

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Martha Velarde & Weems Industries, Inc. t/a Legacy Manufacturing Company**

This Settlement Agreement is entered into by and between Martha Velarde ("Velarde") and Weems Industries, Inc. t/a Legacy Manufacturing Company ("Weems"). Together, Velarde and Weems 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.

Weems employs ten or more persons and is considered 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 Weems has imported, distributed and/or sold in the State of California Flexzilla Whip Hoses, UPC No. 0 92329 38202 8, and Craftsman Heavy Duty Air Hoses, UPC No. 0 92329 34014 1 (the "Products") without requisite Proposition 65 warning that the Products contain the chemicals Di(2-ethylhexyl) phthalate (DEHP), Diisononyl phthalate (DINP), and/or Di-isodecyl phthalate (DIDP).

On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause developmental male reproductive toxicity.

On December 20, 2013, the State of California listed Diisononyl phthalate (DINP) as a chemical known to cause cancer.

On April 20, 2007, the State of California listed DIDP as a chemical known to the State to cause reproductive toxicity.

1.3 **Notice(s) of Violation**

On April 22, 2015 Velarde served Sears Corporation, Sears Holdings Management Corporation, Sears Holdings Corporation, Sears Holdings, Inc. (collectively, "Sears"), Weems, and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "April Notice"). The April Notice was amended on June 11, 2015 to provide Weems and such others, including public enforcers, with notice that alleged that Weems was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that Flexzilla Whip Hoses exposed users in California to DEHP and DINP.

On July 8, 2015 Velarde served Sears, Weems, and various public enforcement agencies with a second "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" that alleged that Weems was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that Craftsman Heavy Duty Air Hose exposed users in California to DIDP (the "July Notice") (the April Notice and July Notice are collectively referred to herein as, the "Notices").

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

1.4 No Admission

Weems denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its 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 Weems 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 Weems of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Weems. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

Notwithstanding the allegations in the Notices, Weems maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California which is in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 28, 2015.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing on the Effective Date, and continuing thereafter, Weems shall only ship, sell, or offer for sale in California, reformulated Products pursuant to Section 2.2 or Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, a "Reformulated Products" are Products that meet the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

"Reformulated Products" shall mean Products that contains less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Weems shall, for all Products it sells or distributes and which are intended for sale in California that are not Reformulated Products, or which Weems has reason to believe will be shipped or sold in California, 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 Products the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales

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

PROPOSITION 65 WARNING:

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

(ii) Point of Sale Warnings. Alternatively, Weems 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 Products. Such instruction sent to Weems 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, birth defects or other reproductive harm.

(b) Mail Order Catalog Warning. In the event that Weems directly sells Products via mail order catalog directly to consumers located in California after the Effective Date that are not Reformulated Products, Weems shall provide a warning for such Products sold via mail order catalog to such California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Products description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Products:

PROPOSITION 65 WARNING:

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Products, Weems may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Products:

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer and reproductive toxicity.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Products. On each page where the designated symbol appears, Weems must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(c) **Internet Sales Warning.** In the event that Weems directly sells Products via the internet directly to consumers located in California after the Effective Date that is not a Reformulated Products, Weems shall provide a warning for such Products sold via the internet to such California residents. A warning that is given on the internet shall be in the same type size or larger than the Products description text and shall be given in conjunction with the direct sale of the Products. The warning shall appear either: (a) on the same web page on which the Products is displayed; (b) on the same web page as the order form for the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning shall be provided:

PROPOSITION 65 WARNING:

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

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

In settlement of all the claims referred to in this Settlement Agreement, Weems 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. Weems 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, Weems 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 3.2 below.

3.2 Payment Procedures

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) 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

(ii) 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

(b) Copy of Payments to OEHHA. Weems 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(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Weems agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

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

(ii) "Brotsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "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, Weems shall reimburse Velarde's counsel for fees and costs incurred as a result of investigating and bringing this matter to Weems' attention, and negotiating a settlement in the public interest. On or before the Effective Date, Weems shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$24,000.00 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 Weems, Sears and Downstream Customers and Entities

Velarde acting on her own behalf, releases Weems, Sears and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Weems 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 chemicals DEHP and DINP that is contained in the Products, and was distributed, sold and/or offered for sale by Weems to customers and consumers in the State of California.

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 Weems 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 chemicals DEHP, DINP and/or DIDP in the Products.

5.2 Weems' Release of Velarde

Weems, 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. 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 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, Weems 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 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 Weems:

Peter C. Riley
TOM RILEY LAW FIRM, P.L.C.
4040 First Avenue NE
P.O. Box 998
Cedar Rapids, Iowa 52406-0998
T: 319.363.4040

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.

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)

Velarde 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:

AGREED TO:

Date: October 28, 2015

Date: 10-30-2015

By: Martha Velarde
Martha Velarde

By: [Signature]
Weems Industries, Inc.

**Request for Taxpayer
 Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Name (as shown on your income tax return)
MARTHA VELARDE

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
 Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
 Other (see instructions) ▶ _____

Exemptions (see instructions):
 Exempt payee code (if any) _____
 Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.)
7530 SOMERSET #18

City, state, and ZIP code
PARAMOUNT, CA 90723

List account number(s) here (optional)

Requester's name and address (optional)

Print or type
 See Specific Instructions on page 2.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

5	4	7	-	9	1	4	-	7	8	5	9
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Employer identification number

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Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person: *Martha Velarde* Date: *October 28, 2015*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted. Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:
- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
 - Certify that you are not subject to backup withholding, or
 - Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1448 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1448 require a partnership to presume that a partner is a foreign person, and pay the section 1448 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1448 withholding on your share of partnership income.