

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and The Container Store, Inc. (“The Container Store”) and Household Essentials, LLC (“Household Essentials”), on the other hand, collectively referred to 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. The Container Store and Household Essentials each employ 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 The Container Store manufactures, sells, and distributes for sale in California, canvas hanging jewelry organizers that contain di(2-ethylhexyl) phthalate (“DEHP”) and that it does so without first providing the health hazard 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 (“Product”) covered by this Settlement Agreement is defined as, and expressly limited to, 80-Pocket Canvas Hanging Jewelry Organizer, that contains DEHP and that is manufactured, sold or distributed for sale in California by The Container Store.

1.4 Notice of Violation

On July 27, 2018, Embry served The Container Store, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that The Container Store violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with 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

The Container Store denies the material, factual, and legal allegations in the Notice and maintains that all of the product 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 The Container Store 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 The Container Store of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by The Container Store. This Section shall not, however, diminish or otherwise affect The Container Store'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 Reformulation

Commencing on the Effective Date, and continuing thereafter, The Container Store agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Product that meet the Reformulation Standard set forth in Section 2.2 below ("Reformulated Products").

2.2 Reformulation Standard

The Container Store agrees that the accessible components of the referenced Product (i.e., those that can be mouthed or touched by an ordinary consumer during reasonably foreseeable use) contain no more than 1,000 parts per million (0.1%) each of DEHP. For purposes of determining compliance with this settlement agreement, the content of DEHP shall be analyzed pursuant to EPA testing methodologies 35800A and 9270C or equivalent methodologies utilized by state or federal agencies for the purpose of determining Listed Phthalate content in a solid substance.

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, The Container Store 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, The Container Store 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, The Container Store agrees to pay \$14,000 to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of The Container Store's management and negotiating a settlement. The Container Store's payment shall be delivered in the form of two checks: (1) one check for \$7,000 payable to "Glick Law Group"; and (2) one check for \$7,000 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 The Container Store and Household Essentials

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and The Container Store and Household Essentials 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 The Container Store and/or Household Essentials and/or each of their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by The Container Store, and each entity to whom The Container Store and/or Household Essentials directly or indirectly

distribute or sell the Product, including, but not limited to, their respective downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on the failure to warn about exposures to DEHP in the Product manufactured, sold or distributed for sale in California by The Container Store and/or Household Essentials 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 The Container Store, Household Essentials 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 DEHP in the Product manufactured, distributed, sold or offered for sale by The Container Store and/or Household Essentials, before the Effective Date.

4.2 The Container Store’s and Household Essentials’ Release of Embry

The Container Store and Household Essentials, on their own behalf and on behalf of their past and current agents, representatives, attorneys, successors, and assignees, hereby waive 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 The Container Store and Household Essentials, on behalf of themselves 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 The Container Store and Household Essentials:

Robert Niemann
Keller and Heckman, LLP
Three Embarcadero Center, STE 1420
San Francisco, CA 94111

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: 1/07/2019


Date: _____

By: 
KIM EMBRY

By: _____
The Container Store, Inc.

AGREED TO:

Date: 1-7-19

By: 
Household Essentials
James L. Glenn
President / CEO

8. COUNTERPARTS; FACSIMILE SIGNATURES

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AGREED TO:

Date: 1/07/2019

By: 
KIM EMBRY

AGREED TO:

Date: 1/7/2019

By: 
The Container Store, Inc.

Tyler Drinkwine
Director of Legal + Compliance

AGREED TO:

Date: _____

By: _____
Household Essentials