

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Ema Bell, Whitmor, Inc., and Rite Aid Corporation**

This Settlement Agreement is entered into by and between Ema Bell ("Bell"), Rite Aid Corporation ("Rite Aid"), and Whitmor, Inc. ("Whitmor"). Together, Bell, Whitmor, and Rite Aid are collectively referred to as the "Parties." Bell is an individual who 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.

Whitmor and Rite Aid are each 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**

Bell alleges that Whitmor and Rite Aid have imported, distributed and/or sold in the State of California travel suit bags containing Di(2-ethylhexyl) phthalate (DEHP) without the requisite Proposition 65 warning.

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 **Product Description**

The products covered by this Settlement Agreement are travel suit bags, which Whitmor and Rite Aid sell individually as *Style # 5242-21*, and *# 5242-22* (referred to hereafter as "Product" or "Products"), containing DEHP.

1.4 **Notice of Violation**

On December 29, 2015, Bell served Whitmor, Rite Aid, 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 Whitmor, Rite

Aid, and such others, including public enforcers, with notice that alleged that Whitmor and Rite Aid were in violation of California Health & Safety Code § 25249.5, 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

Whitmor and Rite Aid deny the material factual and legal allegations contained in the Notice 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 Whitmor or Rite Aid 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 Whitmor or Rite Aid of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Whitmor and Rite Aid. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Whitmor and Rite Aid maintain that they have not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 25, 2016.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing on the Effective Date, and continuing thereafter, Whitmor 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 Product" is Product that meets the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

“Reformulated Product” shall mean Product that contains 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.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Whitmor 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. Whitmor shall provide the warning affixed to the packaging or labeling with one of the following statements:

“WARNING:

This product contains a chemical known to the State of California to cause cancer”; or

“WARNING:

This product contains 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 in the label, labeling, or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Whitmor shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Whitmor 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 Bell. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below.

3.1 Civil Penalty

Within seven (7) days of the Effective Date, Whitmor 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 Bell" 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 Bell, 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. Whitmor agrees to provide Bell's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Bell, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

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

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

(ii) "Brodsky & 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

Whitmor shall reimburse certain of Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Whitmor's and Rite Aid's attention, and negotiating a settlement in the public interest. Within seven (7) days of the Effective Date, Whitmor shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$25,000.00 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 Whitmor, Rite Aid, and Downstream Customers and Entities

Bell, acting on her own behalf, her past and current agents, representatives, attorneys, successors and/or assignees, releases Whitmor, Rite Aid, and their respective parents, subsidiaries, affiliated entities, marketplaces directors, officers, agents, employees, attorneys and each entity to whom Whitmor or Rite Aid 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 the allegations set forth in the Notice Letter. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Whitmor, Rite Aid, and/or the Releasees in the Notice Letter.

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, 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 against Whitmor, Rite Aid, and/or any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the allegations set forth in the Notice Letter, including alleged or actual exposure to the chemicals DEHP in the Products.

5.2 Whitmor's and Rite Aid's Release of Bell

Whitmor and Rite Aid, on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, hereby waive 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/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.

5.3 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. Bell on behalf of herself only, on one hand, and Whitmor and Rite Aid, 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.

Bell, Whitmor, and Rite Aid each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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, Whitmor and Rite Aid shall provide written notice to Bell 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, a 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 Whitmor and Rite Aid:

Megan P. Caldwell
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105-3433
314-480-1648

For Bell:

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)


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

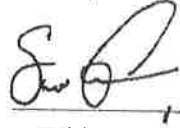
11. MODIFICATION


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:
Date: 6/1/16
By: 
Ema Bell

AGREED TO:
Date: 5/23/2016
By: , EXECUTIVE VICE PRESIDENT
Whitmor, Inc.

AGREED TO:
Date: 5/24/16
By: 
Rite Aid Corporation