

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Big 3 Packaging (“Big 3”). Together, Bell and Big 3 are collectively referred to as the “Parties.” Bell is an individual who 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 Big 3 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 Big 3 has exposed individuals to the chemical diethanolamine (“DEA”) from its sales of HYGN hand sanitizer without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEA is listed under 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 HYGN hand sanitizer (the “Products”) that Big 3 has either imported, and/or distributed, and/or offered for sale and/or directly or indirectly sold in California.

**1.4 Notice of Violation.** On September 29, 2021, Bell served Trifecta Telecom Holdings, LLC; Officemax Incorporated (“Officemax”); Office Depot, Inc.; Office Depot, LLC (“Office Depot”); The Office Club, Inc. (collectively “The Noticed Entities”), and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (collectively, the “Notice”). The Notice provided the Noticed entities and such others, including public enforcers, with notice that alleged that the Noticed entities wer 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 DEA. Big 3 was subsequently identified as the supplier of the products in the Notice and entered into negotiations with Bell as indemnitor to the Noticed

entities to resolve Bell's claims concerning exposure to DEA in the Products. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Big 3 and the Noticed Entities deny the material factual and legal allegations contained in the Notice and maintain that, to the best of their 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 be construed as an admission against interest by Big 3 and the Noticed Entities of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by Big 3 and the Noticed Entities of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Big 3. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Big 3 maintains that it has not knowingly manufactured, or caused to be manufactured, and the Noticed Entities maintain that they have not knowingly sold or distributed or caused to be sold or distributed, the Products for sale in California in violation of Proposition 65.


**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that both Parties have notice that this Agreement is fully executed.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**


After the effective date, Big 3 shall not distribute, offer for sale or sell any Product unless the Product is labeled with a clear Proposition 65 exposure warning.

**2.1 Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, except as set forth in § 2.1 a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for all Products that Big 3 manufacturers, imports, distributes, sells, or offers for sale in California that is not a DEA Free Reformulated Product. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.1(a) or (b), respectively:

- (a) **Warning.** The "Warning" shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including diethanolamine (DEA), which are known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Big 3 may, but is not required to, use the alternative short-form warning as set forth in this § 2.1(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Risk of Cancer from diethanolamine (DEA) Exposure - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**2.2** A **Warning** or **Alternative Warning** provided pursuant to § 2.1 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. The 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.

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Big 3 offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Big 3 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with

written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

**2.3 Compliance with Warning Regulations.** The Parties agree that Big 3 shall be deemed to be in compliance with Proposition 65 and this Settlement Agreement by either adhering to §§ 2.1, and 2.2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the product and the exposure at issue that are in effect after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Big 3 shall pay \$2,500.00 as a Civil Penalty in accordance with this Section. 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. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not sent within the payment times set forth below, Big 3 shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

**3.1 Civil Penalty.** No later than December 10, 2022, Big 3 shall issue two (2) separate checks for the Civil Penalty payment: (a) one to "OEHHA" in the amount of \$1,875.00; and one to (b) "Brodsky Smith in Trust for Bell" in the amount of \$625.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Bell, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brotsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004.

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (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.

**(b) Copy of Payments to OEHHHA.** Big 3 agrees to provide Bell's counsel with a copy of the check payable to OEHHHA, simultaneously with its penalty payment to Bell, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

**(c) Tax Documentation.** Big 3 agrees to provide a completed IRS 1099 for its payments to, and Bell agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Ema Bell" whose address and tax identification number shall be provided within five (5) calendar days of the Effective Date;

(ii) "Brotsky Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "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 her. 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 Effective Date. Under these legal principles, Big 3 shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Big 3 and the Noticed Entities' attention, and negotiating a settlement in the public interest. No later than December 10, 2022, Big 3 shall send a check payable to "Brodsky Smith" in the amount of \$22,500.00 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Big 3 and Upstream and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Big 3, 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 ("Releasors") for failure to provide warnings for alleged exposures to DEA contained in the Products, and Releasors hereby release any such claims against Big 3 and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, and their respective predecessors, successors and assignees, and each entity from whom Big 3 obtained any Products and each entity to whom Big 3 directly or indirectly distributed or sold the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Trifecta Telecom Holdings, LLC; Officemax Incorporated ("Officemax"); Office Depot, Inc.; Office Depot, LLC ("Office Depot"); The Office Club, Inc., and their respective parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, and their respective predecessors, successors and assignees (collectively, the "Releasees"), from all claims



for violations of Proposition 65 through the Effective Date based on exposure to DEA from use of the Products.

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, 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, 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 DEA in the Products.

**5.2 Big 3's Release of Bell.** Big 3, 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 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 exposure to DEA from the Products up through the Effective Date.

**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 only, on the one hand, and Big 3, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. 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 Big 3 each respectively 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 Big 3 with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEA from use of the Products.

**5.5. Public Benefit.** It is the Parties' understanding that the commitments Big 3 has agreed to herein, and the actions to be taken by Big 3 under this Settlement Agreement, including payment of a civil penalty, 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 the Parties that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Big 3's failure to provide a warning concerning exposure to DEA 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 Big 3 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, or if DEA is delisted, Big 3 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. This Settlement Agreement is enforceable solely by the Parties hereto.

**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 or two-day courier on any Party by the other Party to the following addresses:

For Big 3:

Whitney Roy, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, Forty-Third Floor  
Los Angeles, CA 90071

For Bell:

Evan J. Smith  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

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: 11-4-2022

Date:  \_\_\_\_\_

By:  \_\_\_\_\_

Ema Bell

By:  \_\_\_\_\_

Big 3 Packaging