

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Hobie Cat Company II, LLC (“Hobie Cat Company”). Together, Bell and Hobie Cat Company 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 Hobie Cat Company 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 Hobie Cat Company has exposed individuals to the chemical diisononyl phthalate (“DINP”) from its sales of Hobie Cat cooler bags 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 Hobie Cat cooler bags (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Hobie Cat Company.

**1.4 Notice of Violation.** On October 26, 2021, Bell served Hobie Cat Company, Recreational Equipment, Inc. (“REI”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Hobie Cat Company, REI, and such others, including public enforcers, with notice that alleged that Hobie Cat Company 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. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission.** Hobie Cat Company denies each and every material, factual, and legal allegation contained in the Notice and maintain that all of the 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 by Hobie Cat Company 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 by Hobie Cat Company of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Hobie Cat Company. 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, Hobie Cat Company maintains that it has not knowingly manufactured, or caused to be manufactured, 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 this Agreement is last executed by the Parties.

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

**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, Products that Hobie Cat Company directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (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.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean be defined as Products which, if they contain DINP, 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, Hobie Cat Company shall provide a clear and reasonable exposure warning for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. There shall be no obligation for Hobie Cat Company 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 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:** Hobie Cat Company may, but 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](http://www.P65Warnings.ca.gov).

**2.4 Product Warning.** 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** or **Alternative 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** or **Alternative 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** or **Alternative 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.

**2.5 Internet Warning.** 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 Hobie Cat Company 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. Hobie Cat Company must also comply with Title 27, California Code of Regulations, Section 25600.2 by either (a) providing a warning on the product label or labeling that satisfies Section 25249.6 of the Act, or (b) by providing a written notice to third-party retail sellers in accordance with Section 25600.2(b).

**2.6 Compliance with Warning Regulations.** The Parties agree that Hobie Cat Company shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2.3 or §§ 2.4 and 2.5 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 after the Effective Date. If "consumer information," as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Hobie Cat Company shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

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

**3.1 Civil Penalty.** In settlement of all the claims referred to in this Settlement Agreement, Hobie Cat Company shall pay \$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. Within ten (10) business days of the Effective Date, Hobie Cat Company shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and

to (b) "Ema Bell" in the amount of \$125.00. 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  
Brodsky 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 one of the the following addresses, as appropriate :

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.** Hobie Cat Company agrees to provide Bell's counsel with a copy of the checks payable to OEHHHA, simultaneous with its penalty payments to Bell, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

(c) **Tax Documentation.** Hobie Cat Company agrees to provide a completed IRS 1099 form 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) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky 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 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, Hobie Cat Company shall reimburse Bell’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Hobie Cat Company’s attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Hobie Cat Company shall issue a check payable to “Brodsky Smith” in the amount of \$5,500.00 for delivery to the address identified in § 3.2(a)(i), above.

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

**5.1 Release of Hobie Cat Company and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and releases Hobie Cat Company and its parents, subsidiaries, affiliated entities under common ownership, directors, shareholders, officers, agents, employees, attorneys, successors, assignees, and each entity to whom Hobie Cat Company directly or indirectly distributes or sells Products, including but not limited to REI (collectively, “Releasees”), based on its failure to warn about alleged exposures to DINP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Hobie Cat Company in California before the Effective Date, as alleged in the Notice.

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 all of Bell's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Bell may have, including without limitation, all actions and causes of action in law and in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not exclusively, investigation fees, expert fees, and attorneys' fees, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DINP in the Products.

**5.2 Hobie Cat Companys Release of Bell.** Hobie Cat Company, 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, through the Effective Date, 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 only, on one hand, and Hobie Cat Company, 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 Hobie Cat Company 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 Hobie Cat Company with this Settlement Agreement constitutes compliance by Hobie Cat Company with Proposition 65 with respect to exposure to DINP from use of the Products.

**5.5. Public Benefit.** It is Hobie Cat Company's understanding that the commitments it has agreed to herein, and actions to be taken by Hobie Cat Company 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 Hobie Cat Company that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Hobie Cat Company 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 Hobie Cat Company 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.

## **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, preempted, or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, then Hobie Cat Company may 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: (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 Hobie Cat Company:

Alexandra L. Hider  
McGuire Woods LLP  
355 S. Grand Ave., Suite 4200  
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 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.

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

Bell and her counsel agree 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 and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made to any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**13. 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: \_\_\_\_\_

Date: January 5, 2024

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

By: Vincent Sebastiano CFO

Ena Bell

Hobie Cat Company II, LLC

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**13. 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:**

Date: 1 / 5 / 24

By:   
Emma Bell

**AGREED TO:**

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

By: \_\_\_\_\_  
Hobie Cat Company II, LLC