

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 Woodstock Percussion, LLC (“WP”), on the other hand, with EHA and WP each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that WP 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 WP manufactures, sells, and/or distributes for sale in California, wind chimes products that contain lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and developmental/reproductive harm. WP denies all of EHA’s allegations and maintains that all products it sells and/or distributes for sale in California are safe and comply with all applicable state and federal laws including but not limited to Proposition 65.

1.3 Product Description

The products covered by this Settlement Agreement are defined as wind chime products including but not limited to Woodstock Chime Wind Chime Garden Bells with Base (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by WP.

1.4 Notice of Violation

On or around March 14, 2024, EHA served WP, Sullivan, Incorporated (“Sullivan”), Henry E. Huntington Library and Art Gallery (“Huntington”), the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition

65 (“Notice”). The Notice alleged that WP, Sullivan and Huntington had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in Covered Products.

To the best of the parties’ knowledge, no public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

WP denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. WP maintains that independent laboratory test results confirm that no lead is detected in the Covered Products. Nothing in this Settlement Agreement shall be construed as an admission by WP 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 WP of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by WP. This Section shall not, however, diminish or otherwise affect WP'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 date this Settlement Agreement is executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 General Requirements

Commencing on the Effective Date, WP agrees that any Covered Product sold or distributed for sale in California shall either: (a) meet the reformulation standard set forth in Section 2.1 or (b) comply with the general warning requirements set forth in Section 2.2. As used in this Settlement Agreement, the term “distribute” for sale in California shall mean to directly ship a Product into California for sale in California or to sell a Product to a distributor that WP actually knows will sell the Product in California.


2.2 Reformulation Standard

Commencing on the Effective Date, WP shall not sell or distribute for sale in California any Covered Product unless it contains no more than 1.0 micrograms of lead based on a wipe sample collected using National Institute for Occupational Safety and Health Test Method 9100 (“Reformulation Standard”).

2.3 General Warning Requirements

Unless the Covered Product meets the Reformulation Standard, commencing on the Effective Date, WP agrees any Covered Product sold or distributed for sale in California, shall contain a Proposition 65 warning. WP agrees that each 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* Covered Products 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 Covered Products shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Products sold in California by WP, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

1)  **WARNING:** This product can expose you to [chemicals including] lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR

2)  **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

The triangle above shall be yellow on the warning statement unless the sign, label or shelf

tag does not contain the color yellow. This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement 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 prior to sale. If the second warning option is used, it must be in a type size no smaller than the largest type size used for other “consumer information” on the product and in no case shall such warning statement displayed on the Covered Products’ packaging appear in a type size smaller than 6-point type. “Consumer information” includes warnings and directions for use, but does not include the brand name, product name, company name, location of manufacture or product advertising. If the Covered Products’ packaging contains consumer information in a foreign language, a warning statement in that language is required. The same warning shall be posted on any e-commerce websites under the exclusive control of WP where Covered Products are sold into California. Such warning shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in the stream of commerce that had not been reformulated and are distributed and/or sold by WP or any of the Releasees after the Effective Date. There shall be no obligation for WP to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, regardless of when those Covered Products are distributed or sold, and the Section 4 release applies to all such Covered Products. WP shall instruct any third-party website to which it has actual knowledge sells its Covered Products to California to include the same warning as a condition of selling the Covered Products; however, WP does not assume any duty to monitor any third-party websites for compliance.

The warning requirements set forth herein are imposed pursuant to the terms of this Settlement Agreement and are recognized by the Parties as not being the exclusive manner of providing a “clear and reasonable” Proposition 65 warning for the Covered Products. Warnings may also be provided in any manner authorized by the Proposition 65 regulations, as may be amended in the future.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, WP shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to lead in this product are no longer required, a lack of warning by WP will not thereafter be a breach of this Agreement.

In the event a court of competent jurisdiction approves of a reformulation standard for lead in Covered Products that is higher than the Reformulation Standard, WP is permitted to use such reformulation standard at any time without being deemed in breach of this Agreement.

2.4 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1. For the avoidance of doubt, Covered Products in the stream of commerce as referred to in this Agreement specifically include, but are not limited to, Covered Products in the process of manufacture.

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, WP agrees to pay two thousand (\$2,000.00) 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. Shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$1,500.00 to OEHHA, due thirty (30) days after the Effective Date.
- One payment of \$500.00 to EHA, due thirty (30) days after the Effective Date.

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:

Isaac Fayman
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, WP agrees to pay eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of WP, and negotiating a settlement. The eighteen thousand dollars (\$18,000.00) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP as one payment of \$18,000.00, due thirty (30) days after the Effective Date.

All payments required under this Section shall be delivered to:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of WP

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and WP for all claims that can 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 WP and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, managers, employees, attorneys, and any entity, including, but not limited to each entity to whom WP directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), including but not limited to Sullivan and Huntington and each of their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, managers, employees and attorneys based on the failure to warn about exposures to lead required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by WP before the Effective Date, as alleged in the Notice, or for any other reason.

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 WP 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 chemicals listed under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by WP, before the Effective Date.

4.2 WP's Release of EHA

WP, 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

4.3 California Civil Code Section 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 Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and WP on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

EHA and WP each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. DEEMED COMPLIANCE WITH PROPOSITION 65

The Parties agree that compliance by WP with this Settlement Agreement constitutes compliance with Proposition 65 with regard to exposure to Lead from use of the Covered Products.

6. PUBLIC BENEFIT

It is WP's understanding that the commitments it has agreed to herein, and actions to be taken by WP under this Settlement Agreement 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 WP that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to WP's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Covered 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 Covered Products addressed in this Settlement Agreement, provided that WP is in material compliance with this Settlement Agreement.

7. ENFORCEMENT

Prior to bringing any motion or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product without a warning and which is alleged to not meet the Reformulation Standard, EHA shall provide a written notice to WP specifying, for each Covered Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale and proof of purchase, and test reports obtained by EHA regarding each such Covered Product. EHA shall take no further action regarding any alleged violation if, within thirty (30) days of receiving such notice, WP affirms in writing (a) that the Covered Product was subject to the grace period of Section 2.4; (b) that WP provided an appropriate warning in connection with the Covered Product distributed or sold in

California in compliance with Section 2.3; or (c) that the Covered Product meets the Reformulation Standard pursuant to Section 2.2 as supported by a test report from an independent third party laboratory.

8. 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.

9. 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.

10. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

11. 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 WP:

Kim Sandell
Thompson Hine LLP
3130 Wilshire Blvd, Suite 500
Santa Monica, CA 90403
Kim.Sandell@thompsonhine.com

For EHA:

Noam Glick
Entorno Law, 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.

12. 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.

13. 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).

14. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

15. 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: 07/30/2024

Date: 8/2/2024

By: 

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 

WOODSTOCK PERCUSSION, LLC