

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Alicia Chin and Wells Lamont LLC

This Settlement Agreement is entered into by and between Alicia Chin (“Chin”) and Wells Lamont LLC (“Wells Lamont”). Individually, Chin and Wells Lamont are each a “Party”. Together, Chin and Wells Lamont are collectively referred to as the “Parties”.

Chin is an individual residing in California 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.

Wells Lamont is considered a person in the course of doing business or purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.6, *et seq* (“Proposition 65”)

1.2 General Allegations

Chin alleges that Wells Lamont imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California PVC Gloves (exemplar UPC# 5330004284, Item # 42593) (“Product”) that contain Di(2-ethylhexyl)phthalate (DEHP) without first providing the exposure warning 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 and other reproductive harm.

1.3 Notice of Violation(s)

On or about November 17, 2018, Chin served Wells Lamont LLC, & Northern Tool & Equipment Company, Inc. and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Wells Lamont LLC, & Northern Tool & Equipment Company, Inc. violated Proposition 65 by failing to warn its customers and consumers in California that the Product exposes 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.

1.4 No Admission

Wells Lamont denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products it has imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California, including the Released Products (as defined in Section 4.1, *infra*), have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.

1.5 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the last date on which this Settlement Agreement is signed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing six months after the Effective Date (the “Compliance Date”), and continuing thereafter, Wells Lamont agrees to only import, manufacture, distribute for sale, ship for sale, sell, and/or offer for sale in California (a) “Reformulated Products” or (b) Released Products with a warning that complies with Section 2.2, *infra*.

2.1 Reformulated Products

For purposes of this Settlement Agreement, “Reformulated Products” are Released Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A


and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining phthalate content in a solid substance.


2.2 Clear and Reasonable Warning

Commencing on the Compliance Date, Wells Lamont shall, for all Released Products it imports, manufactures, distributes for sale, ships for sale, sell, and/or offer for sale in California that are not Reformulated Products, provide warning that complies with this Subsection 2.2.

Wells Lamont shall employ the use of the warning symbol provided in Subsection 2.2(a) and (b) below, which consists of a black exclamation point in a yellow equilateral triangle¹ with a bold black outline. The warning symbol must be placed to the left of the text of the warning in a size no smaller than the height of the bolded word “WARNING”.

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 customer or user understands to which specific Released Products the warning applies, so as to minimize the risk of customer confusion.

- (a)  **WARNING:** This product can expose you to 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.

- (b)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

¹ If the sign, label or shall tag for the product is not printed using the color yellow, the symbol may be provided in black and white.

In lieu of the Warnings provided in Subsection 2.2(a) and (b), Wells Lamont may use any warning language that complies with Title 27, California Code of Regulations, § 25600, *et seq.*, as amended August 30, 2018, and thereafter.

2.3 Sell-Through

None of the requirements of Subsections 2.1 and 2.2, *supra*, shall apply to, and no other obligations or liabilities under this Settlement Agreement shall attach to, any Released Products that are manufactured on or before the Effective Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement, Wells Lamont shall pay a total of \$3,000 in civil penalties in accordance with this section. Each penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five (25%) to Chin.

By April 26, 2019, Wells Lamont shall issue two checks, as set forth below, for its civil penalty payment:

(i) a check in the amount of \$2,250 made payable to “OEHHA” and sent to Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010;

(ii) a check in the amount of \$750 made payable to Alicia Chin and sent to Chin in care of her attorney, O’Neil Dennis, Esquire, at 385 Grand Avenue, Suite 300, Oakland, California, 94610.

3.2 Reimbursement of Attorney’s Fees and Costs

The parties acknowledge that Chin and her 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 this Settlement Agreement had been settled.

Shortly after the other settlement terms had been finalized, Wells Lamont expressed a desire to resolve Chin's fees and costs. The Parties have reached an accord on the compensation due to Chin and her 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 Settlement Agreement. By April 26, 2019, Wells Lamont shall pay \$10,750 for the fees and costs incurred by Chin in investigating, bringing this matter to Wells Lamont's attention, and negotiating a settlement in the public interest. The payment shall be paid to "O'Neil Dennis" and delivered to:

O'Neil Dennis, Esq.
385 Grand Avenue, Suite 300
Oakland, CA 94610

4. CLAIMS COVERED AND RELEASED

4.1 Chin's Individual Release of Claims

Chin, in her individual capacity only and *not* in her representative capacity, provides a release to Wells Lamont and its past and present officers, directors, owners, members, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers (including online retailers), and all other upstream and downstream entities and persons in the distribution chain of the Covered Product (collectively, "Released Parties"), 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 Chin of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of or related to alleged or actual exposures to DEHP in the Product or similar glove products (collectively, the "Released Products") sold or distributed for sale by Wells Lamont before the Compliance Date.

4.2 Wells Lamont's Release of Chin

Wells Lamont, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Chin and her attorneys and other representatives, for any and all actions taken or statements made by Chin and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Released 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 remaining provisions 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Released Products, then Wells Lamont shall provide written notice to Chin 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 Released Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Wells Lamont from any obligation to comply with any pertinent state or federal toxics control laws.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

For Wells Lamont:

Wells Lamont, LLC
c/o Greg Sperla, Esq.
DLP Piper LLP
555 Mission St., Ste. 2400
San Francisco CA 94105

For Chin:

O'Neil Dennis, Esq.
385 Grand Avenue, Suite 300
Oakland, CA 94610

Any Party may, from time to time, specify in writing to the other, a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. POST EXECUTION ACTIVITIES


Chin agrees to comply with the reporting form requirements referenced in Health and Safety Code § 25249.7(f).


10. MODIFICATION

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

11. 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: <u>4/23/19</u> By: <u></u> Alicia Chin	AGREED TO: Date: _____ By: _____ Mike Setteducate Wells Lamont LLC
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AGREED TO:	AGREED TO:
Date: _____	Date: <u>5 / 1 / 2019</u>
By: _____ Alicia Chin	By:  Mike Setteducate Wells Lamont LLC