

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made this 7th day of March, 2008 by and between Christine Deubler (“Deubler” or “Plaintiff”) and Tripod Labs, Inc. (“Tripod” or “Defendant”). Deubler and Tripod are referred to individually as a “Party” and jointly as the “Parties.”

WHEREAS, Deubler is an individual residing in California, who served Tripod and various public enforcement agencies with a Sixty Day Notice of Violation (“Notice”) dated February 8, 2007 alleging that Tripod was in violation of Cal. Health & Safety Code section 25249.5 *et seq.* (“Proposition 65”) for failure to provide warnings regarding alleged exposures to the Proposition 65-listed chemical, Di-*n*-butyl phthalate (“DBP”), in nail care products sold by Tripod (the “Products”);

WHEREAS, on August 15, 2007, based on the Notice, Deubler filed a complaint (the “Complaint” or the “Action”) in the public interest (entitled *Deubler v. Del Laboratories, Inc., et al.*, Los Angeles Superior Court No. BC 376033) in which she asserted a single cause of action under Proposition 65 for alleged exposures to DBP in the Products without a warning;

WHEREAS, Tripod denies the allegations of the Notice and the Complaint, and specifically asserts that it is not subject to Proposition 65 because it has employed fewer than ten individuals at all times during the statute of limitations period;

WHEREAS, the Products contain medication designed to treat microbial infection of the nails and are sold and distributed by Tripod primarily to healthcare practitioners;

WHEREAS, Tripod estimates that its California sales of the Products total less than \$2500 per year;

WHEREAS, Tripod estimates that it has a six- to eight-month supply of existing inventory of the Products;

WHEREAS, in order to avoid continued litigation, the Parties desire to enter into a full settlement of all claims that were or could have been raised in the Action based upon the facts alleged therein and to resolve the Action with finality;

NOW, THEREFORE, in consideration for the payments and releases given under this Agreement, and its other obligations, the Parties agree as follows:

1. INJUNCTIVE RELIEF. Any Products that are manufactured by Tripod on or after July 1, 2008 for shipment to and sale in California shall not contain DBP. Notwithstanding the foregoing, on or after January 1, 2009, any Products sold or distributed for sale by Tripod in California shall not contain DBP, no matter when such Products may have been manufactured.

2. RELEASE

2.1 Release by Deubler of Claims against Tripod. Deubler, on behalf of herself and her past and current agents, representatives, attorneys, contractors, investigators, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases and forever discharges any and all claims, including without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigative fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, the "Claims"), against Tripod and its customers, distributors, wholesalers, resellers, licensors, licensees, auctioneers, retailers, purchasers and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "Releasees") arising under Proposition 65 or any other statutory, common law or other claim that was or could have been asserted based on the facts alleged in the Complaint or based on alleged exposures to DBP in the Products.

2.2 Unknown Claims. Deubler waives and releases any and all Claims against the Releasees, and acknowledges that she has read and waives the provisions of California Civil Code Section 1542:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Deubler understands and acknowledges the significance of this waiver of Section 1542 of the Civil Code is that even if she discovers additional claims or causes of action, Deubler will not be able to enforce or prosecute those claims or causes of action. Furthermore, Deubler acknowledges that she intends these consequences even as to claims or causes of action that may exist as of the date of the release but which Deubler does not know exists, and which, if known, would materially affect Deubler's decision to execute this release, regardless of whether Deubler's lack of knowledge is a result of ignorance, oversight, error, negligence, or any other cause.

2.3 Release by Tripod of Claims against Deubler. Tripod waives all rights to institute any form of legal action and releases all claims against Deubler, or her attorneys or representatives, for any or all actions made by Deubler or her attorneys or representatives in the course of seeking enforcement of Proposition 65 in connection with this Action.

3. DISMISSAL OF ACTION. Within five (5) business days of Plaintiff's receipt of payment (as set forth in Paragraph 4 below), Deubler shall file with the Los Angeles Superior Court a request for dismissal of Tripod from the Action without prejudice.

4. REIMBURSEMENT OF ATTORNEYS' FEES AND EXPENSES. Tripod agrees to reimburse Deubler in the amount of \$2,500 (Twenty-Five Hundred Dollars) for all

attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made payable to Del Mar Law Group, LLP and delivered to the following address:

JL Sean Slattery, Esq.
Del Mar Law Group LLP
322 Eight Street, Suite 101
Del Mar, CA 92104

The payment shall be delivered to Plaintiff's counsel within ten (10) days after the Agreement is fully executed by the Parties.

5. NO ADMISSION OF LIABILITY. Tripod denies the material factual and legal allegations contained in Plaintiff's Notice and Complaint and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Tripod of any fact, finding, conclusion, issue of law or violation of law.

6. REPORTING. Deubler shall comply with all applicable reporting obligations if required pursuant to Proposition 65 after this Agreement is executed by the Parties.

7. NOTICES. All correspondence required or given under this Agreement shall be provided by U.S. mail or overnight courier, and shall be sent as follows:

To Deubler:

JL Sean Slattery, Esq.
Del Mar Law Group LLP
322 Eight Street, Suite 101
Del Mar, CA 92104

To Tripod:

Trenton H. Norris, Esq.
Bingham McCutchen LLP
3 Embarcadero Center
San Francisco, CA 94111-4067

8. INTEGRATION. The Parties have read this Agreement and have executed it freely and voluntarily. This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes any and all representations, promises, and understandings of any kind, wither oral or written. The Parties agree that this Agreement may not be altered, amended, modified, or otherwise changed except by a writing executed by the Parties.

9. DISPUTES. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce the terms of this Agreement shall be brought in the Superior Court for the County of Los Angeles, which the Parties agree shall have jurisdiction to enforce this Agreement. In any such dispute, the prevailing party shall be entitled to collect its reasonable attorneys' fees.

10. **SUCCESSORS.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties.

11. **COUNTERPARTS.** This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. **AUTHORIZATION.** The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date(s) indicated below.

AGREED TO:

Date: APRIL 16, 2008

By: 
PLAINTIFF CHRISTINE DEUBLER

Print Name: CHRISTINE DEUBLER

Title: _____

AGREED TO:

Date: 3/18/08

By: 
DEFENDANT TRIPOD LABS, INC.

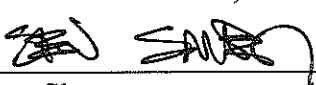
Print Name: Bradley J. Marsh

Title: CEO

APPROVED AS TO FORM:

Date: APRIL 16, 2008

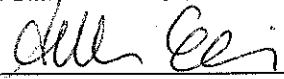
DEL MAR LAW GROUP, LLP

By: 
JL Sean Slattery
Attorneys for Plaintiff
CHRISTINE DEUBLER

APPROVED AS TO FORM:

Date: 3/25/08

BINGHAM McCUTCHEN LLP

By: 
~~Trenton K. Norris~~ Sarah Esmaili
Attorneys for Defendant
TRIPOD LABS, INC.