

UPDATED SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Public Health and Safety Advocates, USTOV, Inc. and U.S. Trading Company

This Settlement Agreement is entered into by and between Public Health and Safety Advocates, LLC (“PHSA”) and USTOV Inc. and U.S. Trading Company (“USTOV”), with PHSA and USTOV collectively referred to as the “Parties.” PHSA is a California LLC that is seeking to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. USTOV 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 §§ 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

PHSA alleges that USTOV has manufactured, imported, sold and/or distributed for sale in California “Dragonfly Fish Balls” containing lead without the requisite Proposition 65 health hazard warnings. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity, and on October 1, 1992, the Governor added lead to the list of chemicals known to the State to cause cancer. The above additions took place more than Twelve (12) months before PHSA served the 60-Day Notice of Violation on USTOV.

1.3 Product Description

The product that is covered by this Settlement Agreement is defined as: Dragonfly Fish Balls, UPC #721557713662 (“Dragonfly Fish Balls”) that is manufactured, imported, sold and/or distributed for sale in California by USTOV. The USTOV Dragonfly Fish Balls shall hereinafter be referred to as “Covered Products.” Lead hereinafter referred to as “Covered Chemical.”

1.4 Notice of Violation

On March 16, 2020, PHSA served USTOV and certain requisite public enforcement agencies with a “60-Day Notice of Violation” Notice # 2020-00677 (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on USTOV’s alleged failure to warn its customers, consumers, workers and other individuals that the Covered Product exposed users in California to lead, as listed in the Notice. To the best of the Parties’ knowledge, no public enforcer has commenced or has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

USTOV denies the material factual and legal allegations contained in PHSA’s Notice and maintains that all products that it has manufactured, imported, distributed, and/or sold 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 USTOV of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by USTOV of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect USTOV’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 20, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standard

“Reformulated Products” are defined as: Products for which the level of Lead does not exceed 5.87 parts per billion (“Default Reformulation Standard”). However, in the event that the California Attorney General determines a different reformulation level to be in the public interest, and sets forth guidelines specifying a maximum level for the Listed Chemical, the Default Reformulation Standard will be superseded by that standard set by the Attorney

General's office ("Attorney General Standard"), and the Attorney General Standard will become the standard for Reformulated Products.

2.2 Reformulation or Warning Commitment

As of the Effective Date, all Products sold by, or on behalf of, USTOV in the State of California shall be Products that qualify as Reformulated Products as defined in Section 2.1 above, or shall carry appropriate Proposition 65 health hazard warnings as described in Section 2.3 below.

2.3 Clear and Reasonable Warnings

As of the Effective Date, for the Covered Product that does not qualify as Reformulated Products, USTOV shall provide clear and reasonable warnings on the Covered Product that it manufactures, distributes, sells, or offers for sale in California. The warnings shall be placed with such conspicuousness and prominent manner that will ensure the message is made available and likely to be read, seen, or heard and understood by an ordinary individual under customary conditions prior to or at the time of the sale or purchase. Warnings shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

The Parties agree that product labeling stating either, (1): "WARNING: This product contains chemicals known to the State of California to cause cancer, and birth defect or other reproductive harm" shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Product, or (2): "a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline (or where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white) which shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING", followed by the word "WARNING" in all capital letters, in bold print, and either "Reproductive Harm -

www.P65Warnings.ca.gov" or "Cancer and Reproductive Harm - www.P65Warnings.ca.gov", as determined by USTOV.

3. PAYMENTS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7 (B)

In settlement of all the claims referred to in this Settlement Agreement, USTOV has been assessed a total of Three Thousand Five Hundred Dollars (\$3,500) in civil penalties in accordance with this section. Penalty payment will 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 PHSA.

USTOV shall issue two separate checks within ten (10) days of the Effective Date for a total amount of Three Thousand Five Hundred Dollars (\$3,500) as follows and all payments shall be delivered to the addresses listed in Section 3.3 below.

- a. One check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$2,625, representing 75% of the total penalty; and
- b. One check made payable to "Public Health and Safety Advocates, LLC." in the amount of \$875, representing 25% of the total penalty.

3.2 Attorneys' Fees and Costs

Twenty-Four Thousand Five-Hundred dollars (\$24,500) of such payment shall be paid to Law Offices of Danialpour & Associates, as PHSA's attorneys, for reasonable investigation fees, and costs, attorney's fees, and any other cost incurred as a result of investigating and bringing this matter to USTOV's attention. The check shall be delivered to Law Offices of Danialpour & Associates, address listed in Section 3.3 below.

3.3 Payment Procedures

All payments owed to OEHHHA, pursuant to Section 3.1, shall be delivered directly to OEHHHA (Memo line “Prop 65 Penalties”) at the following address:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

All payments owed to PHSA, pursuant to Section 3.1, shall be delivered directly to:

c/o PHSA
Law Offices of Danialpour & Associates
357 S. Robertson Blvd. STE 400
Beverly Hills, CA 90211

All payments owed to Law Offices of Danialpour & Associates, pursuant to Section 3.1, shall be delivered directly to:

Attn: David D. Danialpour
Law Offices of Danialpour & Associates
357 S. Robertson Blvd. STE 400
Beverly Hills, CA 90211

3.4 Proof of Payment

A copy of each check payable to OEHHHA, as well as proof of delivery of OEHH’s check, shall be mailed, simultaneous with payment, to Law Offices of Danialpour & Associates at the address set forth in Section 3.3 above, as proof of payment to OEHHHA.

4. AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT

4.1 PHSA represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind PHSA to this Settlement Agreement.

4.2 USTOV represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind USTOV to this Settlement Agreement.

5. CLAIMS COVERED AND RELEASED

5.1 PHSA Release of USTOV

This Settlement Agreement is a full, final, and binding resolution between PHSA and USTOV of any violation of Proposition 65 that was or could have been asserted by PHSA, or on behalf of its past and current agents, representatives and attorneys against USTOV its affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom USTOV directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on their failure to warn about alleged exposures to Lead in Covered Product that were imported, distributed, sold and/or offered for sale by USTOV in California before the Effective Date. This release is provided in PHSA individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, PHSA, on behalf of itself, its past and current agents, representatives and attorneys, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that PHSA may have 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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to lead in USTOV’s Dragonfly Fish Balls imported, distributed, sold and/or offered for sale by USTOV before the Effective Date (collectively “claims”), against USTOV and Releasees.

5.2 USTOV’s Release of PHSA

USTOV, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against PHSA and their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by PHSA and their 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 Products.

6. REPORT OF THE SETTLEMENT TO THE OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA

PHSA shall report this Settlement Agreement to the Attorney General’s Office within five (5) days of the Parties’ execution of this Settlement Agreement.

7. EXECUTION IN COUNTERPARTS AND FACSIMILE/EMAIL

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or Email portable document format (PDF) signature shall be as valid as the original.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to 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) overnight courier to any party by the other party at the following designees addresses:

For PHSA:

David Davar Danialpour, Esq.
Law Offices of Danialpour & Associates
357 S. Robertson Blvd. STE 400
Beverly Hills, CA 90211

For USTOV:

Gary C. Cooper, Esq.
Law Offices of Gary C. Cooper
247 Yale Avenue
Kensington, CA 94708

9. SEVERABILITY

If any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

10. MODIFICATION

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

11. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are 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 USTOV shall provide written notice to PHSA 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, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve USTOV from any obligation to comply with any pertinent state or federal law, including all toxic control laws.


12. AUTHORIZATION

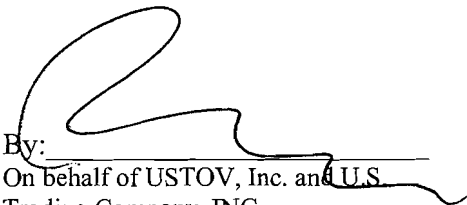
The undersigned are authorized to execute this Settlement Agreement on Behalf of their respective parties and have read, understood, and agree to all the terms and conditions of this Settlement Agreement.

AGREED TO: 5/20/2020 – UPDATED ON 6/12/2020

Date: 6/12/2020

Date: 6/15/20

By: 
On behalf of Public Health and Safety Advocates, LLC

By: 
On behalf of USTOV, Inc. and U.S. Trading Company, INC