

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Westport Corporation (“Westport”), with Johnson and Westport 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. Westport is a business with ten (10) or more employees and a supplier of consumer products to Walmart Inc. (“Walmart”), among others that do business in California. Johnson hereby alleges that Westport 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 Westport manufactures, sells, and distributes for sale in California, USB cords containing the phthalate chemical Diisononyl Phthalate (“DINP”) and lead (“Lead”). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects and other reproductive harm. Johnson alleges that there was a failure to provide the health hazard warning required by Proposition 65 for exposures to DINP and Lead.

1.3 Product Description

The products covered by this Settlement Agreement are USB cords containing DINP and Lead that are manufactured, sold, or distributed for sale in California by Westport including, but not limited to, the USB cord contained in the “*Time and Tru 3-in-1 Battery Set*”; UPC 0 77979 58849 5 (hereinafter referred to as “Products”).

1.4 Notices of Violation

On May 16, 2019, Johnson served Walmart and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Walmart 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.

On May 20, 2019, Johnson served Walmart and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”), alleging that Walmart violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DINP and Lead from the Products.

Westport was subsequently identified as the supplier of the Products to Walmart and entered into negotiations with Johnson as indemnitor to Walmart to resolve Johnson’s claims concerning the Products.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice and Supplemental Notice.

1.5 No Admission

Westport, on its own behalf and on behalf of Walmart denies the material, factual, and legal allegations contained in the Notice and maintains that all the products that it or Walmart 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 Westport or Walmart 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 Westport or Walmart 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 Westport’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 it is last signed below.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products: (i) containing DINP and Di(2-ethylhexyl) phthalate (DEHP) each 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 and DEHP content in a solid substance; and (ii) containing no more than 90 parts per million (“ppm”) lead in any accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Westport shall not manufacture, import, or otherwise acquire Products for sale in the State of California unless they are Reformulated Products.

2.3 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, DEHP and Lead from the Products.

2.4 Based on the civil penalties to be paid pursuant to Section 3.1 below, Products manufactured, imported, or acquired for sale in California by Westport before the Effective Date shall be exempt from the requirements of Section 2.2, 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, Westport agrees to pay \$5,000 in civil penalties within 5 business days of 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. Westport will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$3,750; and (2) “Dennis Johnson” in the amount of \$1,250. Westport agrees to provide a tracking number for the payments made pursuant to this section.

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, Westport 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, within 5 business days of the Effective Date, Westport agrees to pay \$17,000, 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 Westport and negotiating a settlement. Westport agrees to provide a tracking number for the payment made pursuant to this section.

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 Westport, its past and current directors, officers, shareholders, agents, employees, representatives, attorneys, successors and assigns and each entity to whom Westport directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Walmart), franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 based on unwarned exposures to DINP, DEHP and Lead in the Products as manufactured, imported, or otherwise acquired by Westport prior to the Effective Date.

4.2 Johnson's Individual Release of Claims

Johnson, in his individual capacity only, provides a release herein to Releasees 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 DINP, DEHP and Lead in the Products manufactured, imported, or otherwise acquired by Westport 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 Westport's Products.

4.3 Westport’s Release of Johnson

Westport, on its own behalf and on behalf of Walmart, and on behalf of its past and current directors, officers, shareholders, agents, employees, 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, relating to alleged or actual exposures to DINP, DEHP and Lead in the Products, 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 Westport 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.

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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 Westport:

Robert Lombardi
Chief Operating Officer
Westport Corporation
331 Changebridge Rd
Pine Brook, NJ 07058

For Johnson:

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)

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.

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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: August 10, 2019

Date:

By: 
DENNIS JOHNSON

By: _____
WESTPORT CORPORATION

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:

Date: 8/16/2019

By: _____
DENNIS JOHNSON

By:  _____
WESTPORT CORPORATION