

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Martha Velarde and Medline Industries, Inc.

This Settlement Agreement is entered into by and between Martha Velarde ("Velarde"), and Medline Industries, Inc. ("Medline Industries"), with Velarde and Medline Industries collectively referred to as the "Parties." Velarde 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.

Medline Industries 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

Velarde alleges that Medline Industries has manufactured, imported, distributed and/or sold in the State of California a handheld shower containing Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The product addressed by this Settlement Agreement is a Medline Handheld Shower, UPC# 0 80196 32588 0, REF: MDSHHSOWER (referred to hereinafter as the "Product"). Velarde alleges that the Product contains DEHP, and is manufactured, imported, distributed, sold and/or offered for sale by Medline Industries in the State of California

1.4 Notice of Violation

On January 20, 2015, Velarde served Medline Industries and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Medline Industries, and such others, including public enforcers, with notice that alleged that Medline Industries was in violation of Proposition 65 for failing to warn consumers and customers that the Product exposed users in California to DEHP.

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

1.5 No Admission

Medline Industries denies the material factual and legal allegations contained in Velarde's Notice, and maintains that to the best of Medline Industries' knowledge, all products that it has 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 Medline Industries 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 Medline Industries of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Medline Industries. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding Velarde's allegations in the Notice, Medline Industries maintains that it has 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 October 15, 2015.

2. INJUNCTIVE RELIEF

2.1 Reformulation Products

Commencing on the Effective Date, and continuing thereafter, Medline Industries shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, "Reformulated Products" are Medline Handheld Shower(s), as set forth in Section 1.3.

2.2 Reformulation Standard

"Reformulated Products" shall meet or exceed the standards outlined in this section. Acceptable formulated and "Reformulated Products" are defined as products which yield less than or equal to 1,000 ppm of DEHP, when analyzed pursuant to test method CPSC-CH-C1001-09.3, or equivalent methodologies utilized by federal or state agencies for the purpose of determining phthalate content. Quantitative analysis of DEHP is performed by gas chromatography/mass spectrometry (GC/MS).

2.3 Clear and Reasonable Warnings

Medline Industries shall provide a clear and reasonable warning for any Product that it ships, sells, or offers to ship or sell in California that is not a Reformulated Product. Medline Industries shall provide the warning affixed to the packaging or labeling, or directly to the Product, 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

2.4 Formulated / Reformulation Commitment

As of the Effective Date, Medline Industries shall not knowingly manufacture, import, distribute, sell or offer the Product for sale in the State of California unless it is a Formulated or Reformulated Product pursuant to Section 2.2 above.

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

In settlement of all the claims referred to in this Settlement Agreement, Medline Industries 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 3.3 below. Medline Industries 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, Medline Industries 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 Velarde" 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 Velarde, 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

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. Medline Industries agrees 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. Medline Industries agrees 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 § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Medline Industries shall reimburse Velarde's counsel for fees and costs incurred as a result of investigating and bringing this matter to Medline Industries' attention, and negotiating a settlement in the public interest. On or before the Effective Date, Medline Industries shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$25,500.00 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 Medline Industries, Walgreen Co., Drugstore.com and Downstream Customers and Entities

Velarde acting in her own behalf and in the public interest, releases Medline Industries and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Medline Industries directly or indirectly distributes or sells the Product including, but not limited to, Walgreen Co., Drugstore.com, 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 Product that was manufactured, distributed, sold and/or offered for sale by Medline Industries.

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 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 Medline Industries 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 Product.

5.2 Medline Industries' Release of Velarde

Medline Industries, 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 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. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within eighteen months of the execution of this Settlement Agreement, Medline Industries 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, Velarde and Medline Industries 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 sections 1021 and 1021.5, if so requested, Medline Industries 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 \$16,000.00, exclusive of fees and cost on appeal if any. Within ten days of receiving an invoice for work performed under this section, Medline Industries 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 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Medline Industries 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 Product is 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 Medline Industries, Walgreens and Drugstore.com:

Bruce Nye
ADAMS NYE BECHT LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

For Velarde:

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.

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 SETTLEMENT AGREEMENT

The parties agree that Compliance with this Settlement Agreement will constitute Compliance with Proposition 65 by the Releasees as to the Product.

12. 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).

13. MODIFICATION

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

14. 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: 5/21/2015

Date: _____

By: *Martha Velarde*
Martha Velarde

By: _____
On Behalf of Medline Industries
Print: _____

Agreement.

AGREED TO:

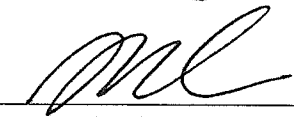
AGREED TO:

Date: _____

Date: 5-21-19

By: _____

Martha Velarde

By: 

On Behalf of Medline Industries

Print: Alex M. Liberman