

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Ema Bell and Samsung Electronics America, Inc.

This Settlement Agreement is entered into by and between Ms. Ema Bell (“Bell”) and Samsung Electronics America, Inc. (“Samsung”), with Bell and Samsung collectively referred to as the “Parties.” Samsung 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 § 25249.6, *et seq.* (“Proposition 65”).

1.2. General Allegations

Bell alleges that Samsung has manufactured, imported, distributed and/or sold in the State of California canister vacuum cleaner hoses containing di(2-ethylhexyl) phthalate (“DEHP”), diisononyl phthalate (“DINP”), and di-isodecyl phthalate (“DIDP”). DEHP, DINP, and DIDP are listed under Proposition 65 as chemicals known to the State of California to cause cancer, birth defects, and/or other reproductive harm.

1.3. Product Description

The product that is addressed by this Settlement Agreement is a hose for canister vacuum cleaner Model#VC12F50PRJC/AA (UPC#887276567358), that Plaintiff alleges contains DEHP, DINP, and DIDP, that is manufactured, imported, distributed, sold and/or offered for sale by Samsung in the State of California (referred to hereinafter as the “Product”).

1.4. Notice of Violation

On May 29, 2015, Bell sent Samsung and various public enforcement agencies a document titled “Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*” (the “Notice”) that provided Samsung, and such others, including public enforcers, with

notice that alleged that Samsung was in violation of Proposition 65 for failing to warn consumers and customers that the Product exposed users in California to DEHP, DINP, and DIDP. No public enforcer has filed suit or diligently prosecuted the allegations set forth in the Notice.

1.5. No Admission

Samsung denies the material factual and legal allegations contained in Bell's Notice, and maintains that all products that it has sold and distributed in California, including the Product, have been and are in compliance with all laws. Samsung contends that the Product has, at all relevant times, been accompanied by a user's manual containing a clear and reasonable warning that satisfies the requirements of Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Samsung 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 Samsung of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Samsung. However, this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this Settlement Agreement is fully executed by both Bell and Samsung.

2. CLEAR AND REASONABLE WARNINGS

Samsung agrees, promises, and represents that, as of the Effective Date, to the extent it manufactures, imports, distributes, sells and/or offers for sale in California any Products, it will continue to provide warnings on such Products that comply with Proposition 65. The warnings

shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of use of the Product. The Parties agree that product labeling stating that “This product contains chemicals known to the State of California to cause cancer, or birth defects, or other reproductive harm” and/or “This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm” and/or “This product contains chemicals known to the State of California to cause cancer and reproductive toxicity” shall constitute compliance with Proposition 65 with respect to the DEHP, DINP, and DIDP in the Products manufactured, imported, distributed, sold and/or offered for sale by Releasees (defined below) after the Effective Date.] Such product labeling may take the form of a warning on the exterior of the product packaging, on a slip of paper packaged with the product, or in the user’s manual for the product. Furthermore, a warning that substantially complies with the terms of the Consent Judgment entered in *Mateel Environmental Justice Foundation v. Sprint Communications, et al.* and *Mateel Environmental Justice Foundation v. Belkin Components, et al.*, Case Nos. CGC-00-312962 and CGC-01-320342 (Cal. Super. Ct. Sept. 3, 2002) or the terms of a “safe harbor” warning set by regulation shall be deemed to comply with Proposition 65 and this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Samsung shall pay a total of \$1,100.00 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 3.2 below. Samsung 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. Civil Penalty

On or before the date that is 20 days following the Effective Date, Samsung shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of \$825.00; and (b) “Brodsky & smith, LLC in Trust for Bell” in the amount of \$275.00. 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 Bell pursuant to Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esq.
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

A copy of the checks payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address set forth above in Section 3.2.1.a., as proof of payment to OEHHA.

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 § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Samsung shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Samsung's attention, and negotiating a settlement in the public interest. Within two business days following the Effective Date, Brodsky & Smith LLC shall furnish its address and tax identification number to Samsung. On or before the date that is 20 days following the Effective Date, Samsung shall either issue a wire transfer in the amount of \$9,900.00 to "Brodsky & Smith LLC" or issue a check payable to "Brodsky & Smith LLC" in the amount of \$9,900.00 for delivery to the following address:]

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

5. RELEASE OF ALL CLAIMS

5.1. Release of Samsung and Downstream Customers and Entities

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

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 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 Samsung 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, DINP, and DIDP in the Product. In connection with the release of the Claims, Plaintiff shall be deemed to have waived any and all provisions, rights, and benefits conferred by

§ 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which 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.

5.2. Samsung's Release of Bell

Samsung, on behalf of itself, its 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 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Samsung 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 Samsung Electronics America, Inc.:

Trenton H. Norris, Esq.
Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

For Bell:

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

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:

MS. EMA BELL

Date: _____

By: _____
Ema Bell

AGREED TO:

SAMSUNG ELECTRONICS AMERICA, INC.

Date: 2/19/16

By: Kevin L. Gould

Printed Name: Kevin L. Gould

Title: (Acting) General Counsel

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:

MS. EMA BELL

Date: 2/19/16

By: 
Ema Bell

AGREED TO:

SAMSUNG ELECTRONICS AMERICA, INC.

Date: _____

By: _____

Printed Name: _____

Title: _____