

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Consumer Protection Group, LLC and BES Manufacturing Co., LLC.

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC ("CPG"), on the one hand, and BES Manufacturing Co., LLC ("BES"), on the other hand, with CPG and BES collectively referred to as the "Parties."

1.2 General Allegations

CPG alleges that BES manufactured and distributed and offered for sale a BES Attachment Kit in the State of California containing Di-(2-ethylhexyl) Phthalate ("DEHP"), and that such products have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as BES Attachment Kit (the "Subject Product") that BES has sold, offered for sale or distributed in California and that contain DEHP.

1.4 Notice of Violation

On November 26, 2018 (AG No. 2018-02116), CPG served BES Products, LLC, Fry's Electronics, Inc. and the requisite public enforcement agencies eligible to initiate

Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" ("Notice") that provided BES Products, LLC, Fry's Electronics, Inc. and such public enforcers with notice that BES Products, LLC and Fry's Electronics, Inc. were allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by BES, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CPG or BES may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNING

2.1 Warning

The Subject Product shall be accompanied by a warning as described in Section 2.2 below, no later than thirty (30) days after the Effective Date. The warning requirements set forth in Section 2.2 below shall apply only to the Subject Product that are distributed, marketed, sold or shipped for sale in the State of California. BES, further agrees, promises and represents that, thirty (30) days after the Effective Date, to the extent it ships or sells any of the Subject Product in existing inventory that have not been reformulated, it will provide warnings that comply with Proposition 65. The warning requirement shall not apply to Product that are already in the stream of commerce as of the Effective Date or that BES places into the stream of commerce within thirty (30) days of the Effective Date.

2.2 Warning Language

The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. Where required, BES shall provide Proposition 65 warnings as follows:

⚠ WARNING: 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

⚠ WARNING: Cancer and Reproductive Harm www.P65Warnings.ca.gov

This shall constitute compliance with Proposition 65 with respect to the chemical in the Subject Product for any Subject Product in existing inventory

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

In settlement of all the claims referred to in this Settlement Agreement, BES shall pay a total of \$6,300 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (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 CPG. CPG's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to CPG and its counsel under the private attorney general doctrine and principles of contract law. Under these

legal principles, BES shall reimburse CPG's counsel for fees and costs, incurred as a result of investigating and bringing this matter to BES attention. BES shall pay Consumer Protection's counsel \$35,700 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

Seven (7) days after the Effective Date, BES shall make a total payment of Forty-Two Thousand Dollars (\$42,000) for the civil penalties and attorney's fees/costs by wire transfer to Plaintiff's counsel Blackstone Law APC:

Bank: First Republic Bank

Routing No.: 321081669

Account No.: 80006597266

Beneficiary: Blackstone Law APC IOLTA

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

**6.1 Release of BES, BES Products, LLC and Fry's Electronics, Inc.,
Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4 and 5 above, CPG, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly

or indirectly, any form of legal action and releases all claims relating to the Subject Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) BES, (b) BES Products, LLC, (c) Fry's Electronics, Inc, (d) all entities to whom BES and/or BES Products, LLC, directly or indirectly provide, distribute, or sell the Subject Product, including but not limited to , distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users (collectively "downstream distributors"), and (e) any and all owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns of BES, BES Products, LLC, Fry's Electronics, and any other downstream distributor, (all entities described above in section 6.1 shall collectively be referred to as "Releasees").

CPG also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against Releasees with regards to the subject product. CPG acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BES, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California 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. The release in this section shall have no force or effect until the full amount of payments set forth in above Sections 3, 4 and 5 are paid in full.

6.2- BES's Release of Consumer Protection

BES waives any and all claims against CPG, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPG and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products. BES represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind BES to this Settlement Agreement.

7. GOVERNING LAW

7.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

7.2 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Subject Product, then CPG shall have no further obligations pursuant to this Settlement Agreement.

7.3 In the event that Proposition 65 is repealed, preempted or otherwise rendered inapplicable by reason of law generally, or as to the Subject Product, then BES shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, any Subject Product that are 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 courier on any party by the other party at the following addresses:

For BES:	Michael R. Wright, Esq.
	Levene, Gouldin & Thompson, LLP
	450 Plaza Drive
	Vestal, NY 13850

For CPG: Jonathan M. Genish, Esq.
Blackstone Law APC
1801 Century Park East., Suite 2400
Los Angeles, CA 90067

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; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, 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)

CPG agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. 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 all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. **MODIFICATION**

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

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: April 11, 2019</p> <p>By:  On Behalf of Consumer Protection Group, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: April 11, 2019</p> <p>By:  On Behalf of BES Manufacturing Co., LLC.</p>