

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Staples, Inc. (“Staples”), with Johnson and Staples 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. Staples 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, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Johnson alleges that Staples sells, and/or distributes for sale in California, toys with vinyl suction cups containing the phthalate chemicals Diisononyl Phthalate (“DINP”) and di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and developmental harm. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Johnson alleges that Staples failed to provide the health hazard warning required by Proposition 65 for exposures to DINP and DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are the following products supplied to Staples by Prime Brands Group, Inc.: soft toys with suction cups containing DINP and/or DEHP that are sold, or distributed for sale in California by Staples and that contain a “PRIME ASST FUR SUCKERZ” SKU 24324306 or a “PRIME ASST SEQUIN SUCKERZ” SKU 24324305, including, but not limited to, the “*Blue Pom-Pom*

With Suction Cup; SKZ-FUR-BLU, UPC I 92129 00595 7 (hereinafter referred to as “Products”).

1.4 Notice of Violation

On March 27, 2019, Johnson served Staples and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Staples violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DINP from its Products. The Parties presently believe that no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice. After issuing the Notice, Johnson alleged that further investigation indicated that the Products also contained DEHP.

1.5 No Admission

Staples 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Staples 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 Staples of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Staples. This Section shall not, however, diminish or otherwise affect Staples’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 31, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing each DEHP and 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 for the purpose of determining the DINP and DEHP content in a solid substance.

2.2 Reformulation Commitment

Within sixty (60) days of the Effective Date, other than Products that are already in the stream of commerce, or in existing inventory intended for distribution or sale in California, (which have been taken into account in the assessment of the civil penalty in Section 3.1 below), Staples shall not import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1. The Parties agree and intend for compliance with the terms of this Settlement Agreement to constitute compliance with Proposition 65 with respect to exposures to DINP and DEHP from the Products, as set forth in the Notice.

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, Staples agrees to cause to be paid \$2,000 in civil penalties. The civil penalties shall be paid no later than the Effective Date. 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. Staples shall cause to be paid the civil penalty in two checks as follows: (1) “OEHHA” in the amount of \$1,500; and (2) “Dennis Johnson” in the amount of \$500.

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, Staples expressed a desire to resolve Johnson's fees and costs. The Parties reached an accord on the compensation due to Johnson and his 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, no later than the Effective Date, Staples shall cause to be paid attorneys' fees and costs in the amount of \$13,000, 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 Staples' management, and negotiating a settlement.

3.3 Failure to Pay

In the event that Staples fails to be or cause to be paid the civil penalties and attorneys' fees and cost, pursuant to sections 3.1 and 3.2 respectively, this Settlement shall be null and void and Johnson shall be free to pursue any and all actions he deems appropriate concerning the Products.

3.4 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

This Settlement Agreement is a full, final, and binding resolution between Johnson, in his individual capacity and *not* on behalf of the public, and Staples of any violation of Proposition 65 based on unwarmed exposures to DINP and DEHP in the Products, that was or could have been asserted by Johnson, on his own behalf, and Johnson hereby releases Staples, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys (collectively, "Releasees") from all claims for violations of Proposition 65 through the Effective Date based on unwarmed exposures to DINP and DEHP in the Products. 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 thereof to Staples, other than Prime Brands Group and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, and attorneys.

4.2 Johnson's Individual Release of Claims

Johnson, in his individual capacity only and *not* in his 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 Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to failure to warn claims under Proposition 65, and arising out of alleged or actual exposures to DINP and DEHP in the Products manufactured, imported, distributed, or sold by Staples prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall extend to all Releasees identified in Section 4.1. The Parties further understand and agree that this Section 4.2 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 thereof to Staples, other than Prime Brands Group and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, and attorneys. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Staples' Products.

Johnson acknowledges that he is familiar with Section 1542 of the 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.

Johnson expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code, as well as under any other State or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits.

4.3 Staples' Release of Johnson

Staples, 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 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 Staples 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 Staples:

Christian Sodano,
Senior Category Merchant
500 Staples Drive
Framingham, MA 01702

For Johnson:

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

with a copy to:

Staples Legal Department
Staples, Inc.
500 Staples Drive
Framingham, MA 01702

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:

Date: December 20, 2019

By: Dennis Johnson
DENNIS JOHNSON

AGREED TO:

Date: December 30, 2019

By: Michael Hurwitz
Michael Hurwitz, President
STAPLES, INC. D-1DMM