

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between My Nguyen (“**Nguyen**”) and DEM Holdings, Inc. (“**DEM Holdings**”) with Nguyen and DEM Holdings referred to individually as a “**Party**” and, collectively, as the “**Parties**”. Nguyen is a resident of the State of California proceeding in the public interest, pursuant to California Health & Safety Code § 25249.7(d), to promote awareness of the health hazards posed by exposure to toxic chemicals and to ensure chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are either disclosed on or eliminated from products sold in California. DEM Holdings employs ten or more persons and is a “person in the course of doing business” as defined by California Health & Safety Code § 25249.11(b) for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

### 1.2 General Allegations

Nguyen alleges DEM Holdings manufactures, imports, sells and/or distributes for sale in California pouches containing diisononyl phthalate (“**DINP**”) and that it does so without providing the health hazard warning Nguyen alleges is required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

### 1.3 Consumer Product Description

The consumer products covered by this Settlement Agreement are pouches containing DINP and manufactured, imported, distributed, sold or offered for sale, in California, by DEM Holdings, including the *Better Office Products 3-Ring Pencil Pouch, Item #80712, ASIN #B07D6Y1XZ9, UPC #0 90696 80712 0*, referred to hereinafter as the “**Products**.”

### 1.4 60-Day Notice of Violation

On August 20, 2020, Nguyen served DEM Holdings, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”) alleging DEM Holdings violated Proposition 65 when it failed to warn its customers and

consumers in California the Products expose users to DINP, a carcinogen. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

DEM Holdings denies the material, factual and legal allegations contained in the Notice and maintains all products it sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by DEM Holdings of any fact, finding, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by DEM Holdings of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "**Effective Date**" shall mean August 10, 2021.

## **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

### **2.1 Commitment to Reformulate or Provide Warnings**

Commencing on the Effective Date, and continuing thereafter, DEM Holdings agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with the Reformulation Standard, defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.6, below.

### **2.2 Reformulation Standard & Reformulated Products Defined**

For purposes of this Agreement, "**Reformulated Products**" are defined as Products which, if they contain diisononyl phthalate ("**DINP**"), di-n-butyl phthalate ("**DBP**"), (2-ethylhexyl)phthalate ("**DEHP**"), butyl benzyl phthalate ("**BBP**"), di-isodecyl phthalate ("**DIDP**") and/or di-n-hexyl phthalate ("**DnHP**"), have phthalate chemicals in maximum concentrations of less than 0.1 percent (1,000 parts per million) in each and every accessible component (i.e. a component that may be touched or utilized during a reasonably foreseeable

use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“**Reformulation Standard**”.)

For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology CPSC-CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other accepted methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

### **2.3 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, and continuing thereafter, DEM Holdings shall provide clear and reasonable health hazard warnings for all Products that DEM Holdings manufactures, imports, distributes, sells or offers for sale in California that do not qualify as Reformulated Products. For purposes of this Agreement, a warning shall be deemed clear and reasonable if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“*Cal. Code Regs.*”) § 25600 *et seq.*, as may be amended from time to time.

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 Agreement, the following warnings shall be deemed clear and reasonable:

**(a) Warning:**

 **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)

**(b) Alternative Short-Form Warning:**

 **WARNING:** Cancer- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Should DEM Holdings determine additional chemical endpoints need to be included in

either of the above warnings, the Parties agree DEM Holdings may modify the content of such warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

#### **2.4 On-Product Warning Requirements**

For all Products that do not meet the Reformulation Standard, DEM Holdings shall affix one of the warnings provided in Section 2.3 on the Product Label, packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California. “Product Label” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

The Warning or Alternative Short-Form Warning provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

#### **2.5 Internet Product Warning Requirements**

For all Products that are imported, distributed, sold or offered for sale via the internet to customers located in California after the Effective Date that are not Reformulated Products, DEM Holdings shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word “WARNING” and given in conjunction with the sale of Products via the internet, shall

appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.

The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product. Warnings provided in conjunction with the sale of Products via the internet may use the Alternative Short-Form Warning, described supra in Section 2.2, if the warning appearing on the Product Label also utilizes the Alternative Short Form Warning.

## **2.6 Compliance with Warning Regulations**

DEM Holdings may comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Initial Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), DEM Holdings agrees to pay a civil penalty of one-thousand, five-hundred dollars (\$1,500) within five (5) days of the Effective Date. DEM Holdings' civil penalty payment will be allocated in accordance with Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”) and the remaining twenty-five percent (25%) retained by Nguyen. DEM Holdings shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,125; and (b) “**My Nguyen**” in the amount of \$375. Nguyen's counsel shall deliver to OEHHA and Nguyen their respective portions of the initial civil penalty payments.

### **3.2 Final Waivable Civil Penalty**

DEM Holdings shall pay a second civil penalty of \$1,500. However, the second civil penalty shall be waived in its entirety, if, on or before December 31, 2021, an officer of DEM Holdings certifies, in an attested declaration, that, as of December 30, 2021, and continuing thereafter, any and all Products made available for sale in California by DEM Holdings are Reformulated Products meeting the Reformulation Standard as defined by Section 2.2, supra.

Upon submission of its certification of Reformulated Products, DEM Holdings shall also supply or provide a recent test, conducted pursuant to the methodologies detailed in the previous Section 2.2, in support of its declaration demonstrating the Products meet the Reformulation Standard. Such test shall be performed and dated after the date of the original Notice.

Unless the second civil penalty is waived, on or before December 31, 2021, DEM Holdings shall issue a check made payable to “OEHHA” in the amount of \$1,125 and a check made payable to “My Nguyen” in the amount of \$375.

### **3.3 Reimbursement of Attorneys’ Fees and Costs**

The Parties acknowledge Nguyen and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the Parties settled the material terms of this Agreement. Shortly after the Parties finalized the non-monetary and injunctive terms, DEM Holdings expressed a desire to resolve Nguyen’s attorneys’ fees and costs. The Parties then negotiated a resolution of the compensation due to Nguyen and his counsel under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement.

Under these legal principles, within five (5) days of the Effective Date, DEM Holdings agrees to pay \$20,500 to Nguyen and his counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of DEM Holdings’ management, and negotiating a settlement in the public interest. DEM Holdings’ payment shall be delivered to the address listed in Section 3.4, below, in the form of a check made payable to “Seven Hills LLP.”

### **3.4 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

Seven Hills LLP  
c/o Kimberly Gates Johnson  
4 Embarcadero Suite 1400  
San Francisco, CA 94111

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

### **4.1 Nguyen's Release of DEM Holdings**

This Agreement is a full, final and binding resolution between Nguyen, as an individual and *not* on behalf of the public, and DEM Holdings, of any violation of Proposition 65 that was or could have been asserted by Nguyen on behalf of himself, his past and current agents, representatives, attorneys, against DEM Holdings, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom DEM Holdings directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including, without limitation, Amazon.com, Inc., Walmart, Inc., Staples., Inc., Quill.com, Edukit, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DINP and the failure to provide a warning about exposure to DINP contained in Products distributed, sold or offered for sale by DEM Holdings, as alleged in the Notice, prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Nguyen as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Nguyen's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Nguyen may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DINP in Products distributed, sold and/or offered for sale by DEM Holdings prior the Effective Date, as alleged in the Notice, against DEM Holdings and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof or any distributors or suppliers who sold the Products or any component parts to DEM Holdings. Nothing in this Section affects Nguyen's right to commence or prosecute an action under Proposition 65 against a Releasee not involving DEM Holdings' Products.

#### **4.2 DEM Holdings' Release of Nguyen**

DEM Holdings, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Nguyen and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Nguyen and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

#### **4.3 Mutual Waiver of California Civil Code Section 1542**

Each Party acknowledges the risk that subsequent to the execution of this Agreement, a Party may discover facts or may incur, suffer or discover losses, damage or injuries which are unknown and unanticipated at the time this Agreement is signed, which if known on the date of this Agreement, may have materially affected its decision to give the release contained in this Agreement. Despite this knowledge and understanding, each Party hereby assumes the risk of such unknown and unanticipated facts and claims, and, except as otherwise provided in this Agreement, hereby waives any alleged right to set aside or rescind this Agreement and any and all rights under California Civil Code § 1542 (and similar laws in other jurisdictions), which section has been duly explained to and is understood by each Party, and which 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 settlement with the debtor.”**

**5. SEVERABILITY**

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

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by and apply within the laws of the State of California. In the event Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then DEM Holdings shall provide written notice to Nguyen of any asserted change in the law and shall have no further injunctive obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve DEM Holdings from its obligation to comply with pertinent state or federal toxics control laws.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided by this Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For DEM Holdings:

Richard Dem, President  
DEM Holdings, Inc.  
19840 Nordhoff Pl.  
Chatsworth, CA 91311

With a Copy to:

Joseph Rothberg, Esq.  
Brutzkus Gubner Rozansky Seror Weber LLP  
21650 Oxnard St., Suite 500  
Woodland Hills, CA 91367-4911

For Nguyen:

Kimberly Gates Johnson, Esq.  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

Any party, from time to time, may specify in writing to the other party a change of

address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same document.

**9. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, representatives, successors and assigns.

**10. REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)**

Nguyen agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

**11. INTEGRATION AND MODIFICATION**

This Agreement may only be modified by the written agreement of the Parties. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each of the Parties hereto covenants that it has not entered into this Agreement as a result of any representation, agreement, inducement or coercion, except to the extent specifically provided herein. Each Party hereto further covenants that the consideration recited herein is the only consideration for entering into this Agreement, and that no promises or representations of other or further consideration have been made by any person.

**12. AUTHORIZATION**

The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 8/10/2021

Date: 8/9/21

By:   
My Nguyen

By: Richard Dem  
Richard Dem, President  
DEM Holdings, Inc.