

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Weihai Luda Arts & Craft Ltd. (“Weihai”). Together, Bell and Weihai 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 Weihai 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”).

1.2 General Allegations. Bell alleges that Weihai has exposed individuals to the chemical diisononyl phthalate (DINP) from its manufacture and distribution of (a) Mossimo Supply Co. hats, UPC #4 90610 32087 0, and (b) Goodfellow & Co. passport/luggage tag sets without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are (a) Mossimo Supply Co. hats, UPC #4 90610 32087 0, and (b) Goodfellow & Co. passport/luggage tag sets (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Weihai.

1.4 Notices of Violation. On or about January 29, 2019 and June 28, 2019, Bell served Weihai, Target Corporation (“Target”), and various public enforcement agencies with documents each entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (collectively, the “Notices”). The Notices provided Weihai and such others, including public enforcers, with notice that alleged that Weihai was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission. Weihai denies the material factual and legal allegations contained in the Notices 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 constitute or be construed, considered, offered or admitted as evidence of an admission by Weihai of any fact, finding, issue of law, or violation of law, or as evidence of fault, wrongdoing, or liability by Weihai, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Weihai of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Weihai. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Weihai maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that the Parties 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 Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS


2.1 Reformulation of Products. Weihai represents that it is not presently selling or otherwise distributing the Products for sale in or into California. Weihai agrees, however, that should it recommence importing, distributing, selling, or offering for sale the Products in or into California in the future, such Products shall: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply

to any Reformulated Product. With respect to existing Products, meaning those that are currently in the channels of distribution, with distributors, and retailers, WEIHAI and its downstream distributors (specifically including Target Corporation) may continue to sell-through those items. However, as of the Effective Date, no new Products may be distributed or sold in California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3.


2.2 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DINP 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 the phthalate content in a solid substance.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Weihai manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Weihai to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Weihai may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer - www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the

word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ 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.

If Weihai sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Compliance with Warning Regulations. The Parties agree that Weihai shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date. If Proposition 65 warnings for DINP or the Products should no longer be required, Weihai shall have no further obligations pursuant to this Settlement Agreement.

3. PAYMENT OF PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b) AND 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 monetary amount of the Settlement. The Parties thereafter reached an accord on (a) the civil penalty payment (the “Civil Penalty”), and (b) 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, and in settlement of all claims referred to in this Agreement, Weihai shall make a total settlement payment of \$42,000.00 (the "Settlement Payment") in accordance with this Section. Pursuant to this Section, the Settlement Payment shall be allotted as follows: Weihai shall pay \$5,000.00 as the Civil Penalty, and Weihai shall reimburse Bell's counsel \$32,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Weihai's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Weihai shall initiate and complete a wire transfer of the Settlement Payment to Brodsky & Smith, LLC, in accordance with the wire transfer instructions set forth in § 3.1, below.

3.1 Brodsky & Smith, LLC Wire Transfer Instructions.

Bank of America, N.A.
100 West 33rd Street
New York, NY 10001
ABA Routing No. 026009593
[International Banks can use SWIFT- BIC: BOFAUS3N]
Account Name: Merrill Lynch
Account No. 6550113516
Ref: For Final Credit 870-07119 Brodsky & Smith, LLC

3.2 Civil Penalty. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Bell. Within twenty (20) days of the Effective Date, Brodsky & Smith, LLC shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,750.00; and to (b) "Ema Bell" in the amount of \$1,250.00. Payment owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of 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

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, Weihai shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Weihai's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Weihai shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$37,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Weihai and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on behalf of herself, and her past and current agents, representatives, attorneys, successors, and/or assignees, but *not* in her representative capacity, and Weihai, of any violation of Proposition 65 that was or could have been asserted by Bell or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DINP contained in the Products, and Releasers hereby release any such claims against (a) Weihai, (b) each of Weihai's downstream distributors (specifically including but not limited to Target Corporation), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, and (c) Weihai's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,

agents, and employees, and sister and parent entities (collectively “Releasees”) from all claims for violations of Proposition 65 through the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 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 she may have related to the Products, 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, costs, fines, penalties 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 listed chemicals in the Products.

5.2 Weihai’s Release of Bell. Weihai, 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 § 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, and her past and current agents, representatives, attorneys, successors, and/or assignees, but *not* in her 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 the Releasees. The Parties acknowledge that the claims released in §§ 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 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.

Bell and Weihai each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Weihai with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DINP from use of the Products.

5.5. Public Benefit. It is Weihai's understanding that the commitments it has agreed to herein, and actions to be taken by Weihai 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 Weihai that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Weihai failure to provide a warning concerning exposure to DINP prior to use of 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 Weihai 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, Weihai 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 e-mail and either : (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 Weihai:

Kendra Lounsberry
Barnes & Thornburg LLP
2029 Century Park East
Suite 300
Los Angeles, CA 90067
kendra.lounsberry@btlaw.com

For Bell:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
esmith@brodskysmith.com

Either 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 § 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 and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. 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: _____

Date: 9/5/2019

By: _____
Ema Bell

By: Matthew Wang
Weihai Luda Co.

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

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13. 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: 9/13/19

Date: _____

By:  _____

By: _____

Emma Bell

Weihai Luda Co.