

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Profit Cultural & Creative Group Corporation (“Profit Cultural”), with Johnson and Profit Cultural 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 Profit Cultural 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 Profit Cultural manufactures, sells, and/or distributes for sale in California, ceramic trays with decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Profit Cultural failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

#### 1.3 Product Description

The products covered by this Settlement Agreement are defined as, and specifically limited to, the “*Winter Wonder Lane; Tinsel Town Collection Ceramic Tray*” UPC: 4 81043 86510 6, manufactured, sold, or distributed for sale in California by Profit Cultural (hereinafter referred to as “Products”).

#### 1.4 Notice of Violation

On December 13, 2019, Johnson served Big Lots Stores, Inc. (“Big Lots”) and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Big Lots violated Proposition 65 when it failed to warn its customers and consumers in

California of the health hazards associated with exposures to lead from the Products. Thereafter, Johnson's counsel was informed that Profit Cultural was the upstream supplier of the Products and was interested in resolving the claims that were the subject of the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Profit Cultural 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 Profit Cultural 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 Profit Cultural of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Profit Cultural. This Section shall not, however, diminish or otherwise affect Profit Cultural'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 this Settlement Agreement is fully executed by the Parties.

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

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance;

and (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., glass substrate).

## **2.2 Reformulation/Warning Commitment**

As of the Effective Date, Profit Cultural shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1. or contain appropriate health hazard warnings pursuant to Section 2.3 below.

## **2.3 Product Warnings**

As of the Effective Date, all Products Profit Cultural sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Profit Cultural further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and contain one of the following statements:

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

OR

**⚠ WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause birth defects and other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## **2.4 Point of Sale and Internet Warnings**

The warning requirements of Section 2.3 shall also be satisfied if Big Lots provides a warning to Customers at the point-of-sale. Customers purchasing Products

directly from Big Lots' California retail stores will receive the Proposition 65 warning via register display and on customers' printed receipts.

If Big Lots sells Products via its own proprietary internet website to customers located in California, the warning requirements of this section, and Section 2.3, shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to completion of the checkout process; or (d) via the "specifications" section of the Product page. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

#### **2.5 Compliance with Warning Regulations**

The Parties intend and agree that Profit Cultural, Big Lots and the Products shall be deemed to be in compliance with the injunctive relief provisions of this Settlement Agreement by adhering to Sections 2.2, 2.3 and 2.4 of this Settlement Agreement.

### **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, Profit Cultural agrees to pay \$2,000 in civil penalties no later than April 24. 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. Big Lots will provide its payment in two checks as follows: (1) "OEHHA" in the amount of \$1,500; and (2) "Dennis Johnson" in the amount of \$500. Big Lots will remit the \$1,500

penalty directly to OEHHA within the time provided for in this Section and shall provide a copy of the transmittal to Johnson's counsel.

### **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, Profit Cultural 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, no later than April 24, 2020 Profit Cultural agrees to pay \$14,500, 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 Profit Cultural's 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

## **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 Profit Cultural, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Profit Cultural directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including without limitation Big Lots Stores, Inc.), franchisees, cooperative members, importers, and licensees (collectively,

“Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. The Parties 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 Big Lots.

#### **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, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Profit Cultural prior to the Effective Date. The Parties 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 Profit Cultural. Nothing in this Section affects Johnson’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Profit Cultural Products.

#### **4.3 California Civil Code § 1542**

It is possible that other claims not known to Johnson arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Johnson, on behalf of himself only, on one hand, and Profit Cultural, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. Johnson acknowledges that the claims released in §§ 4.1 and 4.2 above, may include unknown

claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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 acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

#### **4.4 Profit Cultural's Release of Johnson**

Profit Cultural, 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 Profit Cultural 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 Profit Cultural:**

Carol R. Brophy  
1 Market Street  
Spear Tower, Suite 3900  
San Francisco, CA 94105

**For Johnson:**

Voorhees & Bailey, LLP  
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). This Settlement Agreement shall be reported to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. **MODIFICATION**

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



**11. AUTHORIZATION**

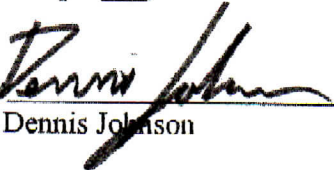
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

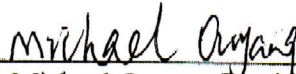
**AGREED TO:**

**AGREED TO:**

Date: April 10, 2020

Date: April 20, 2020

By:   
Dennis Johnson

By:   
Michael Ouyang President/CEO  
Profit Cultural & Creative Group Corporation