

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and Artistic Products, LLC (“Artistic Products”), on the other hand, with Embry and Artistic Products 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. Artistic Products 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 Artistic Products manufactures, sells, and distributes for sale in California, nonglare desk mats that contain Diisononyl phthalate (“DINP”) and that it does so without first providing a satisfactory health hazard warning as required by Proposition 65. DINP is regulated under Proposition 65 as a chemical known to the state of California 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, Artistic Krystal Nonglare Deskmat – Rectangle – 17” Width x 12” Depth - Polyviny (“Product”), that contains DINP and that is manufactured, sold or distributed for sale in California by Artistic Products.

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

On October 26, 2018, Embry served Artistic Products, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Artistic Products violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DINP 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**

Artistic Products 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 Artistic Products 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 Artistic Products of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Artistic Products. This Section shall not, however, diminish or otherwise affect Artistic Products' 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**

After the Effective Date, Artistic Products shall not distribute for sale in California any Product that contains more than 1,000 ppm of DINP unless the label of the Product contains a warning that complies with Proposition 65's warning regulations, including 27 California Code of Regulations Section 25600 et. seq."

### **2.2 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, Artistic Products agrees to pay three

thousand dollars (\$3,000.00) 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. These penalty payments shall be divided as follows:

**Initial Payment.** Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Artistic Products shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of one thousand one hundred twenty five dollars (\$1,125.00) and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of three hundred seventy-five dollars (\$375.00).

**Second Payment.** Within sixty (60) days of the date of this Settlement Agreement executed by the Parties, Artistic Products shall issue an additional two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of one thousand one hundred twenty five dollars (\$1,125.00) and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of three hundred seventy-five dollars (\$375.00).

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**

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 Attorneys' 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, Artistic Products agrees to pay twelve thousand five hundred dollars (\$12,500.00) to Embry and her counsel (the "First Payment"). Within sixty (60) days of the date of this Settlement Agreement executed by the Parties, Artistic Products agrees to pay another twelve thousand five hundred dollars (\$12,500.00) to Embry and her counsel (the "Second Payment"). Therefore, the total payment will be twenty-five thousand dollars (\$25,000.00) to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Artistic Products' management and negotiating a settlement. Artistic Product's payment shall be delivered in the form of two checks: (1) the First Payment for \$12,500, payable to "Glick Law Group"; and (2) the Second Payment for \$12,500 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

### **3.4 Tax Documentation**

Artistic Products agrees to provide a completed IRS 1099 for its payments to, and Embry and her counsel agree to provide IRS W-9 forms for each of the payees under this Settlement Agreement. The Parties acknowledge that Artistic Products cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Artistic Products receives the requisite W-9 forms from Embry's counsel.

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

##### **4.1 Embry's Release of Artistic Products**

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and Artistic Products 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 Artistic Products 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 Artistic Products and each entity to whom Artistic Products directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including but not limited to, Office Depot Inc., its subsidiaries and other related entities ("Releasees"), based on the failure to warn about exposures to DINP in the Product manufactured, sold or distributed for sale in California by Artistic Products 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 Artistic Products and Releasees as related to the Product, 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 manufactured, distributed, sold or offered for sale by Artistic Products, before the Effective Date.

##### **4.2 Artistic Products Release of Embry**

Artistic Products, 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 Artistic Products 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 THAT THE CREDITOR OR RELEASING PARTY 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 OR RELEASED PARTY.**

#### **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 may be by facsimile or 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 Artistic Products:

Bradley Brighton  
Artistic Products LLC  
345 Oser Avenue  
Hauppauge, NY 11788

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: (1) written agreement of the Parties with neither Party to unreasonably withhold consent or agreement to modification, or (2) an order from a court following a noticed motion.

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: May 24, 2019

By:   
KIM EMBRY

**AGREED TO:**

Date: 6/4/2019

By:  CFO  
ARTISTIC PRODUCTS, LLC