

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between:

Michael DiPirro
(referred to herein as “DiPirro”) represented by his attorneys,
Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law,

and

WhaleCo Inc.
(referred to herein as “Noticed Party”) represented by its attorneys,
Seyfarth Shaw LLP.

DiPirro is an individual residing in California who alleges that he seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Noticed Party employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65” or the “Act”).

1.2 General Allegations

DiPirro alleges that the Noticed Party manufactures, imports, sells, or distributes for sale, in the State of California products containing Diethylhexyl phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and birth defects or other reproductive harm (hereinafter the “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are Passport Covers containing the Listed Chemical that are manufactured, sold, or distributed for ultimate sale to consumers in the State

of California by the Noticed Party, including, but not limited to, the: Passport Protective Cover Transparent Frosted, PVC Material Waterproof Document Case (the “Products”).

1.4 Notice of Violation

On or about July 31, 2023, DiPirro served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the recipients of DiPirro’s allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of DiPirro’s knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have manufactured, sold, 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 the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party’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 the day the final requisite signature is applied to the Settlement Agreement.

2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Product Warnings. Commencing within thirty (30) days of the Effective Date, Noticed Party shall, request and require any person or entity selling or offering for sale on temu.com Products containing the Listed Chemical that are not Reformulated Products, as defined in Section 2.6 below, (“Third-Party Sellers”) that are shipped to any California resident for potential sale to California consumers, to (1) provide a clear and reasonable warning on the Product label or labeling that satisfies Section 25249.6 of the Act, and (2) provide written notice to Noticed Party stating that the Product being sold or offered for sale on temu.com may result in an exposure to the Listed Chemical.

2.2 Internet Warnings. For all Products for which Noticed Party has received written notification from a Third-Party Seller, or for which it has Actual Notice, as that term is defined in 27 CCR § 25600.2 (f), sold or offer for sale directly to consumers in California via the internet, Noticed Party shall provide a warning for such Products by including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same web page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional), which then takes the user to a display of the warning set out in Paragraph 2.3.

2.3 Text of the Warning. The Noticed Party shall use the warning set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Product’s packaging):



WARNING: This product can expose you to chemicals including Diethylhexyl 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.

2.4 Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.5 Option to Delist or Stop Sales

On or before the Effective Date, Noticed Party may, at its option, comply with the injunctive requirements of this Section 2 by delisting a Product from temu.com such that the item is then unavailable in general or for online sale for shipment to an address in California.

2.6 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (“ppm”)) each of DEHP, in any accessible components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

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

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Noticed Party shall make a civil penalty payment of \$1,500.00 as a component of this settlement. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

issue to be resolved after the material terms of the agreement had been settled. The Noticed Party then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. The Noticed Party shall pay a total of \$43,500.00 for fees and costs incurred as a result of investigating, working with toxicology experts, bringing this matter to the Noticed Party's attention, document preparation, and negotiating a settlement in the public interest.

5. PAYMENT AND FORM 1099

5.1 Payment. The complete settlement payment in the amount of \$45,000.00 shall be delivered within 30 calendar days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment; number provided upon request) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of a check made payable to: "Jeremy Fietz, Attorney at Law". For any payment that is returned for any reason, including insufficient funds, a payment must be made by CTM in form of a cashier's check within three (3) calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys. Any payment that is not actually received by the due date will also be subject to a 10% late fee.

5.2 Issuance of 1099 Form. The Noticed Party shall provide DiPirro's counsel, Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on the Form 1099 MISC with the amount reported in box 10 ("Gross proceeds paid to an attorney"). The Noticed Party acknowledges that 1099 shall NOT be issued under form 1099 NEC. A W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully executed by the Parties to this agreement.

6. CLAIMS COVERED AND RELEASED

6.1 DiPirro's Release of Noticed and Related Parties

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Party of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against any of the Noticed Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, their past, present, and future shareholders, employees, attorneys, and each entity to whom either Noticed Party directly or indirectly distributes or sells the Products ("Releasees"), and each person or entity to whom any of the Releasees directly or indirectly distributes or sells, or in the past directly or indirectly distributed or sold, the Products including, but not limited to, any downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees (collectively, Downstream Releasees), but not including its upstream suppliers and manufacturers, for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California by the Noticed Party prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against the Noticed Party, Releasees and Downstream Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to the Listed Chemical from Products distributed, sold, or distributed for sale in California by the Noticed Party prior to the Effective Date.

6.2 Noticed Party's Release of DiPirro

Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his 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.

7. 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.

8. 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then the Noticed Party may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal toxics control laws.

9. NOTICES

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

For WhaleCo Inc.:

Aaron Belzer
Seyfarth Shaw LLP
2029 Century Park East, STE 3500
Los Angeles, CA, 90067-3021

AND

For Michael DiPirro:

Jeremy Fietz, Attorney-at-Law
4241 Montgomery Drive, #123
Santa Rosa CA 95405

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

10. 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.

11. POST-EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the parties to this agreement.

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.

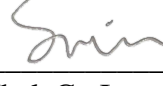
AGREED TO:

Date: 10/26/2023

By: 
Michael DiPirro

AGREED TO:

Dated: 10/26/2023

By: 
WhaleCo Inc.
Print Name: QIN SUN
Title: Director