# 0 41498 143663, Item# 5366, Pattern No: 273D, Lot Number: 25.11.2011, Quantity: 30 Tiles, Size: 12" x 12" (30sq. ft), Gauge: 1.2mm, (collectively referred to hereinafter as the "Product(s)"). Velarde alleges that the Products contain DEHP, and are distributed, sold and/or offered for sale by Defendants in the State of California.

1.4 Notice of Violation

On January 2, 2015, Velarde served Aldi, Linoleum City, and various public enforcement agencies with a document entitled "60-Day Notice of Violation." Then, on February 7, 2015, Velarde served Home Dynamix, Linoleum City, and various public

enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Defendants, and such others, including public enforcers, with notice that alleged that Defendants were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to DEHP.

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

1.5 No Admission

Defendants deny the material factual and legal allegations contained in the Notices, and maintain that to the best of their knowledge all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Defendants 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 Defendants of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Defendants. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Defendants maintain that they have not knowingly manufactured, or caused to be manufactured, the Products 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 April 22, 2015.

2. INJUNCTIVE RELIEF

2.1 Prohibition of Sale

This settlement is limited only to the 243 boxes of Aldi Products sold by Home Dynamix to Linoleum City in January of 2012. Home Dynamix does not own, control or have the legal ability to sell the Products, which is a right vested solely in Aldi.

Commencing on the Effective Date, and continuing thereafter, Home Dynamix will not ship, sell, or offer for sale in California (a) Aldi Deco style Vinyl Floor Tile, UPC# 0 41498 143663, Item# 5366, Pattern No: 273D, Lot Number: 25.11.2011, Quantity: 30 Tiles, Size: 12" x 12" (30sq. ft), Gauge: 1.2mm, as set forth in Section 1.3.

2.2 Clear and Reasonable Warnings

Defendant Linoleum City may sell the remaining 80 boxes of Aldi Products and shall provide a clear and reasonable warning for any Product that they sell in California. Defendant Linoleum City shall provide the warning affixed to the packaging or labeling, or directly to the Products, with the following statement:

WARNING: This product contains Di(2-ethylhexyl) phthalate ("DEHP"), a chemical known to the State of California to cause birth defects or other reproductive harm.

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 of purchase or use.

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

In settlement of all the claims referred to in this Settlement Agreement, Defendants shall pay a total of \$2,000.00 in civil penalties in accordance with this Section. Each 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 Velarde. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. Defendants 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, Defendants shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brotsky & Smith, LLC in Trust for Velarde" in the amount of \$500.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

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

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

Evan J. Smith, Esquire
Brotsky & 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

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

3.2.2 Copy of Payments to OEHHA. Defendants agree to provide Velarde's counsel with a copy of the checks payable to OEHHA, simultaneous

with its penalty payments to Velarde, to be delivered to the address provided in Section 3.2.1(a), as proof of payment to OEHHA.

3.2.3 Tax Documentation. Defendants agree to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(a) "Martha Velarde" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(b) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2.1(a); and

(c) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Velarde 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. Velarde 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 Velarde 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, Defendants shall reimburse Velarde's counsel for fees and costs incurred as a result of investigating and bringing this matter to Defendants' attention, and negotiating a settlement in the public interest. On or before the Effective Date, Defendants shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$15,000.00 for delivery to the following address:

Evan Smith, Esquire
Brodsky & Smith, LLC

Two Bala Plaza, Ste. 510
Bala Cynwyd, PA 19004

5. RELEASE OF ALL CLAIMS

5.1 Release of Defendants, and Downstream Customers and Entities

Velarde acting on her own behalf, and in the public interest, releases Defendants and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Defendants directly or indirectly distributes or sells the Products 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 DEHP contained in the Products that were distributed, sold and/or offered for sale by Defendants.

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, Velarde, on behalf of themselves, their 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 Defendants 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 DEHP in the Products.

5.2 Defendant's Release of Velarde

Defendants, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Velarde, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Velarde and/or 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 Products.

6. **POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within eighteen months of the execution of this Settlement Agreement, Defendants may request in writing that Velarde draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, the Parties agree to reasonably cooperate and use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, if so requested, Defendants agrees to reimburse Velarde and her counsel for the reasonable fees and costs incurred in connection with the work performed pursuant to this section in an amount not to exceed \$10,000.00, exclusive of fees and cost on appeal if any. Within ten days of receiving an invoice for work performed under this section, Defendants will remit payment to the address provided in Section 3.2.1(a).

7. **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.

8. **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 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendants shall provide written notice to Velarde of any asserted change

in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

9. 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 Defendant Home Dynamix, LLC a/k/a Home Dynamics, LLC a/k/a Emerem Trading Co., Inc.:

Dennis F. Murphy, Jr.
Sedgwick, LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104-2834
415.781.7900 phone
415.781.2635 fax
415.627.1526 direct

For Defendant Linoleum City, Inc.

Florence A. McClain
Lewis, Brisbois, Bisgaard & Smith, LLP
333 Bush Street, 11th Floor
San Francisco, CA 94104-2834
415.362.2580 phone
415.434.0882 fax
415.438.6602 direct

For Velarde:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
877-534-2590

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.

10. 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.

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

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

12. MODIFICATION

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

13. 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:

AGREED TO:

Date: _____

Date: 4/9/15 _____

By: _____

Martha Velarde

By:  _____

Home Dynamix, LLC a/k/a Home
Dynamics, LLC a/k/a Emerem Trading
Co., Inc.

Date: _____

By: _____

Counsel for Linoleum City, Inc.

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Date: _____

Date: _____

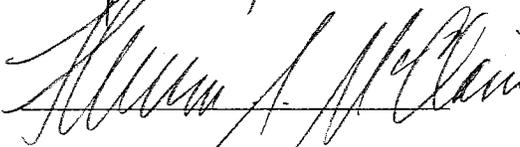
By: _____

Martha Velarde

By: _____

Home Dynamix, LLC a/k/a Home
Dynamics, LLC a/k/a Emerem Trading
Co., Inc.

Date: April 10, 2015

By: 

Counsel for Linoleum City, Inc.