

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Evelyn Wimberley and National Express, Inc.

This Settlement Agreement is entered into by and between Evelyn Wimberley (hereinafter "Wimberley"), on the one hand, and National Express, Inc. (hereinafter "National Express"), with Wimberley and National Express collectively referred to as the "Parties."

Wimberley is an individual residing in California who contends that she seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Wimberley contends that National Express is a company in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Wimberley alleges that National Express manufactured, distributed and/or sold in the State of California garden hoses with exposed brass containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"). Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as the "DAP Xhose Pro," which is sometimes also known as or referred to as the "DAP Xhose" or the "Xhose Pro" containing lead and lead compounds. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about February 5, 2014 Wimberley served National Express, and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided National Express and such public enforcers with notice that alleged that National Express was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead and lead compounds. No public enforcer has prosecuted the allegations set forth in the Notice.

1.5 No Admission

National Express denies the material, factual and legal allegations contained in Wimberley’s Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with Proposition 65 and all other applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by National Express 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 National Express of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by National Express. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of National Express 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 fully executed. If not executed on or before August 4, 2014 this Agreement shall be null and void.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Products do not exceed the following limits for lead: (a) the brass alloy from which the brass components are made shall have no lead as an intentionally added constituent; and (b) the brass alloy from which the brass components are made shall have a lead content by weight of no more than 0.005% (50 parts per million, or “50 ppm”). National Express may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass alloy from which the brass components are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.005%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than fifty (50) ppm shall be deemed to establish good faith reliance.

2.2 Warning Alternative. Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below; provided, however, that the warning requirements set forth in Section 2.3 below shall apply only to Products that National Express manufactures, distributes and/or offers for sale one hundred eighty (180) days after the Effective Date that are manufactured, distributed, marketed, sold or shipped for sale or use inside the State of California. Products that have been or will have been manufactured, distributed, marketed shipped, or sold, or otherwise placed in the stream of commerce for up to 180 days after the Effective Date are exempt from the provisions of Sections 2.1 through 2.3, and are included within the covenant not to sue and release in Section 5.1. To be in compliance with the terms of this Settlement Agreement, National Express is not required to undertake any efforts or conduct to remove such Products from the stream of commerce, to label them, or to reformulate them.

2.3 Warnings.

Where required under Sections 2.2 above, National Express shall provide Proposition 65 warnings as follows and may use either of the following warning statement:

WARNING: This product contains chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm.

At National Express's sole discretion, the warning shall be prominently affixed to or printed on the unit packaging or container of the Products, or to the Product's label. If printed on the label, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Product. Without limiting other possible forms, sizes, colors or placements of warnings, each of the warnings that are shown on Exhibits A and B hereto to be affixed to or printed on each Product's package is agreed to be clear and reasonable and to be likely to be read and understood by an ordinary individual prior to use.

The requirements for warnings in this Section 2.3 are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. If Proposition 65 warnings for lead or lead compounds should no longer be required, National Express shall have no further obligations pursuant to this Settlement Agreement. Except as provided in Section 2.1 above, in the event that National Express ceases to implement or modifies the warnings required under this Settlement Agreement (because of a change in the law or otherwise), National Express shall provide written notice to Wimberley (through counsel) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance.

3. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Wimberley and her counsel under the private attorney general doctrine and principles of contract law. Under these legal

principles, National Express shall reimburse Wimberley's counsel for fees and costs, incurred as a result of investigating, bringing this matter to National Express's attention, and negotiating a settlement in the public interest. National Express shall pay Wimberley's counsel \$18,000.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. National Express shall wire \$18,000.00 to the account of "Law Offices of Stephen Ure, PC" within three (3) business days after (a) this Agreement is executed by both parties, and (b) The Law Offices of Stephen Ure, PC provides National Express with bank wire instructions. If such payment is not made on or before the specified date then this entire Agreement shall be null and void. National Express will confirm receipt of bank wire instructions when they are received. Other than the payment required hereunder, each side is to bear all of its or her own attorney's fees and costs.

4. Intentionally omitted.

5. **RELEASES OF ALL CLAIMS AND COVENANT NOT TO SUE**

5.1 **Wimberley's Release of National Express and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 above, Wimberley, on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assignees, hereby irrevocably and forever waives all rights to, and covenants not to institute or participate in, directly or indirectly, any form of legal action, and she hereby irrevocably and forever releases, waives, and discharges all actual and potential claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, payments in lieu of civil penalties, losses and expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether fixed or

contingent, known or unknown, suspected or unsuspected (collectively “Claims”), against National Express and each of its past and present downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, partners, and joint venturers (including but not limited to DAP Products Inc.) and each of their respective officers, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities (collectively “Releasees”), which legal action or Claims arise under or are derived from Proposition 65 relating to the actual or alleged exposure to, failure to warn about exposures to, or failure to identify chemicals (including but not limited to lead or lead compounds) contained in the Products. The waiver, covenant not to institute or participate in any legal action, and release, waiver and discharge of Claims in the above sentence is effective for all Products that have been or will have been manufactured, distributed, marketed, shipped, sold, or otherwise placed in the stream of commerce from the beginning of time through 180 days after the Effective Date. Wimberley is not currently aware of any chemicals other than lead or lead compounds contained in the Products that exceed the Proposition 65 safe harbor thresholds or that would otherwise require a Proposition 65 warning.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by National Express and Releasees with the requirements of Proposition 65 with respect to alleged exposure to chemicals, including but not limited to lead and lead compounds, in the Products.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding any and all Claims regarding the Products against National Express and Releasees under Proposition 65 as covered under this Section 5.1.

5.2 Wimberley's Waiver of Unknown Claims and Section 1542 Waiver

It is possible that other Claims not known to Wimberley arising out of the facts alleged in the Notice of Violation or otherwise relating to chemicals in the Products that have been manufactured, distributed, marketed, shipped, sold, or otherwise placed in the stream of commerce in California up through the Effective Date (or for Products manufactured, distributed, marketed, shipped, sold, or otherwise placed in the stream of commerce for up to 180 days after the Effective Date) will subsequently develop or be discovered. Wimberley acknowledges and confirms that the waiver, covenant not to institute or participate in any legal action, and release, waiver and discharge of Claims in Section 5.1 applies to all known and unknown Claims. On behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, Wimberley waives California Civil Code Section 1542 as to any such unknown Claims. Wimberley acknowledges that she is familiar with Section 1542 of the Civil Code, which provides as follows:

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.

Wimberley, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by, the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters herein.

5.3 Limitation Of Wimberley's Release; Not Applicable To The Interest of the General Public.

The Parties acknowledge and agree that Wimberley's waiver, covenant not to institute or participate in any legal action, and release, waiver and discharge of Claims in Sections 5.1 and 5.2 is only in her individual capacity and on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assignees. For the avoidance of doubt, such waivers, covenants not to institute or participate in any legal action, and releases, waiver and discharge of Claims in Sections 5.1 and 5.2 are not done as a representative acting in the interest of, or on behalf of, the general public.

5.4 National Express's Release of Wimberley

National Express waives any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Wimberley and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

National Express acknowledges that it is familiar with Section 1542 of the Civil Code, which provides as follows:

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.

National Express on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits

which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6. **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 National Express shall provide written notice to Wimberley of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement.

7. **ACTUAL OR ALLEGED VIOLATIONS AND AN OPPORTUNITY TO CURE**

No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Products may be served or filed against National Express or the Releasees by Wimberley, unless Wimberley first provides National Express with 45 (forty-five) days written notice of any alleged or actual violations of the terms and conditions contained in Settlement Agreement. As long as National Express cures any such alleged violations within the 45 (forty-five) day period (or if any such violation cannot practicably be cured within 45 days, it expeditiously initiates a cure within 45 days and completes it as soon as practicable thereafter), then National Express shall not be in violation of this Settlement Agreement. Any such notice to National Express must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation or a warning, (c) the store or other place at which the product was purchased and available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice. As long

as National Express or the Releasees either (i) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to National Express for full credit, including shipping costs, or (ii) signs a declaration under penalty of perjury stating that, after a reasonable investigation, to the best of its knowledge and belief, the allegedly offending product was not sold, shipped or distributed by National Express to the seller, then National Express shall be in compliance with this Agreement.

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 courier on any party by the other party at the following addresses:

For National Express:

National Express, Inc.
Mr. Rick Kelly
2 Morgan Street
Norwalk, CT 06851

With a copy to:

Howard A. Slavitt
Coblentz Patch Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213

And

For Wimberley:

Mr. Stephen Ure
Law Offices of Stephen Ure, PC.

11622 El Camino Real, Suite 100
San Diego, California 92130

Any 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; FACSIMILE SIGNATURES

This Settlement 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.

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

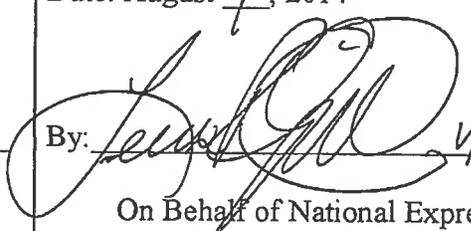
Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. **MODIFICATION**

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

12. **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 : August __, 2014	Date: August <u>4</u> , 2014
By: _____ Evelyn Wimberley	By:  VP. On Behalf of National Express Inc.

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

Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

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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 : August <u>4</u> , 2014 By:  Evelyn Wimberley	AGREED TO: Date: August __, 2014 By: _____ On Behalf of National Express Inc.
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