

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Ema Bell ("Bell") and HBC/FQ LLC ("HBC/FQ"). Together, Bell and HBC/FQ 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. HBC/FQ 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 HBC/FQ has imported, distributed and/or sold in the State of California Helping Hand Handy Traps 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 shower and sink drain taps, including without limitation, Helping Hand Handy Traps UPC No. 8 0 7079201150 8 (the "Product" or "Products") that have been imported, distributed, and/or sold in California by HBC/FQ, and that contain DEHP.

1.4 Notice of Violation

On June 27, 2017, Bell served HBC/FQ 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 HBC/FQ and such others, including public enforcers, with notice that alleged that HBC/FQ was 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

HBC/FQ 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. Nothing in this Settlement Agreement shall be construed as an admission by HBC/FQ 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 HBC/FQ of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by HBC/FQ. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, HBC/FQ maintains that it has 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 the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

(a) Commencing ninety (90) days after the Effective Date, and continuing thereafter, HBC/FQ agrees to manufacture, distribute, or purchase for sale in California only (a) Reformulated Products pursuant to Section 2.2, or (b) 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.

(b) The requirements of this Section 2 shall not apply to any Product that as of the Compliance Date, defined below, is in the stream of commerce or is otherwise in HBC/FQ inventory as of that date.

2.2 Reformulation Standard

"Reformulated Product" shall mean Product that contains in any accessible component 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 ninety (90) days after the Effective Date (the "Compliance Date"), subject to Section 2.1(b) above, HBC/FQ shall provide a clear and reasonable warning for any Product that it manufactures, distributes, or purchases for sale in California that is not a Reformulated Product. HBC/FQ shall provide the warning affixed to the packaging or labeling with the following statement:

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

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 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, HBC/FQ 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, HBC/FQ shall pay a total of \$2,000.00 as a Civil Penalty in accordance with this Section. The Civil 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. HBC/FQ 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 the payment times set forth below.

3.1 Civil Penalty

Within ten (10) business days of the Effective Date, HBC/FQ shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brotsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. All penalty payments shall be delivered to the address listed in Section 3.2(a) below.

3.2 Payment Procedures

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

(i) All payments owed pursuant to Section 3.1 shall be delivered within ten (10) business days after the Effective Date to the following payment address:

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

(ii) **(b) Copy of Payments to OEHHA.** Bell shall transmit to OEHHA HBC/FQ's checks payable to OEHHA within five (5) business days of Bell's receipt of the check made out to OEHHA from HBC/FQ, and shall provide to HBC/FQ a copy of Bell's transmittal letter to OEHHA concurrent with the transmittal to OEHHA.

(C) Tax Documentation. HBC/FQ agrees to provide a completed IRS 1099 for its payments to, and Bell agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Ema Bell" whose address and tax identification number shall be provided within five (5) days 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" (EIN: 68-0284486) 1001 I Street, Sacramento, CA 95814.

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, such resolution of the material terms subject to resolution of the fees and costs. The Parties thereafter 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, HBC/FQ shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to HBC/FQ's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, HBC/FQ shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$18,000.00 for delivery to the address identified in Section 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of HBC/FQ and Downstream Customers and Entities

This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and HBC/FQ, of any violation of Proposition 65 that was or could have been asserted by Bell or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby release any such claims against (i) HBC/FQ and its parents, including but not limited to World & Main (Cranbury), LLC, subsidiaries, affiliated entities, shareholders, marketplaces directors, officers, agents, employees, attorneys, successors and assignees, and (ii) each entity to whom HBC/FQ or World & Main (Cranbury), LLC directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including without limitation Rite Aid Corp., and their respective parents, subsidiaries, affiliated entities, shareholders, marketplaces directors, officers, agents, employees, attorneys, successors and assignees, 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 were manufactured, distributed, sold and/or offered for sale by HBC/FQ or World & Main (Cranbury), LLC 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 Sections 3 and 4 above, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of 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.

5.2 HBC/FQ's Release of Bell

HBC/FQ, 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.

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 HBC/FQ, 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 and HBC/FQ each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5.4 Deemed Compliance with Proposition 65

Material compliance by HBC/FQ with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

5.5. Public Benefit

It is HBC/FQ's understanding that the commitments it has agreed to herein, and actions to be taken by HBC/FQ under this Settlement Agreement, would 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 HBC/FQ that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to HBC/FQ's or World & Main (Cranbury), LLC's 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 HBC/FQ 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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

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 or limited by reason of law generally, or as to the Products, HBC/FQ 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 HBC/FQ:

Joshua A. Bloom
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

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.

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:

AGREED TO:

Date: 12/21/17

Date: 12/15/17

By: 
Ema Bell

By: 
HBC/FQ LLC VP, Admin. Legal Affairs