

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and HDS Trading Corp. (“HDS”), on the other hand, with Embry and HDS 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. HDS does not employ ten or more individuals and is not 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”), however, at the time of the allegation HDS employed ten or more individuals.

#### **1.2 General Allegations**

Embry alleges that HDS manufactures, sells, and distributes for sale in California vinyl coated chrome hangers that contain Diisononyl Phthalate (“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 product covered by this Settlement Agreement (the “Product”) is defined as, and expressly limited to, Vinyl Coated Chrome Hangers, that contain DINP and that are manufactured, sold or distributed for sale by HDS.

#### **1.4 Notices of Violation**

On July 27th, 2018 Embry served J. C. Penney Company, Inc., Sunbeam Products, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that J. C. Penney Company, Inc. and Sunbeam Products, Inc. violated Proposition 65 when they failed to warn their customers and consumers in California of the health risks associated with exposures to DINP from the Product. Embry later came to learn, and the Parties agree, that HDS is the manufacturer of the Vinyl Coated Chrome Hangers referenced in the

Notice. 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**

HDS denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale 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 HDS 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 HDS of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by HDS. This Section shall not, however, diminish or otherwise affect HDS'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, HDS agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Product that is sold with a health hazard warning as provided for in Section 2.2.

### **2.2 General Warning Requirements**

HDS 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* 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 shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by HDS that contains either of the following statements:

**WARNING:** This product can expose you to chemicals including Diisononyl Phthalate (“DINP”), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**WARNING:** Cancer and Reproductive Harm-  
[www.P65Warnings.ca.gov](http://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”. These same warnings shall also constitute a clear and reasonable warning for the Product if posted on any website where the Product is 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, HDS 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, HDS 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, within ten (10) days of the date this Settlement Agreement is executed by the Parties, HDS agrees to pay \$9,000 to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of HDS's management and negotiating a settlement. HDS's payment shall be delivered in the form of two checks: (1) one check for \$4,500 payable to "Glick Law Group"; and (2) one check for \$4,500 payable to "Nicholas & Tomasevic LLP."

### **3.3 Payment Address**

All payments required under Section 3.2 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 HDS Trading Corporation, Upstream and Downstream Entities**

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors and assignees and not on behalf of the public, on the one hand, and (i) HDS and its owners, parents, subsidiaries, affiliates, affiliated entities under common ownership, shareholders, directors, officers, members, employees, attorneys, successors and assigns, (ii) each upstream entity from whom the Product was purchased by HDS, (iii) each entity to whom HDS directly or indirectly distributed or sold the Product, including, but not limited to, its downstream distributors including J. C. Penney Company, Inc. and J. C. Penney Corporation, Inc. (collectively "J. C. Penney") and each of J. C. Penney's past, present and future subsidiaries, employees, shareholders, predecessors, successors, assigns, officers and directors, and including and in addition to (iv) HDS' wholesalers, customers, retailers, franchisees, cooperative members and licensees, including, but not limited to, Sunbeam Products, Inc. (collectively, each of the entities in (i) to (iv) above are referred to as "Releasees"), on the other hand, for any violation of Proposition 65 that was or could have been asserted by Embry, based on the failure to warn about exposures to DINP in the Product that was manufactured, purchased by, distributed, sold or offered for sale by HDS or any other Releasee 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 HDS

and the 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 Product that was manufactured, purchased by, distributed, sold or offered for sale by HDS or any other Releasee before the Effective Date.

#### **4.2 HDS Trading Corporation's Release of Embry**

HDS, 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.

#### **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 HDS 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 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 HDS Trading Corporation:

Sophia Castillo  
Downey Brand, LLP  
455 Market St. STE 1500  
San Francisco, CA 94105  
scastillo@downeybrand.com

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:

AGREED TO:



Date: 3/21/19

Date: 3/19/19

By:   
KIM EMBRY

By: Fred Guindi  
HDS Trading Corporation