

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”), Donatus McCoy (“McCoy”) (collectively, “Enforcers”), and Weems & Plath, LLC (“Weems & Plath”). Together, Enforcers and Weems & Plath are collectively referred to as the “Parties.” Enforcers are individuals who reside in the State of California, and seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Enforcers allege that Weems & Plath 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. Enforcers allege that Weems & Plath has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of (a) *Weems & Plath*® protractor bags, UPC # 721002001016, and (b) *Weems & Plath*® fixed point dividers, UPC # 721002002594, without first providing users and consumers of the products with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are (a) *Weems & Plath*® protractor bags, UPC # 721002001016, and (b) *Weems & Plath*® fixed point dividers, UPC # 721002002594 (collectively, the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Weems & Plath.

1.4 Notices of Violation. On November 11, 2021, McCoy served Weems & Plath and various public enforcement agencies with a document entitled “60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act” (the “November Notice”). The November Notice provided Weems & Plath and such others, including public enforcers, with notice that alleged that Weems & Plath was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the *Weems & Plath*® protractor bags,

UPC # 721002001016, will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the November Notice.

On September 15, 2022, Espinoza served Weems & Plath and various public enforcement agencies with a document entitled “60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act” (the “September Notice”). The September Notice provided Weems & Plath and such others, including public enforcers, with notice that alleged that Weems & Plath was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the *Weems & Plath*® fixed point dividers, UPC # 721002002594, will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the September Notice.

The November Notice and the September Notice are collectively referred to herein, as the “Notices.”

1.5 No Admission. Weems & Plath denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its 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 by Weems & Plath 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 Weems & Plath of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Weems & Plath. 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, Weems & Plath 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 AND/OR WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Weems & Plath directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) 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 Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP 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 DEHP content in a solid substance.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Weems & Plath manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Weems & Plath to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date, and the Section 5 release applies to all such Products. 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 di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Weems & Plath may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.4 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, provided 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 Products 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 Weems & Plath 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. Weems & Plath also will comply with Title 27, California Code of Regulations, Section 25600.2.

2.5 Compliance with Warning Regulations. The Parties agree that Weems & Plath shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 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

Products and the exposures 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 language other than English, Weems & Plath shall provide the **Warning** or **Alternative Warning** in that language in accordance with applicable warning regulations adopted by OEHHA.

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

In settlement of all the claims referred to in this Settlement Agreement, Weems & Plath shall pay \$2,000.00 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 Enforcers. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.1 Civil Penalty. Within thirty (30) business days of the Effective Date, Weems & Plath shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Brodsky Smith in Trust for Enforcers” in the amount of \$500.00. 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 Enforcers, 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 OEHHA (EIN: 68-0284486), pursuant to § 3.1 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

(b) **Tax Documentation.** Weems & Plath agrees to provide a completed IRS 1099 for its payments to, and Enforcers agree to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

- (i) “Gabriel Espinoza” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;
- (ii) “Donatus McCoy” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;
- (iii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and
- (iv) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Enforcers and their 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 Enforcers and their 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, Weems & Plath shall reimburse Enforcers' counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Weems & Plath, and negotiating a settlement in the public interest. Within thirty (30) business days of the Effective Date, Weems & Plath shall issue a check payable to "Brodsky Smith" in the amount of \$23,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Weems & Plath and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Enforcers, acting on their own behalf, and Weems & Plath, of any violation of Proposition 65 that was or could have been asserted by Enforcers or on behalf of their past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP from use of the Products, and Releasers hereby release any such claims against Weems & Plath and their parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Weems & Plath directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on exposure to DEHP 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, Enforcers, on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, hereby covenant not to sue and waive any right to institute, participate in, directly or indirectly, any form of legal action and release all claims that they 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 DEHP from use of the Products.

5.2 Weems & Plath's Release of Enforcers. Weems & Plath, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Enforcers, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Enforcers and/or their 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 DEHP from use of 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 Notices and relating to the Products will develop or be discovered. Enforcers on behalf of themselves only, on one hand, and Weems & Plath, 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.

Enforcers and Weems & Plath 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 after the Effective Date, should compliance with Proposition 65 with respect to exposure to DEHP from use of the Products be governed by operation of law (*i.e.*, Court order regarding phthalates or other regulatory exemption), Weems & Plath may choose to comply with such operation of law and such action would not be a breach or violation of 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 (except Section 5), 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, Weems & Plath shall provide written notice to Enforcers 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 Weems & Plath:

Michael Flanagan, President
Weems & Plath, LLC
214 Eastern Avenue
Annapolis, MD 21403

For Enforcers:

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)**

Enforcers 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 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: _____


Date: Nov 21, 2023

By: _____
Gabriel Espinoza

By: 
Weems & Plath, LLC

AGREED TO:

Date: 12 | 4 | 23

By: 
Donatus McCoy

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: 12 / 4 / 23

Date: _____

By: 
Gabriel Espinoza

By: _____
Weems & Plath, LLC

AGREED TO:

Date: _____

By: _____
Donatus McCoy