

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and KegWorks, on the other hand, each individually referred to as a “Party” and collectively as the “Parties.”

1.2 General Allegations

Embry alleges that KegWorks sells, and distributes for sale in California, Beer Line 3/8” I.D. Vinyl Hose by the foot (the “Product”) containing a chemical listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm, and that it does so without first providing the health hazard warning required by Proposition 65.

1.3 Product Description

This Settlement Agreement is expressly limited to the Product.

1.4 Notice of Violation

On March 20, 2017, Embry served KegWorks, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that KegWorks violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to the Product. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

KegWorks denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sells and/or distributes for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by KegWorks 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

KegWorks of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by KegWorks. This Section shall not, however, diminish or otherwise affect KegWorks' obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean ninety (90) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Commencing on the Effective Date, and continuing thereafter, KegWorks agrees to only sell, import for sale, or distribute for sale in or into California, the Product that is sold with a health hazard warning as required by the Safe Drinking Water and Toxic Enforcement Act and 27 CCR Sec. 25603, subd. (c).

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

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, KegWorks agrees to pay \$1,500 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 Embry. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, KegWorks shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,125 and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of \$375.

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 Embry shall be sent to:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to Embry and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, KegWorks agrees to pay \$1,000 to Embry and her counsel, and on or before January 3, 2019 an additional payment of \$17,500, as and for all fees and costs incurred in investigating, bringing this matter to the attention of Keg Work's management and negotiating a settlement. Both payments by KegWorks shall be payable to the Glick Law Group Attorney Trust Account, and shall be delivered to:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

In the event the payment due on January 3, 2019 is not made when due, KegWorks shall pay interest on the January 2019 payment amount at the statutory pre-judgment interest rate of 10% from May 12, 2017 through and until the date of payment of any unpaid amounts.

4. CLAIMS COVERED AND RELEASED

4.1 Embry's Release of KegWorks

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and KegWorks, of the alleged violation of Proposition 65 that was or could have been asserted by Embry, on her own behalf, on behalf of her past and current agents, representatives, attorneys, successors and assignees, against KegWorks and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by KegWorks, and each entity to whom KegWorks directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees").

In further consideration of the promises and agreements herein contained, Embry on her own behalf and not on behalf of the public, on behalf of her past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights she may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against KegWorks 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 in the Product distributed, sold or offered for sale by KegWorks, before the Effective Date.

4.2 KegWorks' Release of Embry

KegWorks, 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 Embry and her attorneys and other representatives, for any and all actions taken or statements made by Embry and

her 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 Product.

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 Product will develop or be discovered. Embryo on behalf of herself only, on one hand, and KegWorks 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 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.

5. 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.

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.

7. 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 KegWorks:

Kavinoky Cook LLP
726 Exchange Street, Suite 800
Buffalo, New York 14210
Attn: Deborah J. Chadsey

For Embry:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
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.

8. GUARANTY

The Guarantor does hereby personally guarantee, absolutely, irrevocably, and unconditionally, the full and prompt payment of the January 3, 2019 payment provided for in Section 3.2 herein. The obligation of the Guarantor, in his personal and individual capacity, shall be absolute and unconditional and shall remain in full force and effect until full payment of all owed amounts has been made.

9. 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.

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

Embry and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

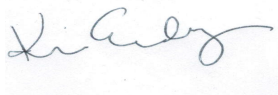
11. MODIFICATION

This Settlement Agreement may be modified only by 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:


By: _____
Kim Embry

Date: 10/24/18

AGREED TO:

KegWorks

By: 
Thomas McManus, Chief Executive Officer

Date: October 23, 2018

GUARANTOR:

By: 
Thomas McManus

Date: October 23, 2018