

## SETTLEMENT AGREEMENT

### 1. **INTRODUCTION**

#### **1.1 Kim Embry and Northern Tool Equipment Company, Inc.**

This Settlement Agreement is entered into by and between Kim Embry (“Embry”) and Northern Tool Equipment Company, Inc. (“Northern Tool”), collectively referred to as the “Parties.” Embry 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.

For purposes of this settlement, Northern Tool stipulates that it is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. (“Proposition 65”).

#### **1.2 General Allegations**

Embry alleges that Northern Tool has manufactured, distributed, and/or sold in the State of California hoses containing Di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning that DEHP is known to the State of California as a chemical known to cause cancer.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are hoses, including but not limited to, Strongway PVC Suction Hose – 1in. x 25 ft and Strongway Commercial-Duty Hose – 3/4 in. x 50 ft.L (the “Products”), manufactured, distributed, sold and/or offered for sale in California by Northern Tool that contain DEHP.

#### **1.4 Notice of Violation**

On May 2, 2017, Embry served Northern Tool and various public enforcement agencies with a document entitled “Proposition 65 Notice of Violation” (the “Notice”). The Notice provided Northern Tool and others, including public enforcers, with notice that alleged that Northern Tool was in violation of California Health & Safety Code §

25249.6, for failing to warn California consumers and customers that the Products expose users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

Northern Tool 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 Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Northern Tool 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 Northern Tool of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Northern Tool. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Northern Tool maintains that it has not knowingly and intentionally violated Proposition 65.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Option**

The Products shall be deemed to comply with Proposition 65 with regard to DEHP and be exempt from any Proposition 65 warning requirements for lead if the Products do not exceed the following limits for DEHP: 1000 ppm by weight for any accessible component part. For purposes of this Settlement Agreement, accessible component part shall mean components of the Product to which a person would be exposed to DEHP by direct contact during normal use of the Product.

### **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. The warning requirements set forth in Section 2.3 below shall apply only to Products that Northern Tool manufactures, assembles, distributes, supplies, sells or procures after the Effective Date that are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date.

### **2.3 Warning Language**

Where required under Sections 2.1 and 2.2 above, Northern Tool shall provide Proposition 65 warnings as follows:

- (a) Northern Tool may use the following warning statement:

**WARNING:** This product contains one or more chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

- (b) The requirements for warnings, set forth in subsection (a) above 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.

- (c) If Proposition 65 warnings for DEHP should no longer be required, Northern Tool shall have no further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Northern Tool shall pay a total of \$1000 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 Embry. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below.

### **3.1 Civil Penalty**

Within ten (10) business days of the Effective Date, Northern Tool shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of \$750.00 and (b) “Glick Law Group” in the amount of \$250.00. 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 Embry, pursuant to Section 3.1 shall be delivered to the following payment address:

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

(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.** Northern Tool agrees to provide Embry's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Embry, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) **Tax Documentation.** Northern Tool agrees to provide a completed IRS 1099 for its payments to, and Embry agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Kim Embry" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) "Glick Law Group" (EIN:                     ) at the address provided in Section 3.2(a)(i); and

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

#### **4. REIMBURSEMENT OF FEES AND COSTS**

Northern Tool shall reimburse Embry's counsel \$9000.00 for Embry's fees and costs incurred as a result of investigating and bringing this matter to Northern Tool's attention, and negotiating a settlement in the public interest. The Payment shall be made payable to Glick Law Group and sent no later than ten (10) days after the Effective Date via USPS certified mail, return receipt requested, to the following addresses:

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

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Release of Northern Tool**

This Settlement Agreement is a full, final and binding resolution between Embry, acting on her own behalf, and Northern Tool, of any violation of Proposition 65 that was or could have been asserted by Embry or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasors”) for failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasors hereby release any such claims against Northern Tool and its parents, subsidiaries, affiliated entities, divisions, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Northern Tool directly or indirectly distributes or sells the Products, including but not limited to any upstream or downstream distributors, wholesalers, customers, retailers (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 chemical DEHP that is contained in the Products, and were manufactured, distributed, sold and/or offered for sale by Northern Tool to customers and consumers in the State of California. As to alleged exposure to DEHP from Products, compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Northern Tool and the Releasees, with the requirements of Proposition 65 with respect to the Products and any alleged resulting exposure.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 and 4 above, Embry, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation

fees, and costs), damages, losses, liabilities and demands against 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 chemical DEHP in the Products.

### **5.2 Northern Tool's Release of Embry**

Northern Tool, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Embry, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Embry 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. Embry on behalf of herself only, on one hand, and Northern Tool on behalf of itself only, 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.

Embry and Northern Tool each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

### **5.4 Deemed Compliance with Proposition 65**

As noted in Section 5.1, compliance by Northern Tool with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

**5.5. Public Benefit**

It is Northern Tool's understanding that the commitments it has agreed to herein, and actions to be taken by Northern Tool under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of Northern Tool that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Northern Tool's failure to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Northern Tool is in material compliance with this Settlement Agreement.

**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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**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, Northern Tool shall provide written notice to Embry 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 Products 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 Northern Tool:

Melissa A. Jones  
Stoel Rives LLP  
500 Capitol Mall, Ste. 1600  
Sacramento, CA 95814

For Embry:

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

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)**

Embry 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. **ENTIRE AGREEMENT**


This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

13. **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.

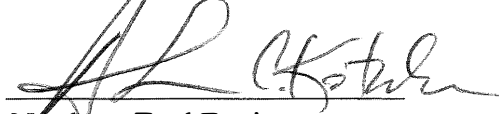
AGREED TO:

Date: 9/7/2017

By:   
Kim Embry

AGREED TO:

Date: 9/7/2017

By:   
Northern Tool Equipment  
Company, Inc.

J. L. Ketchum  
Vice President