

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Safe Products for Californians LLC (“SPFC”) and Horizon Group USA, Inc. (“Horizon Group”) with SPFC and Horizon Group collectively referred to as the “Parties.” SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Horizon Group 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, California Health & Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

SPFC alleges that Horizon Group manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that SPFC alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are art supplies in clear plastic bag containing DEHP, identified as, *Assorted Paint Brushes – 25 Pack UPC# 765940174678*, that are manufactured, imported, distributed, sold and/or offered for sale by Horizon Group and/or its customers in the state of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about December 11, 2017, SPFC served Horizon Group, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Horizon Group violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Horizon Group denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has manufactured, imported, sold and/or distributed for sale 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 Horizon Group of any fact, finding, and issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Horizon Group of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, 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 document has been signed by all Parties.

2. INJUNCTIVE RELIEF: LABELING

2.1 Commitment to Cease Sales, Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, Horizon Group shall not directly sell, or ship for sale in California any Products, unless such Products are either (a) “Reformulated Products” as defined by Section 2.2 below, or (b) Products that bear a clear and reasonable warning pursuant to Section 2.3, below.

2.2 Customer Notification for Products No Longer in Horizon Group's Control

No later than 30 days after the Effective Date, Horizon Group shall send a letter, electronic or otherwise ("Notification Letter"), to each California retailer to which it supplies the Products for resale in California. The Notification Letter shall advise the recipient that portions of the Products "contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm," and request that the recipient either: (a) label the Products remaining in inventory for sale in California, or to California Customers, pursuant to Section 2; or (b) return, at Horizon Group's sole expense, all units of the Products held by a California customer or for sale in California or to California customers to Horizon Group or a party Horizon Group has otherwise designated. The Notification Letter shall require a response from the recipient within 15 days confirming whether the Products will be labeled or returned. Horizon Group shall maintain records of all correspondence or other communications generated pursuant to this Section for one year after the Effective Date and shall promptly produce copies of such records upon SPFC's reasonable written request.

2.3 Reformulation

For the purposes of this Consent Judgment, "Reformulated Products" are defined as Products that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.4 Clear and Reasonable Warnings

For any Products directly sold or offered for sale in California by Horizon Group that are not Reformulated Products, Horizon Group agrees to only sell or offer for sale in California Products accompanied with the following warning:

“[new Prop 65 symbol] WARNING: This product can expose you to chemicals including DEHP, which is known to the state of California to cause cancer, birth defects or other reproductive harm. For more information go to: www.P65warnings.CA.gov”

The warning provided pursuant to Section 2.4 shall be prominently affixed to or printed on the Products’ packaging, labeling, or instruction booklet and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

3. MONETARY PAYMENTS

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b), Horizon Group shall pay civil penalties in the amount of \$6,000.00. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting Horizon Group’s penalty payment under this Settlement Agreement to OEHHA. Within ten (10) business days of this Agreement being signed by the Parties, Horizon Group shall issue a check payable to “Mission Law Firm, A.P.C., Trust Account” in the amount of \$1,500.00, and a check payable to OEHHA in the amount of \$4,500.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that SPFC and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Horizon Group expressed a desire to resolve SPFC's fees and costs. The Parties then negotiated a resolution of the compensation due to SPFC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, Horizon Group shall reimburse SPFC and their counsel \$22,059.84 within ten (10) business days of this Agreement being signed by the Parties. Horizon Group's payment shall be delivered to the address in Section 3.3 in the form of a check payable to "Mission Law Firm." The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Horizon Group's attention and negotiating a settlement of the matter in the public interest.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Mission Law Firm, A.P.C.
Attn: Proposition 65 (SPFC)
332 North Second Street
San Jose, California 95112

4. CLAIMS COVERED AND RELEASED

4.1 SPFC's Release of Proposition 65 Claims

SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, releases Horizon Group, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Horizon Group directly or indirectly distribute or sell Products, including, but not limited,

to downstream distributors, wholesalers, customers, retailers (including Wal-Mart Stores, Inc. and its affiliates and subsidiaries), franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date that were or could have been asserted by SPFC relating to the Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Horizon Group.

4.2 SPFC’s Individual Releases of Claims

SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 SPFC of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Horizon Group prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Horizon Group. Nothing in this section affects SPFC’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Horizon Group’s Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, SPFC, on behalf of itself, its 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 it 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 allegations made in the Notice.

4.3 Horizon Group's Release of SPFC

Horizon Group, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by SPFC and their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

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 laws 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Horizon Group shall provide written notice to SPFC of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and

to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Horizon Group from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Horizon Group:

David P. Callet
CalletLaw, LLC
5335 Wisconsin Ave. NW
Suite 440
Washington, D.C. 20015

For SPFC:

Proposition 65 Coordinator
Mission Law Firm, A.P.C.
332 N 2nd Street
San Jose, CA 95112

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. 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 hereto. 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.

9. **COUNTERPARTS; FACSIMILE AND 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 SECTION 25249.7(f)**

SPFC 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 herein.

AGREED TO:

Date:

5/11/2018

By:

[Signature]
Randy Moore, Operating Manager
Safe Products for Californians LLC

AGREED TO:

Date:

5/10/18

By:

[Signature]
~~Helli Gabler, Executive VP and CFO~~
Horizon Group USA, Inc.
Deborah Derby, President