

SETTLEMENT AGREEMENT

BETWEEN

SARA HAMMOND

AND

VENTURE PRODUCTS, LLC

Sara Hammond (“Hammond”) and Venture Products, LLC (herein referred to as “Venture”) (Hammond and Venture are collectively referred to as the “Parties”), enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Hammond’s allegations that Venture violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

1. Introduction

1.1 Hammond is an individual who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Venture previously sold fitness toning balls (for example the Series 8 Fitness 8 lb. Toning Ball, UPC 4 00025 97821 4, referred to throughout as the “Covered Product”).

1.3 Hammond alleges that the Covered Product contains Di(2-ethylhexyl)phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and that Venture did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).

1.4 On January 1, 1988 the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. These additions took place more than twenty (20) months before Hammond served her “Sixty-Day Notice Of

Violation Sent in Compliance With California Health & Safety Code § 25249.7(d)” which is further described below.

1.5 DEHP is referred to hereafter as the “Listed Chemical”.

1.6 On or about September 11, 2018 Hammond alleges she served Five Below, Inc. and Five Below Merchandising, Inc. and related entities (collectively, "Five Below") and certain relevant public enforcement agencies with a Sixty-Day Notice of Violation sent pursuant to California Health & Safety Code § 25249.7(d) alleging the Covered Product contained the Listed Chemical (the “Notice”). On or about October 19, 2018 Hammond alleges she served Five Below, Venture and related entities and certain relevant public enforcement agencies with a Supplemental Sixty-Day Notice of Violation sent pursuant to California Health & Safety Code § 25249.7(d) alleging the Covered Product contained the Listed Chemical (the “Notice”).

1.7 The Notices alleged that Five Below and Venture violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to the Listed Chemical.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between them concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.9 Venture disputes Hammond’s allegations described in this Settlement Agreement and in the Notices.

1.10 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. 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 Venture, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, licensees, licensors, suppliers, distributors or retailers of its products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Hammond or Venture may have in any other legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2. Release

2.1 This Settlement Agreement is a full, final, and binding resolution between Hammond, acting in her individual capacity, on the one hand, and (a) Venture, and its current owners, parents, subsidiaries, affiliates, sister and related companies, licensees, licensors, suppliers, employees, shareholders, members, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Product, including but not limited to Five Below, Inc., Five Below Merchandising, Inc. and their affiliated entities, distributors, wholesalers, customers, retailers, franchisees, and cooperative members ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to any Proposition 65 listed chemical or the failure to warn about exposure to any Proposition 65 listed chemical arising in connection with the Covered Product sold or otherwise distributed by Venture prior to the Effective Date, including without limitation sales made by Downstream Releasees after the Effective Date.

2.2 Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action,

including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and the Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in connection with the Covered Product sold or otherwise distributed by Venture up to the Effective Date, including without limitation to the extent that such claims relate to Releasees' or Downstream Releasees' alleged exposure of persons to any Proposition 65 listed chemicals contained in the Covered Product or any failure by Releasees or Downstream Releasees to warn about exposures to any Proposition 65 listed chemical contained in the Covered Product.

2.3 Hammond acknowledges that she is familiar with Section 1542 of Civil Code, which provides 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.

Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth below are paid in full.

2.4 Venture's release of Hammond

Venture 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 Hammond and her

attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Product.

3. Venture's Duties

3.1. Commencing on the Effective Date, Venture shall not manufacture or order from any supplier any Covered Product for sale and distribution in California unless the product meets the reformulation standard set forth in Paragraph 3.2 or unless Venture provides a clear and reasonable warning for any non-reformulated Covered Product that it sells in California.

3.2. Except as provided above, effective on and after the Effective Date, Venture agrees to only sell in California, "Reformulated Covered Products." For purposes of this Settlement Agreement, "Reformulated Covered Products" are Covered Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component ("accessible component" is defined as any component that could be touched by a person during reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance, or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance ("Reformulation Standard"). In order to determine compliance with this reformulation standard, Venture may rely on the results of third party testing conducted by an accredited laboratory.

3.3. The Parties agree that any of the following warnings shall constitute a "Compliant Warning" for the Listed Chemical in the Covered Product:

- (a) the text, "**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 or reproductive harm. For more information go to www.P65Warnings.ca.gov.**" accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black

outline sized to be no smaller than the word “WARNING” as provided by regulations adopted on or about August 30, 2016; or

(b) the text, “**WARNING Cancer or Reproductive Harm – www.P65Warnings.ca.gov**,” accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word “WARNING” as provided by regulations adopted on or about August 30, 2016.

The triangular warning symbol specified in Section 3.3 shall be in yellow with a black exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered Product label is not printed against a yellow background.

3.4. The Parties agree that the specifications for Compliant Warnings in this Settlement Agreement comply with Proposition 65 and its regulations as of the date of this Settlement Agreement and with regulations adopted on or about August 30, 2016 which became effective August 30, 2018.

3.5 Compliance by Venture with the terms and conditions of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Covered Products.

3.6 Public Benefit. It is Venture's understanding that the commitments it has agreed to here, and actions to be taken by HOPI under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Title 11 of the California Code of Regulations, section 3201. As such, it is the intent of Venture that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Venture's alleged failure to provide a warning concerning exposure to DEHP with respect to the Covered Products it has manufactured, distributed, sold or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant

benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Venture is in material compliance with this Settlement Agreement.

If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

4. Payments

4.1 In settlement of all the claims referred to in the Settlement Agreement, Venture agrees to pay a total of twenty-three thousand five hundred dollars (\$23,500) no later than five (5) days from the effective date of this Agreement. All payments shall be made by checks and sent via overnight mail with tracking numbers provided to plaintiff's counsel and addressed as follows:

Joseph D. Aglio, Law Corporation
18314 S. Broadway
Gardena, CA 90248

and further specified as follows:

4.1.1 Civil Penalty: Venture shall issue two separate checks for a total amount of one thousand dollars (\$1,000) as penalties pursuant to California Health & Safety Code § 25249.12 as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven hundred fifty dollars (\$750), representing 75% of the total penalty; and (b) one check made payable to Sara Hammond in the amount of two hundred fifty dollars (\$250), representing 25% of the total penalty. Additionally, two separate 1099's shall be issued for the above payments. The first 1099 shall be issued to OEHHA, PO Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the amount of \$250 to Sara Hammond, addressed to Sara Hammond C/O Joseph D. Aglio, Law Corporation and shall be delivered to Joseph D. Aglio, Law Corporation, PO Box 3582, Manhattan Beach, CA 90266. At Venture's request, Hammond's counsel shall provide Venture with a W-9 for Hammond.

4.1.2 Attorneys' Fees and Costs: Twenty-two thousand five hundred dollars (\$22,500) shall be paid by Venture to Joseph D. Agliozzo, Law Corporation as Hammond's attorney, for reasonable investigation fees and costs, attorneys' fees, and other costs incurred as a result of investigating and bringing this matter to Venture's attention. At Venture's request, Hammond's counsel shall provide Venture with a W-9 for Joseph D. Agliozzo, Law Corporation.

5. Authority to Enter Into Settlement Agreement

5.1 Hammond represents that she has full authority to enter into and legally bind Hammond to this Settlement Agreement.

5.2 The person signing this Settlement Agreement on behalf of Venture represents and warrants that he/she has been granted full authority to enter into and legally bind Venture to this Settlement Agreement.

6. Report of the Settlement Agreement to the Office of the Attorney General of California

Hammond shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7. Execution in Counterparts and Facsimile

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to California Civil Code §§ 1633.1-1633.17.

8. Entire Agreement

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other promises or agreements, oral or otherwise, exist to bind

any of the Parties or are being relied on by any of the Parties in connection with the execution of this Settlement Agreement.

9. Modification of Settlement Agreement

Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

10. Application of Settlement Agreement

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Hammond and the Releasees and Downstream Releasees identified in Section 2 above.

11. Enforcement of Settlement Agreement

11.1 Either party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement subject to Sections 11.2 and 11.3 below. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Venture by Hammond, unless Hammond notifies Venture of the specific future acts alleged to breach this Settlement Agreement at least sixty (60) days before serving or filing any action or Notice of Violation, and Venture fails to comply with the requirements imposed on it as set forth in Section 11.3 below. Any notice to Venture must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or a Proposition 65 compliant warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 For a period of three (3) years after the Effective Date of this Agreement, the parties agree that, within thirty (30) days of receiving the notice described in Section 11.2, Venture shall either (a) agree in writing not to contest Hammond's notification and make a contribution to Hammond to be used by her in her Proposition 65 inspections and enforcement in the amount of either:

(1) \$5,000, in the event that prior to taking delivery of the product, Venture failed to obtain from its supplier independent testing data for a representative sample of the product from the lot or batch shipped to Venture demonstrating that it met the reformulation standard required pursuant to the Settlement Agreement; or (2) \$2,500 in the event that, prior to taking delivery of the product, Venture demonstrates to Hammond's reasonable satisfaction that it received from its supplier independent testing data showing that the lot or batch from with the product was shipped met the reformulation standard required pursuant to this Agreement, or (b) refute the information provided to Venture by Hammond under Section 11.2 with analytical data reasonably acceptable to Hammond showing representative samples of the product meet the Reformulation Standard. In the event that Venture fails to refute the information provided by Hammond, and the parties are unable to resolve the dispute, Hammond, in its sole discretion may elect to file a Notice of Violation with the California Attorney General and seek all penalties, damages, and other remedies available under Proposition 65 through a court proceeding notwithstanding the amounts listed in Section 11.3.

The Parties expressly agree that any and all applicable time limitations (whether arising from statutes, equitable principles or otherwise under common law) relating to any legal claims arising from the notice under Section 6.2 shall be tolled for the 60-day period. During this tolling period, no time shall be considered to pass, lapse or accrue with respect to any statutes of limitation or other time-based defense of any kind whatsoever.

12. Notification Requirements

Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Hammond:

Joseph D. Aglio
Joseph D. Aglio, Law Corporation
PO Box 3582
Manhattan Beach, CA 90266

For Venture:

Steven Fischer
Venture Products, LLC
376 Hollywood Avenue
Fairfield, NJ 07004

With Copy to Counsel for Venture:

John J. Allen
Allen Matkins Leck Gamble Mallory & Natsis, LLC
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

Either party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

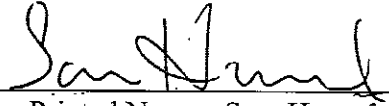
13. Severability

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

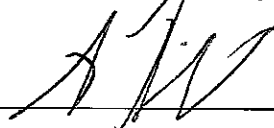
14. Governing Law

The terms of this Settlement Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then Venture shall provide written notice to Hammond of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Product is so affected.

Date: January 7, 2019

SARA HAMMOND
By: 
Printed Name: Sara Hammond

Date: January 9, 2019

VENTURE PRODUCTS, LLC
By: 
Printed Name: Steven Fischer
Title: Member