

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 The Parties**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Safe Products for Californians LLC (“SPFC”) and Escort Inc. (“Escort”) with SPFC and Escort collectively referred to as the “Parties.” SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, 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. Escort employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

SPFC alleges that Escort manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that SPFC alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause cancer.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are suction cups containing DEHP including, but not limited to, *Suction Cups SKU 79-000174-01* that are manufactured, imported, distributed, sold and/or offered for sale by Escort and/or its customers in the state of California, hereinafter the “Products.”

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

On or about October 20, 2017, SPFC served Escort, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Escort violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose 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.

#### **1.5 No Admission**

Escort denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has manufactured, imported, sold and/or distributed for sale 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 Escort of any fact, finding, and issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Escort of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which this document has been signed by all Parties.

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

### **2.1 Product Labeling**

Escort has begun labeling the Products with the warning contained in this section. As of the Effective Date, Escort shall not directly sell, or ship for sale in California any Products, unless the Products are accompanied by one of the following warnings:

“**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm”; or

“**WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate (“DEHP”), which is known to the state of California to cause cancer, and birth defects and other reproductive harm. For more information go to: [www.P65warnings.CA.gov](http://www.P65warnings.CA.gov)”

The warning above may be preceded by the following symbol: a triangle outlined in black bold and enclosing a black exclamation point.

The warning provided pursuant to Section 2.1 shall be prominently affixed to or printed on the Products’ packaging, labeling, or instruction booklet and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

If Escort knows or has reason to know that the Products require warnings for one or more other listed chemicals then it may use the appropriate warning text as set forth in Title 27, California Code of Regulations, Section 25603, as it may be amended from time to time. Nothing herein shall preclude Escort from utilizing the “short form” warning text set forth in Title 27, California Code of Regulations, Section 25603(b), as long as it complies with the requirements applicable to such warnings as set forth in Title 27, California Code of Regulations, Section 25602, as it may be amended from time to time (or by any statute or regulation that supersedes it).

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, Escort 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. **MONETARY PAYMENTS**

3.1 **Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b), Escort shall pay civil penalties in the amount of \$1,000. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (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 paid to SPFC. SPFC’s counsel shall be responsible for remitting Escort’s penalty payment under this Settlement Agreement to OEHHA. Within five (5) business days of this Agreement being signed by the Parties, Escort shall issue a check payable to “Mission Law Firm, A.P.C., Trust Account” in the amount of \$250, and a check payable to OEHHA in the amount of \$750. These penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 **Reimbursement of Attorneys’ Fees and Costs**

The Parties acknowledge that SPFC and its 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 the agreement had been settled. Shortly after the other settlement terms had been finalized, Escort expressed a desire to resolve SPFC’s fees and costs. The Parties then negotiated a resolution of the compensation due to SPFC and its 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 agreement, Escort shall reimburse SPFC and their counsel \$12,000 within two (2) business days of this Agreement being signed by the Parties. Escort’s payment shall be delivered to the address in Section 3.3 in the form of a check payable to “Mission Law Firm.” The reimbursement shall cover all fees and costs incurred by SPFC investigating,

bringing this matter to Escort's attention and negotiating a settlement of the matter in the public interest.

**3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

Mission Law Firm, A.P.C.  
Attn: Proposition 65 (SPFC)  
332 North Second Street  
San Jose, California 95112

**4. CLAIMS COVERED AND RELEASED**

**4.1 SPFC's Release of Proposition 65 Claims**

SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, releases Escort, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Escort directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date that were or could have been asserted by SPFC relating to the Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Escort.

**4.2 SPFC's Individual Releases of Claims**

SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 of SPFC of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Escort prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Escort. Nothing in this section affects SPFC's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Escort's Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, SPFC, on behalf of itself, its 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 it 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 allegations made in the Notice.

#### **4.3 Escort's Release of SPFC**

Escort, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against SPFC and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by SPFC and their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter 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 enforceable provisions remaining 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 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Escort shall provide written notice to SPFC of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Escort from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Escort:

Megan O'Laughlin  
Hitchcock Evert LLP  
750 North St. Paul Street  
Suite 1110  
Dallas, Texas 75201

For SPFC:

Proposition 65 Coordinator  
Mission Law Firm, A.P.C.  
332 N 2<sup>nd</sup> Street  
San Jose, CA 95112

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.

**8. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. 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.

**9. COUNTERPARTS; FACSIMILE AND 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 SECTION 25249.7(f)**

SPFC 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 herein.

**AGREED TO:**

**AGREED TO:**

Date: 3/27/18

Date: 4-5-18

By: 

Randy Moore, Operating Manager  
Safe Products for Californians LLC

By: 

Sandy Maxey  
Escort Inc.