

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Lifestyle Products, LLC (“Lifestyle Products”), with Johnson and Lifestyle Products 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. Johnson alleges that Lifestyle Products 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 Lifestyle Products manufactures, sells, and distributes for sale in California, cosmetic kit cases 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. Johnson alleges that Lifestyle Products failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are the following cosmetic cases containing DEHP that are manufactured, sold, or distributed for sale in California by Lifestyle Products: (i) “*Bella Beauty ‘Brow Babe’ 2 Pc Tweezer & Case*”; Style: BB00458BL; ACC: 09 032 98399888 7; (ii) “*Ornate Tweezer*” SKU 98405552; and (iii) “*Holo Geo Tweezer Case*” SKU 98405497 (hereinafter collectively referred to as “Products”).

1.4 Notice of Violation

On August 13, 2019, Johnson served Lifestyle Products and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Lifestyle Products violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Lifestyle Products 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 Lifestyle Products 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 Lifestyle Products of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lifestyle Products. This Section shall not, however, diminish or otherwise affect Lifestyle Products’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 30, 2019.

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 90 days after 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), Lifestyle Products shall not sell or offer the Products for sale in the State of California unless they are Reformulated Products. 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 Products.

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, Lifestyle Products agrees to pay, no later than the Effective Date, \$2,200 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 Johnson, and delivered to the address in Section 3.3 herein. Lifestyle Products will provide its payment, on or before the Effective Date, in two checks as follows: (1) “OEHHA” in the amount of \$1,650; and (2) “Dennis Johnson” in the amount of \$550.

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, Lifestyle

Products 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, Lifestyle Products agrees to pay, no later than the Effective Date, \$16,500, 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 Lifestyle Products’ management, 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

3.4 Tax Documentation

Lifestyle Products agrees to provide a completed IRS 1099 for its payments to, and Johnson agrees to provide IRS 2-9 forms for, each of the following payees under this Settlement Agreement:

“Dennis Johnson” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

“Voorhees & Bailey, LLP” at the address provided herein; and

“Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. CLAIMS COVERED AND RELEASED

4.1 Johnson’s Release of Proposition 65 Claims

Johnson acting on his own behalf, and *not* on behalf of the public, releases Lifestyle Products, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Lifestyle

Products directly or indirectly distributes or sells Products, including, but not limited, to Burlington Stores, Inc., and their respective subsidiaries, affiliates and parents, 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 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 Lifestyle Products.

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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Lifestyle Products prior to the Effective Date. 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 Lifestyle Products. Nothing in this Section affects Johnson’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Lifestyle Products’ Products.

4.3 Waiver of California Civil Code Section 1542

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, on behalf of himself and his past and current agents, representatives, attorneys, successors, and/or assignees 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 California Civil Code § 1542 as well as under any other state or federal statute or common law principal of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters up through and including the Effective Date. The release in this section shall have no force or effect until the full amount of payments set forth below are paid in full.

4.4 Lifestyle Products' Release of Johnson

Lifestyle Products, 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.

4.5 Compliance with Proposition 65. The Parties intend and agree that compliance by Lifestyle Products with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from the Products.

4.6 Public Benefit. It is Lifestyle Products' understanding that the commitments it has agreed to herein, and actions to be taken by Lifestyle Products under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure §1021.5 and Cal. Admin Code Tit. 11, § 3201. As such,

it is the intent of Lifestyle Products that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Lifestyle Products failure to provide a warning concerning exposure to DEHP prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Lifestyle Products is in material compliance with this Settlement Agreement.

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 Lifestyle Products 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 Lifestyle Products:

Steven R. Stoker, Esq.
Pascuzzi Pascuzzi & Stoker
2377 W. Shaw Avenue; Suite 101
Fresno, CA 94303

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.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other promises or agreements, oral or otherwise, exist to bind any of the Parties or are being relied on by any of the Parties in connection with the execution of this Settlement Agreement.

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.

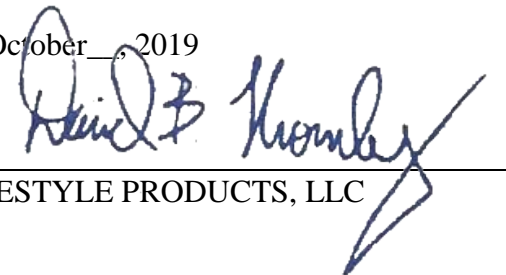
AGREED TO:

Date: October 23, 2019

By: 
DENNIS JOHNSON

AGREED TO:

Date: October , 2019

By: 
LIFESTYLE PRODUCTS, LLC