

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson ("Johnson") and Audrey Donaldson ("Donaldson") (Johnson and Donaldson shall collectively be referred to hereinafter as the "Citizen Enforcers") on the one hand, and Enchante Accessories, Inc. ("Enchante") on the other hand, with the Citizen Enforcers and Enchante each individually referred to as a "Party" and collectively as the "Parties." Citizen Enforcers are individuals residing in the State of California who seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Citizen Enforcers allege that Enchante 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

Citizen Enforcers allege that Enchante manufactures, sells, and/or distributes for sale in California, ceramic spoon rests with decorations containing lead and ceramic mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Citizen Enforcers allege that Enchante 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 specifically defined as the following products manufactured, sold, or distributed for sale in California by Enchante: (i) the "*Ceramic Spoon Rest With Reindeer Decoration*"; SKU: 400200829058; D1049 C6944; (ii) the Burlington Stores "*Happy Easter*" Ceramic Spoon Rest; Style: V 14929; SKU: LIN 16 256 23994711 7 1/1; and (iii) the Peppermint & Pine "*Cup of Cheer*"

Ceramic Mug; TJ Maxx SKU: 80-6895-949327-000999-23-2, (hereinafter collectively referred to as the “Products”).

1.4 Notices of Violation

On February 19, 2020, Johnson served Enchante and the requisite public enforcement agencies with 60-Day Notices of Violation, alleging that Enchante 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 ceramic spoon rest with reindeer decoration and the “Cup of Cheer” ceramic mug.

On May 15, 2020, Donaldson served Burlington Stores Inc. (“Burlington”) and the requisite public enforcement agencies with 60-Day Notices of Violation, alleging that Enchante violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead in the “Happy Easter” ceramic spoon rest. Thereafter, Citizen Enforcers’ counsel was contacted by counsel for Enchante and informed that Enchante was the upstream manufacturer/supplier of the spoon rest product subject to the May 15, 2020 notice.

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

1.5 No Admission

Enchante denies the material, factual, and legal allegations contained in the Notices 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 Enchante 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 Enchante of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Enchante. This Section shall not, however, diminish or otherwise affect Enchante’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 August 14, 2020.

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. Further, for the ceramic mugs with exterior designs, they shall also yield a result of non-detect (defined as no more than 25 ppm (0.0025%) by weight of lead) for any decorations located in the upper 20 millimeters of the mug, i.e., the “Lip-and-Rim” area, when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a solid substance

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/Warning Commitment

As of the Effective Date, Enchante 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 Enchante 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. Enchante 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 Consent Judgment, 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

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.

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 Notices or referred to in this Settlement Agreement, Enchante agrees to pay \$3,000 in civil penalties on or before 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 Citizen Enforcers, and delivered to the address in Section 3.3 herein. Enchante will provide its payment in three checks as follows: (1) "OEHHA" in the amount of \$2,250; (2) "Dennis Johnson" in the amount of \$495; and (3) "Audrey Donaldson" in the amount of \$255.

3.2 Attorneys' Fees and Costs

The Parties acknowledge that Citizen Enforcers and their 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, Enchante expressed a desire to resolve Citizen Enforcers' fees and costs. The Parties reached an accord on the compensation due to Citizen Enforcers' 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, on or before the Effective Date, Enchante agrees to pay \$26,500, 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 Enchante'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 Citizen Enforcers' Release of Proposition 65 Claims

Citizen Enforcers, acting on their own behalf, and *not* on behalf of the public, release Enchante, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Enchante directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Ross Stores, Inc., The TJX Companies, Inc., and Burlington 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 Enchante.

4.2 Citizen Enforcers' Individual Release of Claims

Citizen Enforcers, in their individual capacity only and *not* in their representative capacity, provide 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 Citizen Enforcers 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 Enchante 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 Enchante. Nothing in this Section affects Citizen Enforcers' rights to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Enchante's Products.

4.3 Enchante's Release of Citizen Enforcers

Enchante, 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 Citizen Enforcers and their attorneys and other representatives, for any and all actions taken or statements made by Citizen Enforcers and their 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 Enchante may provide written notice to Citizen Enforcers 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 Enchante:

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

For Citizen Enforcers:

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)

Citizen Enforcer and their 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:

AGREED TO:

Date: August 6, 2020

Date: August 10, 2020

By: 
Dennis Johnson

By: 
_____, President/CEO
Enchante Accessories, Inc.

Date: August __, 2020

By: _____
Audrey Donaldson

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AGREED TO:

AGREED TO:


Date: August ____, 2020

Date: August 12, 2020

By: _____
Dennis Johnson

By:  _____
_____, President/CEO
Enchante Accessories, Inc.

Date: August 5, 2020

By:  _____
Audrey Donaldson