

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and NES Group (“NES”). NES is the supplier of the subject “ceramic tray” branded as Steven Madden, Ltd (“Steven Madden”) and sold by Macy’s West Stores, Inc. (“Macy’s”). Johnson and NES are each a “Party” and collectively 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 NES 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 NES manufactures, sells, and distributes for sale in California, ceramic dishes 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 NES failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

1.3 General Allegations

The products covered by this Settlement Agreement are ceramic trays with decorations containing lead that are manufactured, sold, or distributed for sale in California by NES including, but not limited to, the “*Steve Madden Earrings and Trinket Tray*”; *UPC 1 90094 43505 2* (hereinafter referred to as “Products”).

1.4 Notice of Violation

On February 19, 2020, Johnson served Steven Madden and Macy’s and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that

they violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to lead from their Products. NES was subsequently identified as the supplier of the Products to Steven Madden and Macy's and entered into negotiations with Johnson as indemnitor to Steven Madden and Macy's to resolve Johnson's claims concerning the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

NES, on its own behalf and on behalf of Steven Madden and Macy's, 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 NES 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 NES of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by NES. This Section shall not, however, diminish or otherwise affect NES' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 15, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION

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., ceramic substrate).

2.2 Reformulation Commitment

As of the Effective Date, NES 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.

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, NES agrees to pay \$1,200 in civil penalties on or before May 15, 2020. 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. NES will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$900; and (2) “Dennis Johnson” in the amount of \$300.

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, NES 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, NES agrees to pay \$13,300, in the form of checks made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of NES' management, and negotiating a settlement, as follows: (i) \$2,425 due on or before May 15, 2020; (ii) \$3,625 due on or before June 15, 2020; (iii) \$3,625 due on or before July 15, 2020; and (iv) \$3,625 due on or before August 15, 2020

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 Payment Acceleration Clause

The timing of payments, set forth in Sections 3.1 and 3.2, are material terms of this agreement. Any payment that is not received within three (3) business days of the due date shall trigger this acceleration clause and all remaining payments shall be due and payable within five (5) business days of triggering this acceleration clause.

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 NES, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom NES directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including Macy's), franchisees, cooperative members, importers, and licensees (including Steven Madden), (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 NES.

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 NES 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 NES. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve NES's Products.

4.3 NES' Release of Johnson

NES, 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 NES 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 NES:

Todd Christopher Hunt, Esq.
Law Offices of Todd C. Hunt, APC
7190 West Sunset Boulevard, No 89
Los Angeles, CA 90046

For Johnson:

Dennis Johnson
c/o 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).

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: **May 5, 2020**

By:


Dennis Johnson

AGREED TO:

Date:

By:

NES Group

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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AGREED TO:

Date:

By: _____
Dennis Johnson

AGREED TO:

Date:

By: _____
NES Group

5/5/20