

# **CONFIDENTIAL SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Parties**

This Confidential Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Partrade Trading Company, LLC (“Partrade Trading”). Donaldson and Partrade Trading shall each be referred to as a “Party” and collectively as the “Parties.” The claims asserted by Donaldson against Partrade Trading concern the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Donaldson alleges that Partrade Trading 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 section 25249.6 *et seq.* (“Proposition 65”). Donaldson further alleges that Partrade Trading manufactures, sells, and distributes for sale in California, PVC gel grooming mitts containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that Partrade Trading failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

### **1.3 Product Description**

The product covered by this Settlement Agreement is the *Partrade Red Gel comb*; *UPC: 7 15519 44342 1 8*, manufactured, sold, or distributed for sale in California by Partrade Trading (hereinafter the “Product”).

### **1.4 Notice of Violation**

On September 9, 2021, Donaldson served Partrade Trading, Wilco Farms Stores, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that the notice recipients violated Proposition 65 by failing to warn

their customers and consumers in California of the health hazards associated with exposures to DEHP from the Product. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Partrade Trading denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Partrade Trading 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 Partrade Trading of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Partrade Trading. This Section shall not, however, diminish or otherwise affect Partrade Trading'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 the date that this Settlement Agreement is executed by both parties.

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

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date, Partrade Trading shall not sell or offer the Product for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Product.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases contained in Sections 4.1 and 4.2 below, Partrade Trading agrees to pay, no later than January 17, 2022, \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson, and delivered to the address in Section 3.3 herein. Partrade Trading will provide its payment, on or before January 17, 2022, in two checks as follows: (1) “OEHHA” in the amount of \$1,875; and (2) “Audrey Donaldson” in the amount of \$625.

### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Donaldson’s counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Partrade Trading agrees to pay, on or before January 17, 2022, \$15,000, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of Partrade Trading’s management, and negotiating a settlement. All other fees and costs not specified in this paragraph and associated with handling of this case by the Parties are waived.

### **3.3 Payment Address**

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

Voorhees & Bailey, LLP  
990 Amarillo Avenue  
Palo Alto, CA 94303

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

### **4.1 Donaldson's Release of Proposition 65 Claims**

Donaldson acting on her own behalf, and in the public interest, releases Partrade Trading, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, suppliers, manufacturers, distributors, subcontractors, vendors, attorneys, and each entity to whom Partrade Trading directly or indirectly distributes or sells the Product, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DEHP in the Product.

### **4.2 Donaldson's Individual Release of Claims**

Donaldson also, in her individual capacity only and *not* in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Product manufactured, imported, distributed, or sold by Partrade Trading prior to the Effective Date.

### **4.3 Partrade Trading's Release of Donaldson**

Partrade Trading, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson 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 Product.

### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any 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 Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Partrade Trading may provide written notice to Donaldson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected.

### **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 Partrade Trading:

Victoria E. Lew, Esq.  
Yukevich | Cavanaugh  
355 South Grand Avenue, 15<sup>th</sup> Floor  
Los Angeles, CA 90071-3180

For Donaldson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
990 Amarillo Avenue  
Palo Alto, CA 94303

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)**

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**12. AUTHORIZATION**

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

**13. CONFIDENTIALITY**

The Parties agree that the terms of this Settlement Agreement or any of the negotiations leading to this Settlement Agreement shall remain confidential and shall not be disclosed to any other person, firm, or entity. Notwithstanding the foregoing, the Parties agree to limited disclosure as required by compliance with any legal requirements,

including reporting this settlement to the State of California's Office of the Attorney General, court order, or to enforce this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: Jan 11, 2022

Date: \_\_\_\_\_, 2022

By:   
AUDREY DONALDSON

By: \_\_\_\_\_  
PARTRADE TRADING COMPANY, LLC

including reporting this settlement to the State of California's Office of the Attorney General, court order, or to enforce this Settlement Agreement.


**AGREED TO:**

Date: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
AUDREY DONALDSON

**AGREED TO:**

Date: 1/12, 2022

By:   
PARTRADE TRADING COMPANY, LLC