

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Panacea Products Corporation and its related corporate entities (collectively, “Panacea”), with Johnson and Panacea each individually referred to as a “Party” and collectively as the “Parties.” Johnson 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. Panacea is a business with ten (10) or more employees and a supplier of consumer products to Michaels Stores, Inc. (“Michaels”), among others that do business in California. Johnson hereby alleges that Panacea 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”).

#### **1.2 General Allegations**

Johnson more specifically alleges that Panacea manufactures, sells, and distributes for sale in California, vinyl covered wire containing the phthalate chemical Diisononyl Phthalate (“DINP”). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Johnson alleges that there was a failure to provide the health hazard warning required by Proposition 65 for exposures to DINP.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are vinyl covered wire containing DINP that are manufactured, sold, or distributed for sale in California by Panacea including, but not limited to, the “*Ashland Wire With Cutter*”; UPC 0 93432 60367 3 (hereinafter referred to as “Products”).

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

On August 14, 2018, Johnson served Michaels and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Michaels violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DINP from the Products. Panacea was subsequently identified as the supplier of the Products to Michaels and entered into negotiations with Johnson as indemnitor to Michaels to resolve Johnson’s claims concerning the Products, including with respect to those set forth against Michaels in the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Panacea, on its own behalf and on behalf of Michaels denies the material, factual, and legal allegations contained in the Notice and maintains that all the products that it or Michaels have 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 Panacea 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 Panacea of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. This Section shall not, however, diminish or otherwise affect Panacea’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 January 18, 2019.

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

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products containing DINP 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 to determine DINP content in a solid substance.

### **2.2 Reformulation Commitment**

As of the Effective Date, Panacea shall employ its best efforts to not manufacture, import, or otherwise acquire Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1.

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

To the extent that Products manufactured, imported, or otherwise acquired by Panacea after the Effective Date do not meet the standard for Reformulated Products set forth in Section 2.1 above, Panacea shall label them, if they are then distributed for potential sale in California, with a clear and reasonable warning which shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:<sup>1</sup>

(a) **Warning.** The “Warning” shall consist of the statement:

**⚠ WARNING:** This product can expose you to chemicals including DINP, which are 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 Warning:** Panacea may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

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<sup>1</sup> To the extent Panacea determines that the Products for which a warning is to be given also contain Proposition 65 chemicals that have been listed for reproductive harm effects, it may modify the chemical(s) and effects referenced in the **Warning** or **Alternative Warning** accordingly

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 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 shall be affixed to or printed on the Products’ packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2.5 The Parties agree and intend that compliance with the injunctive terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DINP from the Products.

2.6 Based on the civil penalties to be paid pursuant to Section 3.1 below, Products manufactured, imported, or acquired for sale in California by Panacea before the Effective Date shall be exempt from the warning requirements of Section 2.3, and are covered by the releases in Section 4.

### 3. **MONETARY SETTLEMENT TERMS**

#### 3.1 **Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Panacea agrees to pay \$8,000 in civil penalties no later than December 14, 2018. 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 Johnson and delivered to the address in Section 3.3 herein.

Panacea will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$6,000; and (2) “Dennis Johnson” in the amount of \$2,000.

### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that Johnson 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 material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Panacea expressed a desire to resolve Johnson’s fees and costs. The Parties reached an accord on the compensation due to Johnson’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, on or before December 14, 2018, Panacea agrees to pay \$29,500, 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 Panacea, and negotiating a settlement.

### **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 Johnson’s Release of Proposition 65 Claims**

Johnson, in his individual capacity only, releases Panacea, its directors, officers, agents employees, attorneys, and each entity to whom Panacea directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Michaels), franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for

violations of Proposition 65 based on unwarned exposures to DINP in the Products as manufactured, imported, or otherwise acquired by Panacea prior to the Effective Date.

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

Johnson, in his individual capacity only, 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 Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Proposition 65-listed chemicals in the Products manufactured, imported, or otherwise acquired by Panacea prior to the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Panacea's Products.

#### **4.3 Panacea's Release of Johnson**

Panacea, on its own behalf and on behalf of Michaels, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Johnson and his attorneys and other representatives, for any and all actions taken or statements made by Johnson and his 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 Products.

### **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

Products, then Panacea may provide written notice to Johnson 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 Products are 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 Panacea:

Randy Swords  
Vice President  
Panacea Products  
2711 International Street  
Columbus, Ohio 43228

For Johnson:

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

With a copy to:

Robert Falk  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Fl.  
San Francisco, CA 94105

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)**

Johnson and his 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. AUTHORIZATION**

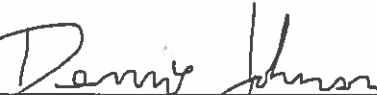
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.


**AGREED TO:**

**AGREED TO:**

Date: December 11, 2018

Date: December 11, 2018

By:   
DENNIS JOHNSON

By:   
Randy Swords, Vice President  
PANACEA PRODUCTS CORPORATION