

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and Spradling International, Inc. (“Spradling”) and Jo-Ann Stores, LLC (“Jo-Ann”), on the other hand, with Embry, Spradling, and Jo-Ann 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. Spradling 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”). Jo-Ann employs ten or more individuals and is a person in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Embry alleges that Spradling manufactures, sells, and distributes for sale in California vinyl fabrics that contain Diisononyl phthalates (DINP) and that it does so without first providing the health hazard warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to, vinyl fabrics that contain DINP and that are manufactured, sold or distributed for sale in California by Spradling, including Arctic Vinyl Fabric Solids (the “Products”).

1.4 Notice of Violation

On June 7, 2018, Embry served Spradling, Jo-Ann, , the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Spradling violated Proposition 65 by failing to warn their customers and consumers in California of the health risks associated with exposures to DINP from the Products. 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

Spradling and Jo-Ann deny all material, factual, and legal allegations or conclusions in the Notice and maintain that all of the products 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 Spradling or Jo-Ann 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 Spradling or Jo-Ann of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Spradling and Jo-Ann. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Spradling or Jo-Ann, their officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect Spradling's or Jo-Ann'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, Spradling agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Products that are sold with a health hazard warning as provided for in Section 2.2.

2.2 General Warning Requirements

Spradling 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 the consumer or user understands to which *specific* Products 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 Products shall consist of an in-store warning sign and/or a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Spradling that contains the following statements:

WARNING: This product can expose you to chemicals including Diisononyl phthalates (DINP), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. 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 same warning shall be posted on any websites where the Products are sold in California.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date., which Products are expressly subject to the 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, Spradling agrees to pay \$1,000 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 ten (10) days of the date this Settlement Agreement is executed by the Parties, Spradling shall issue two separate checks for the initial civil penalty payment to (a)

“OEHHA” in the amount of \$750 and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of \$250.

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

All penalty payments 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, Spradling agrees to pay \$19,000 to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Spradling’s management and negotiating a settlement. Spradling’s payment shall be delivered in two payments: (1) \$11,000 payable within 10 days of execution of this Agreement (in the form of one check for \$5,500 payable to “Glick Law Group”, and one check for \$5,500 payable to “Nicholas & Tomasevic, LLP”); and (2) \$8,000

payable on or before [November 11, 2019] (in the form of one check for \$4,000 payable to “Glick Law Group”, and one check for \$4,000 payable to “Nicholas & Tomasevic, LLP”), provided that no other Proposition 65 enforcer has filed a 60-day notice of violation on the Products on or before November 11, 2019.

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 Spradling International, Inc. & Joann Fabric and Crafts

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and Spradling 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 Spradling and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products was purchased by Spradling, and each entity to whom Spradling directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including, without limitation, Jo-Ann, franchisees, cooperative members and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to DINP in the Products manufactured, sold or distributed for sale in California by Spradling before the Effective Date, as alleged in the Notice.

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 Spradling and 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 with respect to the alleged or actual failure to warn about exposures to DINP in the Products manufactured, distributed, sold or offered for sale by Spradling before the Effective Date.

4.2 Spradling's Release of Embry

Spradling, 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 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 Products will develop or be discovered. Embry on behalf of herself only, on one hand, and Spradling 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, AND THAT, IF KNOWN BY HIM OR HER, WOULD 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 and apply within 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 Spradling:

William "Buddy" Cox
Bradley Arant Boult Cummings, LLP
One Federal Place, 1819 Fifth Avenue North
Birmingham, AL 35203-2119

For Jo-Ann:

Michael Weed
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall
Suite 3000
Sacramento, CA 95814-4497

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: February 20, 2019

By: 
KIM EMBRY

AGREED TO:

Date: 2/11/2019

By: 
SPRADLING INTERNATIONAL, INC.

AGREED TO:

Date: Feb. 18, 2019

By: , Sr. Legal Counsel
JO-ANN STORES, LLC