

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 3B Medical, Inc. (“3B”), on the other hand, with EHA and 3B each individually referred to as a “Party” and collectively as the “Parties.” EHA is a California corporation acting in the interest of the general public. EHA seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. 3B employs ten or more individuals 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that 3B manufactures, sells, and distributes for sale in California oxygen cannulas that contain Di(2-ethylhexyl) phthalate (“DEHP”) and that it did so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, 3B Medical Oxygen Cannula, that contains DEHP and that is manufactured, sold or distributed for sale in California by 3B (“Product”).

1.4 Notice of Violation

On October 30, 2020, EHA served 3B Medical, Inc., Amazon, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that 3B Medical, Inc. violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Product.

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 against 3B.

1.5 No Admission

3B denies the material, factual, and legal allegations in the Notice and maintains that all of the product it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by 3B 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 3B of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by 3B. This Section shall not, however, diminish or otherwise affect 3B'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 sixty (60) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF


2.1 Clear and Reasonable Warnings

Commencing on the Effective Date, and continuing thereafter, 3B agrees to only manufacture for sale, purchase for sale, import for sale, and/or distribute for sale in California Products that are sold with a Proposition 65 warning as provided for in Section 2.3 below.


2.2 Warning Requirements

3B agrees that a Proposition 65 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 consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California that contain the following statements:

- 1)  [California Prop 65] **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, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

- 2)  [California Prop 65] **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.gov

Language in brackets is optional. The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. The same warning shall be posted on any 3B websites where the Products are sold in California.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are manufactured and/or already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

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, 3B agrees to pay one thousand dollars (\$1,000.00) 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, 3B shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of seven hundred and fifty dollars (\$750.00) and (b) Environmental Health Advocates, in the amount of two hundred and fifty dollars (\$250.00).

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 1900
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, 3B agrees to pay nine thousand dollars (\$9,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of 3B, and negotiating a settlement. 3B's payment shall be delivered in the form of two checks: (1) one check for \$4,500.00 payable to "Glick Law Group"; and (2) one check for \$4,500.00 payable to "Nicholas & Tomasevic LLP."

3.3 Payment Addresses

All payments required under this Section shall be delivered:

The Glick Law Group Payment to:

Noam Glick
Glick Law Group
225 Broadway, Suite 1900
San Diego, CA 92101

The Nicholas & Tomasevic, LLP Payment to:

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

3.4 Tax Documentation

3B 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 3B cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after 3B receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of 3B

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and 3B 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 3B and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by 3B, and each entity to whom 3B directly or indirectly distributed or sold the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in the Product manufactured, sold or distributed for sale in California by 3B before the Effective 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 3B 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 DEHP in the Product manufactured, distributed,

sold or offered for sale by 3B, before the Effective Date.

4.2 3B's Release of EHA

3B, 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 or otherwise seeking to enforce Proposition 65 against it in connection with the Product.

4.3 Mutual Release of Known and Unknown Claims

EHA, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, in its respective individual capacity only and not in its representative capacity, and 3B, each provide a general release of the other including the Releasees herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products. EHA and 3B each acknowledge that they are each familiar with Section 1542 of the California Civil Code, 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.

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, 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 3B:

Timothy Murphy
Carlson, Gaskey & Olds, P.C.
400 West Maple Rd, Suite 350
Birmingham, MI 48009

For EHA:

Noam Glick
Glick Law Group, 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. Further, this Settlement Agreement constitutes the sole and entire Agreement of the Parties and supersedes all prior and contemporaneous understandings, Agreements, representations and warranties, both written and oral.

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 of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: 02/08/2021

Date: 2/8/21

By: 

By: 

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

3B MEDICAL, INC.