

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and Weems Industries, Inc., dba Legacy Manufacturing Company (“Legacy”), on the other hand, with Embry and Legacy 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. Legacy 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 Legacy manufactures, sells, and distributes for sale in California, plastic hoses that contain Diisononyl pthalate (DINP) 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 is defined as, and expressly limited to, Legacy Flexible Plastic Hose, that is manufactured by Legacy and sold or distributed for sale in California. This hose is hereafter referred to as the “Product.”

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

On June 12, 2019, Embry served Legacy, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Legacy 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**

Legacy 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 Legacy 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 Legacy of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Legacy. This Section shall not, however, diminish or otherwise affect Legacy'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, Legacy agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Product that is either reformulated or is sold with a health hazard warning as provided for in Section 2.2. The term "reformulated" means manufactured in a manner that contains less than 1,000 parts per million of DINP.

### **2.2 General Warning Requirements**

Legacy 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 Legacy that contains one of the following statements:

- 1) **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).
- 2) **WARNING:** Cancer– [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)
- 3) **WARNING:** This product can expose you to chemicals including Diisononyl phthalate (DINP), which is known to the State of California to cause cancer and to [another chemical] which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- 4) **WARNING:** This product can expose you to chemicals including [another chemical] which is known to the State of California to cause cancer or birth defects or other reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- 5) **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. Where the sign or label for the Product is not printed using the color yellow, the symbol may be printed in black and white. 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 of Legacy’s websites where the Product is sold in California.

Should the State of California enact legislation changing the warning requirements under Proposition 65, or should a state agency issue regulations providing for different warnings that are deemed to be clear and reasonable under Proposition 65, Legacy’s compliance with such legislation or regulations will also be in compliance with this Agreement.

### **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, Legacy agrees to pay five hundred dollars (\$500.00) 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. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Legacy shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of three hundred and seventy five dollars (\$375.00) and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of one hundred and twenty five dollars (\$125.00).

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 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, Legacy agrees to pay four thousand five hundred dollars (\$4,500.00) to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Legacy's negotiating a settlement. Legacy's payment shall be delivered in the form of two checks: (1) one check for two thousand two hundred and fifty dollars (\$2,250.00) payable to "Glick Law Group"; and (2) one check for two thousand two hundred and fifty dollars (\$2,250.00) 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

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

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

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

##### **4.1 Embry's Release of Legacy Manufacturing Company**

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

##### **4.2 Legacy Manufacturing Company's Release of Embry**

Legacy, 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 Mutual Release of Known and Unknown Claims**

Embry, on behalf of herself and her agents, attorneys, representatives, successors, and assigns, in her respective individual capacity only and not in her representative capacity, and Legacy's, each provide a general release of the other including the Releasees herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products. Embry and Legacy each acknowledge that they are each familiar with Section 1542 of the California Civil Code, which provides 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 must have materially affected his or her settlement with the debtor or released party.

Embry and Legacy waive the rights under Section 1542.

#### **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 Legacy Manufacturing Company:

Bruce Nye  
Scali Rasmussen

1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612

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**

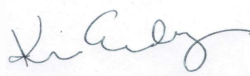
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 01/10/2020

Date: 2020-01-09

By:   
KIM EMBRY

By:   
LEGACY MANUFACTURING COMPANY