

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and Eaton Aeroquip, LLC (“Eaton”), on the other hand, with Embry and Eaton each individually referred to as a “Party” and collectively as the “Parties.” Embry is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Eaton employs ten or more individuals 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Embry alleges that Eaton manufactures, sells, and distributes for sale in California, polyvinyl chloride tubing in 100 foot lengths that contain di(2-ethylhexyl)phthalate (“DEHP”) and that it does so without first providing the warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, 1/4"OD x 100' Clear PVC Tubing, Part No. PT20004NA-100 containing DEHP and that is or has been manufactured, sold, or offered or distributed for sale in California by Eaton (“Product”).

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

On April 5, 2018, Embry served Eaton Corporation, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Eaton Corporation violated Proposition 65 when it failed to provide a warning under Proposition 65 with respect to exposures to DEHP from 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**

Eaton denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sells or distributes or has sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all applicable requirements under Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Eaton 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 Eaton of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Eaton. This Section shall not, however, diminish or otherwise affect Eaton's 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, Eaton agrees to only sell or distribute the Product in California if the Product is accompanied by a warning as provided for in Section 2.2. This warning requirement shall not apply to the extent that the Product is reformulated so that it has a DEHP content of less than 1,000 parts per million by weight.

### **2.2 General Warning Requirements**

Eaton agrees that each 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 a person understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product, when sold by Eaton in California and requiring a warning, shall be provided on the Product or its

packaging or label, or on a shelf tag or sign in a manner provided for in applicable regulations under Proposition 65 that contains the following statement:

**WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning shall also include a symbol consisting of a black exclamation point in a equilateral triangle with a bold black outline. The symbol shall be in yellow, unless the sign, label or shelf tag is printed using the color yellow, in which case it may be 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 may also be a short-form warning, as such term is used in applicable regulations under Proposition 65. If after the Effective Date, Eaton offers the Product for sale on a website for sale to purchasers in California, it shall provide a warning in a form permitted by this Agreement.

### **2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 to which Eaton is subject shall not apply to any Product that was manufactured, distributed, or sold or offered for sale, or otherwise placed into the stream of commerce, before or as of the Effective Date, as any and all claims related to any such Product and its distribution, sale, offering for sale or placement into the stream of commerce are expressly subject to the releases (including downstream 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, Eaton agrees to pay \$3,000 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 fifteen (15) days of the date this Settlement Agreement is executed by the Parties, Eaton shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$2,250.00 and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of \$750.00.

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

The penalty payment 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 fifteen (15) days of the date this Settlement Agreement is executed by the Parties, Eaton agrees to pay \$29,500 to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Eaton and negotiating a settlement. Eaton's payment shall be delivered in

the form of two checks: (1) one check for \$14,750 payable to “Glick Law Group”; and (2) one check for \$14,750 payable to “Nicholas & Tomasevic LLP.”

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Embry’s Release of Eaton**

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and Eaton, of any 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 Eaton 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 Eaton, and each entity to whom Eaton directly or indirectly has distributed or sold or offered for sale or distributes or sells or offered for sale the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (including without limitation, Fastenal Company) (“Releasees”), based on matters alleged in the Notice and the failure to provide warnings under Proposition 65 with respect to DEHP applicable to any Product manufactured, sold, offered or distributed for sale, or otherwise placed in the stream of commerce before or as of the Effective Date (but not as to any other products).

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 Eaton and the other 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 or otherwise, with respect to the alleged or actual failure to provide warnings under Proposition 65 with respect to any Product manufactured, sold, offered or distributed for sale before the Effective Date (but not as to any other products).

#### **4.2 Eaton's Release of Embry**

Eaton, 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 (but not as to any other products).

#### **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. Embry on behalf of herself only, on one hand, and Eaton 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.

**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 Eaton:

Eaton Corporation  
Law Department  
1000 Eaton Boulevard  
Mail Code 4N  
Cleveland, OH 44122  
Attention: Lisa D. Sutton

with a copy to:

Sonja A. Inglin  
Cermak & Inglin, LLP  
12121 Wilshire Blvd., Suite 322  
Los Angeles, CA 90025

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. 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. **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).

10. **MODIFICATION**

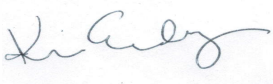
This Settlement Agreement may be modified only by written agreement of the Parties.

11. **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:**

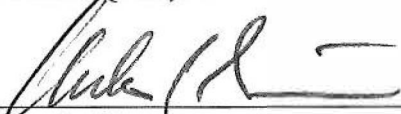
Date: October 23, 2018

  
By: \_\_\_\_\_  
KIM EMBRY

**AGREED TO:**

Date: October 15, 2018

EATON AEROQUIP, LLC

  
By: \_\_\_\_\_  
Charles C. Sims  
Vice-President of Finance