

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Ema Bell ("Bell") and HM Smallwares Ltd. ("HM Smallwares"). Together, Bell and HM Smallwares are collectively referred to as the "Parties." Bell 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.

Bell contends that HM Smallwares 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

Bell alleges that HM Smallwares has distributed for sale in the State of California certain costume accessories containing Di(2-ethylhexyl) phthalate (DEHP), which is a listed chemical under Proposition 65, without the requisite Proposition 65 warning.

1.3 Product Description

The products covered by this Settlement Agreement are costume accessories including but not limited to Police Badges, UPC No. ~~057543765309~~ (the "Product" or "Products") that are manufactured, imported, distributed, and/or sold in the State of California by HM Smallwares, and that contain DEHP.

1.4 Notice of Violation

On March 20, 2017, Bell served HM Smallwares 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 HM Smallwares and the requisite public enforcers with notice that alleged that HM Smallwares was in violation of California Health & Safety Code § 25249.5 for failing to warn California consumers and customers that the Product exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

HM Smallwares denies the material factual and legal allegations contained in the Notice and maintains that all products it has sold and/or distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by HM Smallwares 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 HM Smallwares of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by HM Smallwares. However, this section shall not diminish or otherwise affect HM Smallwares obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, HM Smallwares maintains that it has not knowingly or intentionally manufactured, caused to be manufactured, or distributed 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 the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing ninety (90) days after the Effective Date, and continuing thereafter, HM Smallwares shall only distribute for authorized sale in California, Reformulated Products as defined

in Section 2.2 below, or Products that are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. Products manufactured or distributed by HM Smallwares prior to 90 days after the Effective Date are exempted from the foregoing obligation and may be offered for sale in California and sold through downstream distributors, dealers and retailers, including but not limited to First Imperial Trading Corporation dba Halloween Club and Bhasin Enterprises, Inc., with or without Proposition 65 warnings as previously packaged and received.

2.2 Reformulation Standard

"Reformulated Product" shall meet the standards outlined in this Section. "Reformulated Product(s)" are defined to mean Products that contain less than or equal to 1,000 parts per million ("ppm") of DEHP in any accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent testing methodologies utilized by government agencies for the detection of phthalate chemicals in consumer products.

2.3 Clear and Reasonable Warnings

Commencing ninety (90) days after the Effective Date, HM Smallwares shall, for all Product that it distributes for authorized sale in California that is not a Reformulated Product, provide a warning on the Product, its packaging, or its labeling that states:

[California Proposition 65] **WARNING:** This product contains [a] chemical[s] known to the State of California to cause cancer, and birth defects or other reproductive harm.

Or

[California Proposition 65] **WARNING:** This product phthalate chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

Or

[California Proposition 65] **WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Warning language in brackets is optional. The last warning shown above shall be preceded by a symbol consisting of a yellow equilateral triangle outlined in bolded black and into which a bolded black exclamation point is inserted. If yellow is not otherwise used on the Product's packaging, the triangle need not be yellow.

The warning shall be 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. 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, HM Smallwares 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, HM Smallwares shall pay a total of Five Hundred Dollars (\$500) in civil penalties pursuant to Health & Safety Code 25249.7(b) in accordance with this Section. After a thorough investigation, Bell agrees that this civil penalty payment satisfies the statutory criteria under Proposition 65. This penalty payment shall 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 ten (10) business days of the Effective Date, HM Smallwares shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$375 and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$125. 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.** HM Smallwares 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.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Bell and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation to be paid 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 in connection with the Notice through the mutual execution of this agreement, including but not limited to any and all investigative, expert and legal fees and expenses incurred by Bell and her counsel as a result of investigating and bringing this matter to HM Smallwares' attention, and negotiating a settlement in the public interest. Accordingly, within ten (10) business days of the Effective Date, HM Smallwares shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$8,000 for all work and attorney's fees described above for delivery to the following address:

5. RELEASE OF ALL CLAIMS

5.1 Release of HM Smallwares and Downstream Customers and Entities

Bell, acting on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, hereby releases HM Smallwares, and its parents, subsidiaries, affiliated entities, directors, officers, agents, employees, licensors, licensees, attorneys, and each entity to whom HM Smallwares 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 alleged or actual violations of Proposition 65 for their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by HM Smallwares through 90 days after the Effective Date. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against HM Smallwares and/or the Releasees in the Notice. Bell agrees that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to DEHP in the Products.

In further consideration of the promises herein contained, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, costs, fines, penalties, losses, or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees, arising from Products manufactured, sold and/or distributed for sale prior to 90 days after the Effective Date.

In this regard, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, further provides a general release herein which shall be effective as a full and final accord and satisfaction as a bar to any and all claims, liabilities, and demands of any nature, character, kind, known or unknown, suspected or unsuspected, as such claims relate to the Products manufactured, distributed and/or sold prior to 90 days after the Effective Date.

Bell further acknowledges that she is familiar with Civil Code Section 1542, which provides 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, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions for Civil Code Section 1542 as well as under any other state or federal statute or common law principle or similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters.

5.2 HM Smallwares' Release of Bell

HM Smallwares, 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/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.

HM Smallwares further acknowledges that it is familiar with Civil Code Section 1542, which

provides 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.

HM Smallwares, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes and any all rights and benefits that it may have under, or which may be conferred on it by the provisions of Civil Code Section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters herein.

5.3 Deemed Compliance with Proposition 65

Compliance by HM Smallwares with this Settlement Agreement constitutes compliance with Proposition 65 with respect to alleged or actual exposures to DEHP in the Products.

5.4. Public Benefit

The parties agree that the commitments agreed to herein, and actions to be taken by HM Smallwares under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to HM Smallwares' failure to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that HM Smallwares is in material compliance with this Settlement Agreement.

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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

8. MUTUAL DRAFTING

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Part should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

9. 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 or limited by reason of law generally, or as to the Products, HM Smallwares 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.

10. 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 HM Smallwares:

Wayne C.
HM Smallwares Ltd.
PO Box 3172
Champlain, NY 12919-9998

For Bell:

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.

11. 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).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties. Any Party seeking to modify this Settlement Agreement or to allege a violations thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify or enforce the Settlement Agreement.

13. 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.

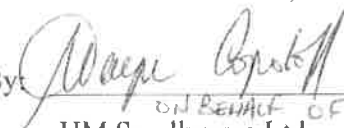
AGREED TO:

AGREED TO:

Date: 6/22/17

Date: JUNE 22, 2017

By: 
Ema Bell

By: 
ON BEHALF OF
HM Smallwares Ltd.