

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

1.1 This Settlement Agreement is entered into by and between Evelyn Wimberley (“Wimberley”), an individual residing at Redondo Beach, California and Walnut Hollow Farm, Inc. (“Walnut Hollow”), a Wisconsin corporation with its principal place of business at 1409 State Road 23, Dodgeville, Wisconsin 53533. Wimberley and Walnut Hollow are collectively referred to as the “Parties.” Wimberley is acting as a private enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”)), and is enforcing Proposition 65.

1.2 On June 29, 2016, Wimberley served Walnut Hollow and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Walnut Hollow was in violation of Proposition 65. Wimberley’s Notice alleges that Walnut Hollow has manufactured, distributed, and/or offered for sale in California certain craft tool accessories, known as hot tool points, including hot tool points sold under the name “Creative Points,” that expose consumers to lead and lead compounds without the requisite Proposition 65 warnings. Lead and lead compounds (the "Listed Chemical") are listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and other reproductive harm. The Notice alleges that Walnut Hollow’s conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

1.3 Walnut Hollow denies the material, factual and legal allegations contained in the Notice, and maintains that all products sold, distributed or offered for sale in California have been and are in compliance with all laws, including, without limitation, Proposition 65.

1.4 Walnut Hollow purchases the hot tool points covered by this Settlement Agreement from third party manufacturers who must implement the changes to Walnut Hollow’s packaging and reformulation of Walnut Hollow’s products described herein.

1.5 The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning Walnut Hollow's products set forth in Wimberley's Notice, including claims against Walnut Hollow's customer, Hobby Lobby, who also received the Notice alleging violations of Proposition 65 resulting from its distribution and/or sale of Walnut Hollow's products in California. By executing this Settlement Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with the Settlement Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

## **2. DEFINITIONS**

2.1 The products covered by this Settlement Agreement shall be designated "Covered Products." The Covered Products are hot tool points, which are tips placed at the end of hot tools (devices similar to a soldering iron) for purposes of burning and cutting as part of craft projects, some of which are sold under the name "Creative Points."

2.2 The term "Effective Date" means the date that this Settlement Agreement is fully executed by the Parties.

## **3. WARNING LABELS AND REFORMULATION OF PRODUCTS**

3.1 **Requirements for Future Sales of Covered Products.** Walnut Hollow agrees that, after the Effective Date, all Covered Products that it manufactures or has third parties manufacture for sale to consumers in California shall either be (a) reformulated pursuant to Section 3.2 or (b) include a warning as provided in Section 3.3.

3.2 **Reformulation.** A Covered Product does not require a warning label if it contains 300 parts per million of lead or less.

3.3 **Warning Labels.** Until August 30, 2018, a Covered Product that does not meet the reformulation level of Section 3.2 shall contain a warning affixed to or printed on the Covered Product's packaging or labeling. The following warning statement shall be provided:

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

On and after August 30, 2018, all Covered Products sold to consumers in California shall contain a warning that complies with the Consumer Product Exposure Warning requirements of California Code of Regulations title 27 section 26703.

3.4 **Direct to Consumer Sales.** If a Covered Product does not meet the reformulation level of Section 3.2, Walnut Hollow shall provide the warning set forth in Section 3.3 for any internet or catalog sale of any Covered Product shipped to a consumer in California.

#### 4. SETTLEMENT PAYMENTS

4.1 Walnut Hollow shall pay a settlement amount of \$20,000.00 to Wimberley, to be allocated by Wimberley as follows:

4.1.1 **Attorneys' Fees and Costs:** \$19,000.00 to reimburse Wimberley and her attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Walnut Hollow's attention, litigating and negotiating a settlement, pursuant to Code of Civil Procedure Section 1021.5.

4.1.2 **Civil Penalty.** A civil penalty of \$1,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health and Safety Code Section 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Wimberley, as provided by California Health & Safety Code Section 25249.12(d).

4.2 **Payments.** Walnut Hollow shall deliver the payments required under this section by bank wire to the Law Offices of Stephen Ure, PC Client Account by November 4, 2016.

## 5. CLAIMS COVERED AND RELEASED

5.1 This Settlement Agreement is a full, final and binding resolution between Wimberley on behalf of herself, her past and current attorneys, agents, representatives, successors, heirs, assigns, on the one hand; and Walnut Hollow, and its officers, directors, shareholders, parents, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (collectively “Defendant Releasees”), all entities to whom they directly or indirectly distribute or sell Covered Products, including but not limited to Hobby Lobby Stores, Inc., and other distributors, wholesalers, customers, retailers, franchisees, cooperative members, and Defendant Releasees' licensors and licensees (collectively “Downstream Defendant Releasees”), on the other hand; regarding any violation of Proposition 65 that was or could have been asserted in the Notice against Walnut Hollow, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to chemicals contained in Covered Products, with respect to any Covered Products manufactured, shipped, distributed or sold by Walnut Hollow prior to the Effective Date. The Parties further understand and agree that this release shall not extend upstream to any entities that supplied the Covered Products or any components thereof to Walnut Hollow.

5.2 In further consideration of the promises and agreements herein contained, the commitments set forth in Section 3, and for the payments to be made pursuant to Section 4, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, including but not limited to the Law Offices of Stephen Ure, PC, successors, heirs and assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed, or contingent (collectively “Claims”) that were brought or could have been brought against Walnut Hollow, the Defendant Releasees, or the Downstream Defendant Releasees, based on claims arising under Proposition 65 with respect

to chemicals in the Covered Products, as such claims relate to the alleged failure to warn under Health & Safety Code Section 25249.6.

5.3 On behalf of itself, Defendant Releasees and Downstream Defendant Releasees, Walnut Hollow waives all rights to institute any form of action against Wimberley, her attorneys, consultants, and representatives for all actions taken or statements made in the course of this Action prior to the Effective Date.

5.4 Compliance with the terms of this Settlement Agreement by Walnut Hollow resolves any issue, now and in the future, concerning compliance by Walnut Hollow, the Defendant Releasees, and the Downstream Defendant Releasees with the requirements of with Proposition 65 with respect to any chemicals in any Covered Products that are manufactured, shipped, or sold by Walnut Hollow following the Effective Date.

## **6. ENFORCEMENT**

6.1 Time is of the essence with regard to the payment herein and if such payment is not made by the agreed upon date then this Settlement Agreement shall, in its entirety, be null and void as to Walnut Hollow, Defendant Releasees, and Downstream Defendant Releasees as defined in Section 5 above, unless Wimberley or her attorney takes possession of any late payment by Walnut Hollow. Any Party may file suit to enforce the terms and conditions contained in this Settlement Agreement. A Party may enforce any of the terms and conditions of this Settlement Agreement only after that Party first provides 30-days notice to the Party allegedly failing to comply with the terms and conditions of this Settlement Agreement and attempts to resolve such Party's failure to comply in an open and good faith manner.

## **7. MODIFICATION**

7.1 This Settlement Agreement may be modified from time to time by express written agreement of the Parties. A Party seeking to modify this Settlement Agreement shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Settlement Agreement.

## **8. ENTIRE AGREEMENT**

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

## **9. GOVERNING LAW AND APPLICATION**

9.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and shall apply only to Covered Products that are sold or offered for sale in the State of California. In the event that Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Walnut Hollow shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so effected.

9.2 This Settlement Agreement shall apply to and be binding upon Wimberley Walnut Hollow and its divisions, subdivisions, and subsidiaries, if any, and the Parties' heirs, successors and assigns.

9.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be

interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement.

## **10. PROVISION OF NOTICE**

10.1 All notices required pursuant to this Settlement Agreement and correspondence shall be sent to the following:

For Wimberley:

Law Offices of Stephen Ure, PC  
11622 El Camino Real, Suite 100  
San Diego, CA 92130

For Walnut Hollow:

Walnut Hollow  
Attn: Sandy Bartelt  
1409 State Rd. 23  
Dodgeville, WI 53533

With a copy to:

Jeffrey A. Simmons  
Foley & Lardner, LLP  
Suite 5000, 150 East Gilman St.  
Madison, WI 53703

## **11. ATTORNEY'S FEES**

11.1 A party who unsuccessfully brings or contests an action arising out of this Settlement Agreement shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful party has acted with substantial justification. For purposes of this Settlement Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

**12. EXECUTION AND COUNTERPARTS**

12.1 This Settlement Agreement may be executed in counterparts and by means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one document.

**13. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

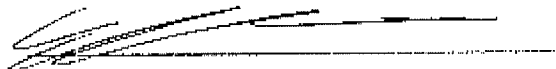
13.1 Wimberley agrees to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**14. AUTHORIZATION**

14.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Settlement Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

Dated: November 2, 2016



Evelyn Wimberley

Dated: November 2, 2016

Walnut Hollow

By Sandra Bartlett

Name: Sandra Bartlett

Title: President