

**SETTLEMENT AGREEMENT BETWEEN**  
**SARA HAMMOND**  
**AND**  
**AD SUTTON & SONS, INC.**

Sara Hammond (“Plaintiff” or “Hammond”) and AD Sutton & Sons, Inc. (“Defendant” or “SUTTON”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Hammond’s allegations that SUTTON violated Proposition 65. Hammond and SUTTON are collectively referred to as the “Parties.” 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 alleges she is an individual who seeks to improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.
- 1.2. SUTTON previously either sold, offered for sale, imported, distributed, or manufactured for sale in California various backpacks containing vinyl/PVC components including, but not limited to, the Deluxe Backpack - UPC 0 89305 57796 7 - SKU 069 10 0764 (the “Covered Products”).
- 1.3. Hammond alleges that the Covered Products contain Di(2-ethylhexyl)phthalate, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate (“DEHP”), and that SUTTON 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 of California to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State of California to cause developmental male reproductive toxicity. These additions took place more than twenty (20) months before Hammond served SUTTON with her “Sixty-Day Notice Of Violation pursuant to California Health & Safety Code § 25249.7(d)”.
- 1.5. DEHP is referred to hereafter as the “Listed Chemical”.
- 1.6. On or about August 6, 2019, Hammond alleges she served SUTTON, Target Corporation, Target Brands, Inc., and certain relevant public enforcement agencies with a Sixty-Day Notice of Violation pursuant to California Health & Safety Code § 25249.7(d) alleging that the Covered Products contain the Listed Chemical (the “Notice”).
- 1.7. The Notice alleges that SUTTON and the other noticed parties 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 concerning the Covered Products’ compliance with Proposition 65 (the “Dispute”).
- 1.9. SUTTON disputes and does not admit Hammond’s allegations described in this Settlement Agreement and in the Notice.

1.10. SUTTON enters into this Settlement Agreement solely to resolve disputed claims and to avoid potentially prolonged and costly litigation. SUTTON expressly maintains that all products it sells, including the Covered Products, comply with all laws, including but not limited to Proposition 65, and are completely safe for their intended use. SUTTON further maintains that the Covered Products are manufactured in conformance with good manufacturing practices, that the Listed Chemical is not knowingly or intentionally added to Covered Products, and that it takes good faith steps to ensure that Covered Products do not contain DEHP at levels that require a Proposition 65 warning. By executing this Settlement Agreement, SUTTON does not admit any facts or conclusions of law against interest, 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 against interest by SUTTON 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 against interest or evidence of fault, wrongdoing, or liability by SUTTON, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, licensees, licensors, suppliers, manufacturers, importers, 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 SUTTON may have in any other legal proceeding as to allegations unrelated to the Dispute or the claims settled and released herein.

## **2. Releases**

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) SUTTON, and its owners, parents, subsidiaries, affiliates, sister and related companies, licensees, licensors, suppliers, manufacturers, importers, 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 Products, including but not limited to all distributors, wholesalers, customers, retailers (including but not limited to Target Corporation and Target Brands, Inc.), franchisees, and cooperative members (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any other 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 actual or alleged exposures to any Proposition 65 listed chemical, or the failure to warn about exposure to any Proposition 65 listed chemical arising in connection with Covered Products sold, offered for sale, manufactured, imported or otherwise distributed by SUTTON up through and including the Effective Date, even if sold by Releasees or 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 Products, 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 Covered Products sold, offered for sale, manufactured, imported or otherwise distributed by SUTTON 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 Products or any failure by Releasees or Downstream Releasees to warn about exposures to any Proposition 65 listed chemical contained in the Covered Products up through and including the Effective Date.
- 2.3. Hammond acknowledges that she is familiar with Section 1542 of 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, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees, knowingly and 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 up through and including the Effective Date. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4 of this Settlement Agreement are paid in full.

2.4. Public Benefit.

It is SUTTON's understanding that the commitments it has agreed to herein, and actions to be taken by SUTTON under this Settlement Agreement, confer a significant benefit to the general public as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to SUTTON's alleged failure to provide a warning concerning actual or alleged exposure to the Listed Chemical prior to use of 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 SUTTON is in material compliance with this Settlement Agreement

2.4. SUTTON's release of Hammond.

SUTTON 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 Products up through and including the Effective Date.

**3. SUTTON's Duties**

- 3.1. Effective on and after the Effective Date SUTTON shall not sell Covered Products for distribution in California unless the Covered Products are either “Reformulated Covered Products” as defined in Paragraph 3.2, or unless SUTTON provides a Compliant Proposition 65 Warning as defined in Paragraph 3.3. Compliance with this Settlement Agreement by SUTTON shall constitute compliance with Proposition 65 with regard to Covered Products sold, offered for sale, imported, manufactured or otherwise distributed after the Effective Date.
- 3.2. 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. For purposes of this Settlement Agreement, “accessible component” is defined as any component that can be touched by a person during reasonably foreseeable use of the Covered Products. In order to determine compliance with this reformulation standard, SUTTON may rely on third-party testing from 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)  [California Proposition 65] **WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer, and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or,

- (b)  [California Proposition 65] **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

When either warning is used, it shall be 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 does not otherwise use the color yellow.

Any warning provided shall be placed on the Covered Product’s packaging, its labeling, or on a retail sign in proximity to where the product is offered for sale in California. Language in brackets is optional.

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 and which became effective August 30, 2018.

- 3.5. If modifications or amendments to Proposition 65 or its “safe harbor” warning regulations are adopted after the Effective Date as to what constitutes a “clear and reasonable warning,” 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**

In complete resolution of all claims of any kind for damages, penalties, restitution, attorney’s fees, investigative expenses, testing expenses, or any other monetary relief of any kind related to the claims that were raised or that could have been raised in the Notice and that are the subject of this Settlement Agreement, SUTTON agrees to pay a total of twenty two thousand and five hundred dollars (\$22,500). As further specified below, all payments shall be made within 5 days of the Effective Date by check and sent via overnight mail with tracking numbers provided to plaintiff’s counsel and addressed as follows:

Joseph D. Agliozzo, Law Corporation  
1601 N. Sepulveda Boulevard, # 649  
Manhattan Beach, CA 90266

- 4.1.1. Civil Penalty: In complete resolution of any claim for civil penalties of any kind related to the claims raised in the Notice or this Settlement Agreement, SUTTON 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 and fifty dollars (\$750), representing 75% of the total penalty; and (b) one check made payable to Sara Hammond in the amount of two hundred and 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 and be addressed to Sara Hammond C/O Joseph D. Agliozzo, Law Corporation and shall be delivered to Joseph D. Agliozzo, Law Corporation, PO Box 3582, Manhattan Beach, CA 90266. Hammond's counsel shall provide SUTTON with a W-9 for Hammond upon the full execution of this Settlement Agreement.

4.1.2. Attorneys' Fees and Costs: A total of twenty one thousand and five hundred dollars (\$21,500) shall be paid to Joseph D. Agliozzo, Law Corporation as Hammond's attorney, for any and all attorney's fees, investigation expenses, testing expenses, and other any other fees, costs, and/or expenses incurred as a result of investigating and bringing this matter to SUTTON's attention, and negotiating this Settlement Agreement in the public interest. Hammond's counsel shall provide SUTTON with a W-9 for Joseph D. Agliozzo, Law Corporation upon the full execution of this Settlement Agreement.

**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 SUTTON represents and warrants that he/she has been granted full authority to enter into and legally bind SUTTON 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 Effective Date 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 one and 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 are merged herein. 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**

If one Party alleges the other Party is in breach of this Settlement Agreement, that Party shall notify the other party. Should Plaintiff allege that Defendant is in breach of this Settlement Agreement for failing to comply with Section 3 hereof, Plaintiff will provide written notice with sufficient information to allow Defendant to cure the alleged violation. If Defendant provides written confirmation to Plaintiff that it has cured the alleged violation within 30 days of its receipt of written notice, Plaintiff shall take no further enforcement action and Defendant shall bear no further liability of any kind for the alleged violation. If Defendant fails to cure, the Parties agree to meet and confer in good faith for a period of at least thirty days from the initial notice to attempt to resolve the allegation. If informal efforts to resolve fail, any Party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in this Settlement Agreement, to enforce the terms and conditions contained herein. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such proceeding. This Settlement Agreement may be enforced exclusively by the Parties hereto.

**12. Notification Requirements**

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

For Hammond:

Joseph D. Agliozzo, Esq.  
Joseph D. Agliozzo, Law Corporation  
1601 N. Sepulveda Boulevard, # 649  
Manhattan Beach, CA 90266

For SUTTON:

Steven Sutton, President  
A.D.Sutton & Sons, Inc.  
20 W. 33rd Street/2nd Floor  
New York, NY 10001

With copy to:

J. Robert Maxwell, Esq.  
ROGERS JOSEPH O'DONNELL,  
311 California Street, 10th Floor  
San Francisco, CA 94104

Any Party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section. Courtesy notices via email to counsel may be provided.

**13. Severability**

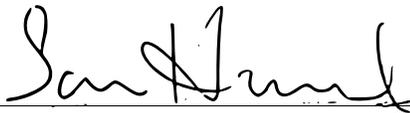
If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**14. Governing Law**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and shall apply only to Covered Products sold to a California consumer. 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 Products, then SUTTON 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 Products are so affected.

SARA HAMMOND

Date: January 29, 2020

By:   
Printed Name: Sara Hammond

AD Sutton & Sons, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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SARA HAMMOND

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Sara Hammond

AD Sutton & Sons, Inc.

Date: Feb. 5, 2020

By: Steven S. Little

Printed Name: Steven S. Little

Title: Pres.