

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Anthony Ferreiro, Nova Medical, Inc. & Nova Medical Products, Inc.**

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and Nova Medical, Inc., and Nova Medical Products, Inc (collectively "Nova Medical"). Together, Ferreiro and Nova Medical are collectively referred to as the "Parties." Ferreiro 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.

Nova Medical is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6, *et seq.* ("Proposition 65").

1.2 **General Allegations**

Ferreiro alleges that Nova Medical has imported, distributed and/or sold in the State of California *Nova 365 Volume Control Hand Held Shower Cords, UPC No. 6 52308 93000 0, Item No. 9300-R* (the "Product" or "Products") without requisite Proposition 65 warning that the Product contains the chemical Di(2-ethylhexyl) phthalate ("DEHP"). 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.

1.3 **Notice of Violation(s)**

On May 21, 2015, Ferreiro served Wal-Mart Stores, Inc. ("Wal-Mart"), Nova Medical, and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided Nova Medical and such others, including public enforcers, with notice that alleged that Nova Medical was in violation of California Health & Safety Code § 25249.5, 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 Notice.

1.4 No Admission

Nova Medical denies the material factual and legal allegations contained in the Notice 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Nova Medical 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 Nova Medical of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Nova Medical. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Nova Medical maintains that it has not knowingly or intentionally manufactured, or caused to be manufactured, the Products for sale in California which are in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 15, 2016.

2. INJUNCTIVE RELIEF

2.1 Commencing on the Effective Date, and continuing thereafter, Nova Medical shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 2.2 of this Consent Judgment. Nova Medical and its downstream retailers shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date. For purposes of this Consent Judgment, "Reformulated Products" are Products that are in compliance with the standard set forth below in Section 2.2.

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

3. SETTLEMENT PAYMENT

3.1 In settlement of all the claims referred to in this Settlement Agreement, and without any admission of liability therefore, Nova Medical shall make the following monetary payments:

3.1.1 Nova Medical shall pay a total of \$2,000.00 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 Ferreiro. Each penalty payment shall be delivered to the addresses listed in Section 3.1.3 below. Nova Medical 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.

3.1.2 In addition to the payment above, Nova Medical shall pay \$25,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs, including any investigation and laboratory costs or expert fees, incurred in the course of bringing the Ferreiro 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. The parties acknowledge that Ferreiro and his 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. Ferreiro 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 Ferreiro

and his 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. As such, within seven (7) calendar days of the Effective Date, Nova Medical shall issue one check to “Brodsky & Smith, LLC” for \$7,000.00 delivered to the address listed in Section 3.1.3 below. Thereafter, and for the ensuing two (2) months, Nova Medical shall make payment of \$9,000.00 to “Brodsky & Smith, LLC” on each one month (i.e. 30 day) anniversary of the Effective Date until all monies owed to Brodsky & Smith have been paid. Nova Medical 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 five (5) business days of the date they are due.

3.1.3 Within seven (7) days of the Effective Date, Nova Medical 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 Ferreiro" in the amount of \$500.00. Payment owed to Ferreiro 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.

4. RELEASE OF ALL CLAIMS

4.1 Release of Nova Medical and Downstream Customers and Entities

Ferreiro acting on his own behalf, releases Nova Medical and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Nova Medical directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, marketplace hosts, wholesalers, customers, retailers (including, but not limited to, Wal-Mart and its affiliates and subsidiaries), 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 chemical DEHP that is contained in the Products, and was distributed, sold and/or offered for sale by Nova Medical and Wal-Mart to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted by Ferreiro against Nova Medical and/or the Releasees for failure to provide warnings for alleged exposures to DEHP contained in the Products.

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, Ferreiro, on behalf of himself, his 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 Nova Medical and/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 chemical DEHP in the Products.

Ferreiro, on his own behalf, further agrees, promises, and covenants that he has not and will not, nor will any person, organization or any other entity acting on his behalf, file, charge, claim, sue, participate in, join or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary or other) against the Released Parties with respect to any Released Claims which are the subject of this Agreement.

4.2 Nova Medical's Release of Ferreiro

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

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and Nova Medical, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
 THE CREDITOR DOES NOT KNOW OR SUSPECT TO 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 OR HER SETTLEMENT WITH THE DEBTOR.

Ferreiro and Nova Medical each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5. 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.

6. 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 Product, Nova Medical shall provide written notice to Ferreiro 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.

7. 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 Nova Medical:

Garth N. Ward
LEWIS BRISBOIS
701 B Street, Suite 1900
San Diego, CA 92101

For Ferreiro:

Evan J. Smith, Esquire.
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.

8. 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.

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

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

10. MODIFICATION

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

11. 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: April 14, 2016

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
Nova Medical, Inc. &
Nova Medical Products, Inc.

For Ferreiro:

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

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AGREED TO:

AGREED TO:

Date: April 14, 2016

Date: 4/25/2016

By: Anthony Ferreiro
Anthony Ferreiro

By: [Signature]
Nova Medical, Inc. &
Nova Medical Products, Inc.