

**State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting**

**Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612**

FORM JUS 1501  
(03-01)

**PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)**

**REPORT OF SETTLEMENT**

Please print or type required information

☒ Original Filing    ☐ Supplemental Filing    ☐ Corrected Filing

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S)  <b>Kim Embry</b>				
	DEFENDANT(S) INVOLVED IN SETTLEMENT  <b>Big Time Products, LLC</b>				
<b>CASE INFO</b>	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME <b>Embry v. Big Time Products, LLC</b>				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation and Warning</b>				
	PAYMENT: CIVIL PENALTY <b>\$1,200</b>		PAYMENT: ATTORNEYS FEES <b>\$10,800</b>		<b>For Internal Use Only</b>
	PAYMENT: OTHER 		DATE SETTLEMENT SIGNED <b>08 / 23 / 2017</b>		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		
	COPY OF SETTLEMENT MUST BE ATTACHED				
<b>FILER INFO</b>	NAME OF CONTACT <b>Noam Glick</b>				
	ORGANIZATION <b>GLICK LAW GROUP, P.C.</b>			TELEPHONE NUMBER <b>((619)) 382-3400</b>	
	ADDRESS <b>225 Broadway, Suite 2100</b>			FAX NUMBER <b>( 619 ) 615-2193</b>	
	CITY <b>San Diego</b>	STATE <b>CA</b>	ZIP <b>92101</b>	E-MAIL ADDRESS <b>noam@glicklawgroup.com</b>	

**FILING INSTRUCTIONS:** This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 The Parties**

This Settlement Agreement is entered into by and between Kimberly Embry, only in her individual capacity ("Embry") and Big Time Products, LLC. ("Big Time"). Together, Embry and Big Time are collectively referred to as the "Parties." Embry is an individual who 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. Big Time is considered 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 Big Time has manufactured, imported, distributed and/or sold in the State of California Working Hands PVC Coated Rubber Gloves without the requisite Proposition 65 warning that Diisononyl phthalate ("DINP") is known to the State of California as a toxin.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are Working Hands PVC Coated Rubber Gloves (the "Product" or "Products") that have been manufactured, imported, distributed, sold and/or offered for sale in California by Big Time and that contain DINP.

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

On May 2, 2017, Embry served Big Time and various public enforcement agencies with a document entitled "Proposition 65 Notice of Violation" (the "Notice"). The Notice provided Big Time and such others, including public enforcers, with notice that alleged that Big Time 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 DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Big Time 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 Big Time 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 Big Time of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Big Time. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Big Time maintains that it has not knowingly manufactured, or caused 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 the date this Agreement is last executed by the Parties.

### **2. INJUNCTIVE RELIEF**

#### **2.1 Reformulation and Warnings**

Commencing ninety (90) days after the Effective Date, and continuing thereafter, Big Time agrees to manufacture or distribute for sale in California only (a) reformulated Products pursuant to Section 2.2, or (b) Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. Big Time and its downstream retailers shall have no obligation to reformulate or label Product that entered the stream of commerce prior to the Effective Date. 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 one thousand (1,000) parts per million of DINP.

#### **2.3 Clear and Reasonable Warnings**

Commencing ninety (90) days after the Effective Date, Big Time shall provide a clear and reasonable warning for any Product that it manufactures, distributes, or offers for sale in California

that is not a Reformulated Product. Big Time shall provide the warning affixed to the packaging or labeling using language similar to the warning(s) below:

(a) **WARNING:** This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

Or

(b) **WARNING:** This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

Or

(c) the text, "**WARNING** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016.

Or

(d) the text, "**WARNING** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016.

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, Big Time shall be entitled to use, at its 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, Big Time shall pay a total of \$1,200 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, Big Time shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$900; and (b) "Glick Law Group Client Trust Account" in the amount of \$300. 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.** Big Time agrees to provide Embry's counsel with a copy of the check 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.** Big Time 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: 47-1838518) at the address provided in Section 3.2(a)(i);

(iii) "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i); and

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

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

The Parties acknowledge that Embry and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Embry 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, Big Time shall reimburse Embry's counsel for fees and costs incurred as a result of investigating and bringing this matter to Big Time's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Big Time shall issue two separate checks, one payable to "Glick Law Group" and one payable to "Nicholas & Tomasevic", each in the amount of \$5,400 (for a total amount of \$10,800) to be delivered to each of the following addresses:

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

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, 19th Floor  
San Diego, CA 92101

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

### **5.1 Release of Big Time and Downstream Customers and Entities**

This Settlement Agreement is a full, final and binding resolution between Embry, acting on her own behalf only, and Big Time, 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 DINP contained in the Products, and Releasors hereby release any such claims against Big Time and its parents, subsidiaries, affiliated entities, divisions, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Big Time directly or indirectly distributes or sells the Products, including but not limited to Do It Best Commerce Company LLC (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 DINP that is allegedly contained in the Products, and were manufactured, distributed, sold and/or offered for sale by Big Time to customers and consumers in the State of California. As to alleged exposure to DINP from Products, compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Big Time 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 Sections 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 DINP in the Products.

## **5.2 Big Time's Release of Embry**

Big Time, 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 Big Time 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 Big Time 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 Big Time with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP in the Products.

#### **5.5. Public Benefit**

It is Big Time's understanding that the commitments it has agreed to herein, and actions to be taken by Big Time 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 Big Time that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Big Time's alleged failure to provide a warning concerning exposure to DINP 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 Big Time 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 or limited by reason of law generally, or as to the Products, Big Time 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 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 Big Time:

Shelley Hurwitz  
Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071

For Embry:

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

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, 19th Floor  
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.

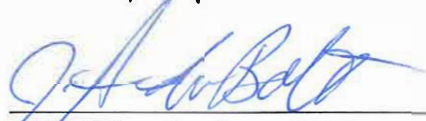
**AGREED TO:**

**AGREED TO:**

Date: 8/23/2017

Date: 8/21/17

By:   
Kim Embry

By:   
Big Time Products, LLC