

PROPOSITION 65 SETTLEMENT AGREEMENT

A. DEFINITIONS and SIGNATURES

NOTICE: 60-Day Notice of Violation described herein

Dated: April 24, 2018

ALLEGED VIOLATOR(S): Loungefly, LLC (“Loungefly”)

PRODUCTS: Patent dome bags

That contain LISTED CHEMICAL(S): Di(2-ethylhexyl)phthalate (“DEHP”)

Example Product: Loungefly Pokemon Pokeball Patent Dome Bag (SKU # 10763204)

Type(s) of Harm: Cancer

Birth Defects and Other Reproductive Harm

EFFECTIVE DATE: March 18, 2019

REFORMULATED PRODUCTS: Products that contain no more than 1,000 parts per million of any of the LISTED CHEMICAL(S) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized and/or approved by California or federal agencies for the purpose of determining phthalates in a solid substance.

WARNING:



WARNING: Use of this product can expose you to chemicals including Di(2-ethylhexyl)phthalate (“DEHP”), which are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

Alternatively,



WARNING: Cancer - www.P65Warnings.ca.gov.

CIVIL PENALTIES: Civil Penalty Payment: \$1,500.00

75% to OEHHA: \$1,125.00

25% to DiPirro: \$375.00

ATTORNEYS' FEES AND COSTS: \$18,500.00

ADDRESSES:

For Loungefly:

Kristine Kruger, Esq.
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101-3099

For DiPirro:

Law Offices of David R. Bush
6761 Sebastopol Avenue, Suite 111
Sebastopol, CA 95472

SIGNATORIES TO THIS SETTLEMENT AGREEMENT


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.

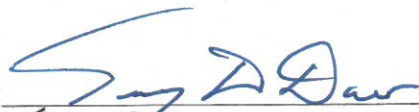
AGREED TO:

AGREED TO:

Date: 3/12/2019

Date: 3/18/19

By: 
Michael DiPirro

By: 
Tracy D. Daw
Title: General Counsel
Loungefly, LLC

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro”), and Loungefly, LLC (“Loungefly”) with DiPirro and Loungefly individually referred to as a “Party” and collectively as the “Parties.” DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Loungefly employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

DiPirro alleges that Loungefly sells, or distributes for sale in the state of California, PRODUCTS containing the LISTED CHEMICAL(S), without first providing the clear and reasonable exposure warning required by Proposition 65. The LISTED CHEMICAL(S) are listed pursuant to Proposition 65 as one or more chemicals that are known to the state of California to cause cancer and/or birth defects or other reproductive harm as listed in Section A above.

1.3 Product Description

The PRODUCTS covered by this Settlement Agreement are defined above in Section A, and contain LISTED CHEMICAL(S), that are sold, or distributed for sale in California by Loungefly, including, but not limited to the Example Product listed above in Section A.

1.4 Notice of Violation

On the Date of the NOTICE as defined in Section A above, DiPirro served Loungefly, and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“NOTICE”), a document that informed the recipients of DiPirro’s allegation that

VIOLATOR(S) violated Proposition 65 by failing to warn its customers and consumers in California that the PRODUCTS expose users to one or more LISTED CHEMICAL(S). 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

Loungefly denies the material, factual, and legal allegations contained in the NOTICE and contends that all of the PRODUCTS it has produced, sold, or distributed for sale in California, have been, and are, in compliance with all applicable state laws and requirements relating to the PRODUCTS. Nothing in this Settlement Agreement shall be construed as an admission by Loungefly of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Loungefly of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Loungefly. This section shall not, however, diminish or otherwise affect Loungefly's obligations, responsibilities, and duties under this Settlement Agreement.

2. INJUNCTIVE RELIEF: WARNINGS OR REFORMULATION

2.1 Reformulation Standard

For purposes of this Settlement Agreement, REFORMULATED PRODUCTS are defined in Section A above. Loungefly agrees to submit any laboratory testing results on which it relies to determine its PRODUCTS are REFORMULATED PRODUCTS to DiPirro within 30 days of request.

2.2 Product Warnings

For all PRODUCTS sold in California that are not REFORMULATED PRODUCTS, each warning described in this subsection 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. The text of the warning shall be printed in black ink on a light background, in a font that is easy to read and legible, but in no case less than in 6-point font.

Loungefly shall use the warning language as set forth in Section A above and with the word “WARNING” in capital letters and bold print, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown in Section A above (the symbol may be black on white if the color yellow is otherwise not used on the Product’s packaging).

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).

VIOLATOR(S) shall make a Civil Penalty Payment as defined in Section A above, in accordance with this section, on or before the EFFECTIVE DATE. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.3 below. The penalty payment shall be delivered to the address listed in Section 3.3 below.

3.2 Payment. Payment shall be delivered by Loungefly via bank wire to David R. Bush, LAW OFFICE OF DAVID R. BUSH, no later than two (2) business days following the EFFECTIVE DATE. Any payment that is not actually received by the due date will also be subject to a 10% fee.

3.3 Issuance of 1099 Forms. Loungefly shall provide DiPirro’s counsel with a separate 1099 forms for each of its payments under this Agreement to:

(a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010,

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Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;

- (b) "Michael DiPirro," whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties for his portion of the civil penalties paid; and
- (c) "Law Offices of David R. Bush," for fees and costs reimbursed pursuant to Section 4.

4. REIMBURSEMENT OF FEES AND COSTS

Loungefly shall pay the amount listed in Section A above as ATTORNEYS' FEES AND COSTS for fees and costs incurred as a result of investigating, bringing this matter to Loungefly's attention, and negotiating a settlement in the public interest. Loungefly shall issue a separate 1099 for fees and costs and deliver payment via bank wire to Law Office of David R. Bush on or before the EFFECTIVE DATE to the address listed in Section A above.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro's Release of VIOLATOR(S)

This Settlement Agreement is a full, final, and binding resolution between DiPirro and Loungefly of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Loungefly, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Loungefly directly or indirectly distributes or sells the PRODUCTS, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), for unwarned exposures to the LISTED CHEMICAL(S) from the PRODUCTS sold or distributed for sale in California by Loungefly prior to the EFFECTIVE DATE.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases Loungefly and Releasees from all claims whether known or unknown, suspected or unsuspected that he may have against Loungefly and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for alleged or actual exposures to the LISTED CHEMICAL(S) from PRODUCTS sold, or distributed for sale in California by Loungefly prior to the EFFECTIVE DATE.

With respect to the foregoing waiver and release in this paragraph, DiPirro hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

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.

5.2 Loungefly's Release of DiPirro

Loungefly, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his 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 PRODUCTS.

6. 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.

7. 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 PRODUCTS, then Loungefly may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the PRODUCTS are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Loungefly from any obligation to comply with any pertinent state or federal toxics control laws.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the addresses listed in Section A above. Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. 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.

10. POST-EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

11. MODIFICATION

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