

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Karen Calacin & Emco Supply, Inc.**

This Settlement Agreement is entered into by and between Karen Calacin ("Calacin"), and Emco Supply, Inc. ("Emco"). Together, Calacin and Emco are collectively referred to as the "Parties." Calacin is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Emco is considered a person in the course of doing business under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, *et seq.* ("Proposition 65") for purposes of this Settlement Agreement.

1.2 **General Allegations**

Calacin alleges that Emco has imported, distributed and/or sold in the State of California a Red Rock Outdoor Gear 5 Gallon Solar Shower (the "Product" or "Products") containing Di(2-ethylhexyl) phthalate (DEHP) without the requisite Proposition 65 warning. On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity.

1.3 **Notice of Violation**

On July 8, 2016, Calacin served Emco and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided Emco, and such others, including public enforcers, with notice that alleged that Emco was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Product exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Emco denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed 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 Emco 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 Emco of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Emco. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Emco maintains that it has not knowingly manufactured, or cause to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 12, 2016.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing on the Effective Date, and continuing thereafter, Emco shall only ship, sell, or offer for sale in California, reformulated Products pursuant to Section 2.2 or Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that meets the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

"Reformulated Product" shall mean Product that contains less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

2.3 Clear and Reasonable Warnings

Commencing ninety on the Effective Date, Emco shall provide a clear and reasonable warning for any Product that it ships, sells, or offers to ship or sell in California that is not a Reformulated Product. Emco shall provide the warning affixed to the packaging or labeling with the following statement:

[CALIFORNIA PROPOSITION 65] WARNING:

This product contains a chemical known to the State of California to cause cancer, and birth defects or other reproductive harm.

The language in brackets is optional. The 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 is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Emco shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Emco shall pay a total of \$900.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Calacin. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. Emco shall be liable for payment of interest, at a rate of 10%

simple interest, for all amounts due and owing that are not received within two business days of the Effective Date.

3.1 Civil Penalty

Within fourteen (14) days of the Effective Date, Emco shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$675.00; and (b) "Brodsky & Smith, LLC in Trust for Calacin" in the amount of \$225.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Calacin, pursuant to Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1 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

(b) Copy of Payments to OEHHA. Emco agrees to provide Calacin's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Calacin, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Emco agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(i) "Karen Calacin" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties:

(ii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

(D) W-9s. Calacin agrees to provide a W-9 for each payee under this Settlement Agreement on the Effective Date.

4. REIMBURSEMENT OF FEES AND COSTS

4.1 Fees & Costs. The parties acknowledge that Calacin and her 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. Calacin then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation due to Calacin and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Emco shall reimburse Calacin's counsel for fees and costs incurred as a result of investigating and bringing this

matter to Emco's attention, and negotiating a settlement in the public interest. As such, Emco agrees to issue the following checks payable to "Brodsky & Smith, LLC" for delivery to the address identified in Section 3.2(a)(i) above by the specified date. The timing specified for payment required by this Section is a material term, and time is of the essence:

(a) On or before September 26, 2016, Emco shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$6,600.00; and

(b) On or before November 26, 2016, Emco shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$1,500.00.

4.2 Penalty for Late Payment(s). Emco shall be liable for a penalty payment equal to \$750.00 for all amounts due and owing that are not received within three (3) calendar days of the date they are due.

5. RELEASE OF ALL CLAIMS

5.1 Release of Emco and Downstream Customers and Entities

Calacin acting on her own behalf, releases Emco, its parents, subsidiaries, affiliated entities, shareholders, directors, officers, agents, employees, attorneys and each entity to whom Emco directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemicals DEHP that is contained in the Products, and were distributed, sold and/or offered for sale by Emco to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Emco and/or the Releasees for their failure to provide warnings for alleged exposures to DEHP contained in the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Calacin, on behalf of

herself, her past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands against Emco and/or any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemicals DEHP in the Products.

5.2 Emco's Release of Calacin

Emco, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Calacin, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Calacin and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 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 Products will develop or be discovered. Calacin on behalf of herself only, on one hand, and Emco, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above 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 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.**

Calacin and Emco each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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, Emco shall provide written notice to Calacin of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

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 or two-day courier on any party by the other party to the following addresses:

For Emco:

Cliff Emmons
Red Rock Outdoor Gear
Emco Supply Inc.
1009 South Robinson Drive
Robinson, TX 76706

For Calacin:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, 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)

Calacin agrees to comply with the reporting requirements referenced in Health & Safety Code section 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 and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 9/2/16

Date: _____

By: 

By: _____

Karen Calacin

Emco Supply, Inc.

For Calacin:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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Date: _____

Date: 9/2/16

By: _____

Karen Calacin

By:  _____

Emco Supply, Inc.