

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Alicia Chin and The Hillman Group, Inc.

This Settlement Agreement is entered into by and between Alicia Chin ("Chin") and The Hillman Group, Inc. ("Hillman"). Together, Chin and Hillman are collectively referred to as the "Parties." Chin is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Hillman employs ten or more individuals and is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.6, *et seq* ("Proposition 65").

#### 1.2 General Allegations

Chin alleges that Hillman imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California the key toppers (Item # 0 45899 71069 2 and # 1871410037) ("Products") that contain di(2-ethylhexyl)phthalate ("DEHP") and Di-n-butyl Phthalate (DBP) (Item # 0 45899 71069 2) & di(2-ethylhexyl)phthalate ("DEHP") (Item # 1871410037) without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. DBP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

#### 1.3 Notice of Violation(s)

On or about April 6, 2017, Chin served Hillman, Home Depot U.S.A., Inc., and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Hillman and Home Depot, U.S.A., Inc. violated Proposition 65 by failing to warn their customers and consumers in California that the Product (Item # 0 45899 71069 2) exposes users

to DEHP and DBP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

On or about May 5, 2017, Chin served Hillman, Lowe's Home Centers, LLC, and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Hillman and Lowe's Home Centers, LLC violated Proposition 65 by failing to warn their customers and consumers in California that the Product (Item # 1871410037) exposes users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.4 No Admission**

Hillman denies the material, factual, and legal allegations contained in the Notices identified in Section 1.3 and maintains that all of the products it has imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California, including the Products, have been, and are, in compliance with all laws, including, but not limited to, Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Hillman's obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean sixty (60) days after the date this Settlement Agreement has been fully executed.

### **2. INJUNCTIVE RELIEF:**

#### **2.1 Reformulation Option**

Products manufactured after the Effective Date shall be deemed to comply with Proposition 65 with regard to DEHP and DBP and be exempt from any Proposition 65 warning requirements for DEHP and DBP if the Products do not contain DEHP and DBP in

concentrations of more than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP and DBP content in a solid substance.

## **2.2 Warning Option**

Warnings in accordance with the requirements of Section 2.3 shall be given for Products that do not meet the warning exemption standard set forth in Section 2.1. The Section 2.3 warning requirements shall apply only to Products that Hillman distributes or sells in the State of California and shall not apply to Products that are already in the stream of commerce as of the Effective Date.

## **2.3 Warning Options and Language**

Where required under Section 2.2, Hillman shall either have: (1) Proposition 65 compliant warnings affixed to the Products, labeling or packaging or (2) warning signs or tags posted in the California stores of its customers who sell the Products, in close proximity to the point of display of the Products. Hillman may, at its option, use any warning statement that complies with Proposition 65, including, but not limited to, the following:

- (a) **WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.
- (b) **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- (c) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

If Hillman elects to use the warning statements identified in either Section 2.3 (b) or 2.3(c), it may also include a symbol consisting of a black exclamation point in a yellow



equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning in a size no smaller than the height of the word "WARNING". The warning shall be prominently displayed and displayed with such conspicuousness as compared with other words, statements, designs, or devices on the label, labeling or sign as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Each warning shall be provided in a manner such that the customer or user can be expected to understand to which specific product the warning applies, so as to minimize the risk of customer confusion.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement, Hillman shall pay a total of \$2500 in civil penalties in accordance with this section. Each penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five (25%) to Chin.

By October 1, 2017, Hillman shall issue two checks, as set forth below, for its civil penalty payment:

(i) a check in the amount of \$1875 made payable to "OEHHA" and sent to Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010;

(ii) a check in the amount of \$625 made payable to Alicia Chin and sent to Chin in care of her attorney, O'Neil Dennis, Esquire, at 385 Grand Avenue, Suite 300, Oakland, California, 94610.

#### **3.2 Reimbursement of Attorney's Fees and Costs**

The Parties acknowledge that Chin 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 the issue to be resolved after the material terms of this Settlement Agreement had been settled. The Parties then attempted to, and did, reach an accord on the compensation due to Chin and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Settlement Agreement. By October 1, 2017, Hillman shall pay \$15,500 for the fees and costs incurred by Chin in investigating, bringing this matter to Hillman's attention, and negotiating a settlement in the public interest. The payment shall be paid to "O'Neil Dennis" and delivered to:

O'Neil Dennis, Esq.  
385 Grand Avenue, Suite 300  
Oakland, CA 94610

**4. CLAIMS COVERED AND RELEASED**

**4.1 Chin's Individual Release of Claims**

This Settlement Agreement is a full, final and binding resolution between Chin and Hillman of any violation of Proposition 65 that was or could have been asserted by Chin on behalf of herself, and not on behalf of the public, and on behalf of her past and current agents, representatives, attorneys, successors and/or assigns, against Hillman, Home Depot, U.S.A., Inc. and Lowe's Home Centers, LLC and their parents, subsidiaries, affiliated entities, directors, officers, employees, shareholders, attorneys and each entity or person to whom Hillman, Home Depot, U.S.A, Inc. and Lowe's Home Centers LLC directly or indirectly distributes or sells the Products, including, but not limited to, downstream distributors, wholesalers, licensors, licensees, auctioneers, franchisees, dealers, customers, owners, retailers, purchasers, users, and their parents, subsidiaries and affiliated entities, and their directors, officers, employees, representatives, shareholders, attorney, agents and employees (collectively "Releasees") based

on their alleged failure to warn about alleged exposures to DEHP and/or DBP contained in the Products.

In consideration of the promises and agreements contained herein, Chin on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assigns, waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have relating to the Products, including without limitation, all actions and causes of action, in law or in equity, suits, demands, obligations, costs, expenses, fees (including, but not limited to, investigation fees, expert fees and attorneys' fees), damages, fines, penalties, losses, claims, liabilities and demands of any nature, character or kind, whether known or unknown, suspected or unsuspected, fixed or contingent (collectively "Claims"), arising out of alleged or actual exposures to DEHP and DBP in the Products sold or distributed for sale by Hillman and that were manufactured before the Effective Date.

The Parties agree that compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by the Releasees with the requirements of Proposition 65 with respect to alleged exposure to DEHP and/or DBP in the Products.

#### **4.2 Hillman's Release of Chin**

Hillman, 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 Chin and her attorneys and other representatives, for any and all actions taken or statements made by Chin 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 Products.

#### **5. 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 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Hillman shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

For Hillman:

Doug Roberts  
General Counsel  
The Hillman Group, Inc.  
10590 Hamilton Ave  
Cincinnati, Ohio 45231  
513-826-0665

With a copy to Hillman's counsel:

John E. Dittoe, Esq.  
Law Office of John E. Dittoe  
70 Hazel Lane  
Piedmont, CA 94611  
[jack@jdittoe.com](mailto:jack@jdittoe.com)  
510-206-3244

For Chin:

O'Neil Dennis, Esq.  
385 Grand Avenue, Suite 300  
Oakland, CA 94610

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. 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.

**9. POST EXECUTION ACTIVITIES**

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

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties or pursuant to Court order.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: September 20, 2017

Date: September \_\_\_\_\_, 2017

By: 

Alicia Chin

By: \_\_\_\_\_

The Hillman Group, Inc.



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The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: September \_\_\_\_, 2017

Date: September 25, 2017

By: \_\_\_\_\_  
Alicia Chin

By:  \_\_\_\_\_  
The Hillman Group, Inc.