

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”), on the one hand, and SDI Technologies, Inc. (“SDI Technologies”) and Lifeworks Technology Group, LLC (“Lifeworks”), on the other hand. Together, Bell, SDI Technologies and Lifeworks 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 alleges that SDI Technologies 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”) and that Lifeworks is a person that took actions as a licensee of SDI Technologies that allegedly violated Proposition 65.

1.2 General Allegations. Bell alleges that (a) using the iHome trademark of SDI Technologies, Lifeworks manufactured, imported, distributed and/or sold in the State of California Sports Sleeves that contain Di(2-ethylhexyl) phthalate (DEHP) without providing a requisite Proposition 65 exposure warning, and (b) that pursuant to the license agreement between Lifeworks and SDI Technologies, that SDI Technologies is also liable under Proposition 65 for such alleged violations. 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 reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are mobile phone sleeve holders worn on the arm, including the iHome Sports Sleeves (the “Covered Product” or “Covered Products”) that have been imported, distributed, offered for sale and/or sold in California by Lifeworks under license from SDI Technologies, that contain DEHP.

1.4 Notice of Violation. On January 31, 2018, Bell served SDI Technologies, The Michaels Companies, Inc. (“Michaels”), 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 SDI Technologies and such others, including public enforcers, with notice that alleged that SDI Technologies was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Covered Product(s) exposed users in California to DEHP. No public enforcer is or has ever been diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission. SDI Technologies and Lifeworks (a) state that the Covered Products were manufactured, sold and distributed by Lifeworks under license from SDI, and (b) 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 Covered Product(s), have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Lifeworks or SDI Technologies of any fact, finding, issue of law, violation of law or conclusion of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Lifeworks or SDI Technologies of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lifeworks and SDI Technologies. However, Paragraph 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Lifeworks and SDI Technologies maintain that they have not knowingly manufactured, imported, sold or caused to be manufactured, imported or sold the Covered Product(s) 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: WARNINGS

2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter, neither Lifeworks nor SDI Technologies shall manufacture, sell, or authorize any other person to offer for sale any Covered Products intended for retail sale in California that contain DEHP on any component to which consumers are exposed in excess of 0.1% (1,000 ppm) (each a “Reformulated Product”) unless the Covered Product is accompanied by a warning that complies with Article 6 of

Title 27 of the California Code of Regulations. Covered Products sold by Lifeworks or SDI Technologies before the Effective Date may sell through without a warning even if not a Reformulated Product. Until August 30, 2018, the warning shall consist of either:

- (a) The statement: “WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.”; or
- (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline to the left of the word “warning” in bold all capital letters, followed by the statement “This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is 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.”; or (2) a warning consisting of a symbol that is a black exclamation point in a yellow equilateral triangle with a bold black outline to the left of the word “warning” in bold all capital letters, followed by the statement “Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”¹

For Covered Products manufactured on and after August 30, 2018, the warning set forth in Paragraph 2.1(b) shall be used..

2.2 The warning provided pursuant to Paragraph 2.1 shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is 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.

¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other transmission format is being printed in color for purposes of other language, symbols or designs.

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

In settlement of all the claims referred to in this Settlement Agreement, Lifeworks as the Licensee of SDI Technologies and party responsible for the manufacture, importation and sale of the Covered Products shall pay on behalf of itself and SDI Technologies a total of \$500.00 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. The Civil Penalty payment(s) shall be delivered to the addresses identified in Paragraph 3.2, below. Lifeworks, on behalf of SDI Technologies 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) days of the Effective Date, Lifeworks shall issue on behalf of itself, as Licensee and party responsible for the manufacture and sale of the Covered Products, and SDI Technologies, two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$125.00. The Civil Penalty payments shall be delivered to the addresses identified in Paragraph 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 Paragraph 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 Paragraph 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. Lifeworks, on behalf of itself and SDI Technologies, 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 Paragraph 3.2(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Lifeworks on behalf of itself and SDI Technologies 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) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Paragraph 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 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. 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, Lifeworks on behalf of itself and SDI Technologies shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of SDI Technologies and Lifeworks, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Lifeworks shall issue on behalf of itself and SDI Technologies a check payable to "Brodsky & Smith, LLC" in the amount of \$4,500.00 for delivery to the address identified in Paragraph 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of SDI Technologies, Lifeworks and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Lifeworks and SDI Technologies, of any violation(s) or claimed violation(s) of Proposition 65 or any related statutory or common law claim that has been, could have been or may in the future be asserted by Bell or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") regarding exposing or the exposure of persons to DEHP and/or the failure to warn about exposure to DEHP arising in connection with the Covered Products manufactured, shipped, and/or otherwise distributed by any Defense Releasee prior to the Effective Date, even if sold by any Lifeworks, SDI or Downstream Releasee after the Effective Date, and Releasers hereby fully and completely release, to the fullest extent allowed by law, any such claims against Lifeworks and SDI Technologies and each of their parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees (the "Defense Releasees"), and each entity to whom Lifeworks or SDI Technologies directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Michaels, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, (collectively, the "Downstream 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

Covered Products, and were manufactured, distributed, sold and/or offered for sale by any Defense Releasee or any Downstream Releasee to customers or consumers in the State of California.

In further consideration of the promises and agreements in this Agreement, 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, releases in full and final accord and satisfaction as a bar to all actions and covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of action and releases all claims that she may have, including without limitation, all actions and causes of action, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, penalties, losses, liabilities and demands against any of the Defense or Downstream Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual violations of Proposition 65 or exposure to the chemical DEHP in the Products.

5.2 Lifeworks and SDI Technologies' Release of Bell. Lifeworks and SDI Technologies, on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, 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 Covered Products.

5.3 California Civil Code § 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 Covered Products will develop or be discovered. Bell on behalf of herself only, on one hand, and Lifeworks and SDI Technologies, 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 Paragraphs 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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, Lifeworks and SDI Technologies each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by (a) Lifeworks as licensee of SDI Technologies with this Settlement Agreement, and (b) by SDI Technologies, collectively constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Covered Products.

5.5. Public Benefit. It is the understanding of SDI Technologies and Lifeworks that the commitments they have agreed to in this Agreement, and actions to be taken or agreed to be refrained from, by SDI Technologies and Lifeworks under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of SDI Technologies and Lifeworks that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to the failure of any Defendant Releasee to provide a warning concerning exposure to DEHP with respect to the Covered Products Lifeworks has manufactured, distributed, sold, or offered for sale in California under license from SDI Technologies, 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 Covered Products addressed in this Settlement Agreement, provided that Lifeworks and SDI Technologies are 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 Covered Products, SDI Technologies and/or Lifeworks 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 Covered Product is so affected.

8. NOTICES

Unless specified in this Agreement, 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 SDI Technologies and Lifeworks:

Thomas N. FitzGibbon
Apex Law APC
233 Wilshire Blvd., Ste. 400
Santa Monica, CA 90401

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 electronic signature including in a Portable Document Format document, 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 § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties as to its subject matter and content and any and all prior negotiations and understandings related to its subject matter and content shall be deemed to have been merged within it. No representations or terms of agreement other than those contained in this Agreement exist or have been made by any Party with respect to the other Party or the subject matter of this Agreement.

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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: 7/27/18

Date: _____

By: 
Ema Bell

By: _____
SDI Technologies, Inc.

AGREED TO:

Date: _____

By: _____
Lifeworks Technology Group, LLC

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:

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Date: _____

Date: 7/27/18

By: _____
Ema Bell

By: 
SDI Technologies, Inc.

AGREED TO:

Date: 

By: 
Lifeworks Technology Group, LLC