

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. ("EHA"), on the one hand, and MBR Industries, Inc. ("MBR"), on the other hand, with EHA and MBR each individually referred to as a "Party" and collectively as the "Parties." EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. MBR at all relevant times has had fewer than ten employees, and therefore is not a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* ("Proposition 65").

MBR has agreed to defend and indemnify Northgate Market with respect to the Notice of Violation referred to below and with respect to this settlement.

1.2 General Allegations

EHA alleges that MBR manufactures, sells, and distributes for sale in California, basting brushes that contain Diisononyl phthalate ("DINP") and that it does so without first providing the health hazard warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. MBR denies EHA's allegations, and alleges that any DINP exposure that may have resulted from consumers' or employees' use or handling of the basting brushes was below the level requiring a warning.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to, basting brushes that contain DINP and that are manufactured, sold or distributed for sale in California by MBR ("Products").

1.4 Notice of Violation

On April 29, 2020, EHA served MBR, Northgate Gonzales Markets, Inc. (erroneously referred to in the notice as "Northgate Market"), the California Attorney General and other requisite

public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that MBR and Northgate violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to DINP from Products.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

MBR denies the material, factual, and legal allegations in the Notice and maintains that all the product it sold and/or distributed for sale 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 MBR 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 MBR of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by MBR. This Section shall not, however, diminish or otherwise affect MBR’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Compliance Date

For purposes of this Settlement Agreement, the term “Compliance Date” shall mean ninety (90) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Removal of Product from California Market

Notwithstanding Products manufactured on or prior to the Compliance Date as provided for in Section 2.2, MBR will no longer sell Product in California once the existing inventory of Product is sold.

2.2 Sell-Through Period

Notwithstanding anything else in this Settlement Agreement, Products that are manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this Settlement Agreement, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligations of MBR, or any Releasees (if applicable), do not apply to Products manufactured on or prior to the Compliance Date.

2.3 Nothing in this agreement shall prevent MBR from selling basting brushes in California that are "reformulated," meaning that they contain 1000 parts per million or less of DINP.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, MBR agrees to pay two thousand dollars (\$2,000) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, MBR shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand and five hundred dollars (\$1,500) and (b) Environmental Health Advocates, Inc., in the amount of five hundred dollars (\$500).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section 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

All penalty payments owed to EHA shall be sent to:

Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, MBR agrees to pay eighteen thousand dollars (\$18,000) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of MBR, and negotiating a settlement. MBR's payment shall be delivered in the form of two checks: (1) one check for nine thousand dollars (\$9,000) payable to "Glick Law Group"; and (2) one check for nine thousand dollars (\$9,000) payable to Nicholas & Tomasevic LLP."

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

MBR agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that MBR cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after MBR receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of MBR and Northgate Gonzales Markets, Inc.

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and MBR of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against MBR and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products were purchased by MBR, and each entity to whom MBR directly or indirectly distributes or sells the Products, including, but not limited to, Northgate Gonzales Markets, Inc. and any other of MBR's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (all referred to herein as "Releasees"), based on the failure to warn about exposures to DINP in the Products manufactured, sold or distributed for sale in California by MBR before the Compliance Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against MBR and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DINP in the Products manufactured, distributed, sold or offered for sale by MBR, before the Compliance Date.

4.2 MBR's Release of EHA

MBR, 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 EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and

its 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.

4.3 California Civil Code Section 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 Product will develop or be discovered. EHA on behalf of itself only, on one hand, and MBR on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Compliance Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, other than Section 4, "The Claims Covered and Released" 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.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For MBR:

Bruce Nye
Scali Rasmussen
1901 Harrison Street 14th Floor
Oakland, CA 94612

For EHA:

Jake Schulte
Nicholas & Tomasevic, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California 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 on behalf of their respective Parties and have read, understood, and agree to all the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: October 2, 2020.

Date: October 6, 2020

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
MBR INDUSTRIES, INC.