

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Grupo Ruz S.A. de C.V. (“Grupo Ruz”), for itself and for the benefit of Sanrio, Inc., (“Sanrio”) and CVS Pharmacy, Inc., (“CVS”) and their parent, subsidiary, and affiliated companies. Sanrio, CVS, and their respective parent, subsidiary, and affiliated companies are not parties to this Settlement Agreement and assume no liability or obligation from it or from any statements or representations made herein, but are intended to receive all benefits afforded to “Releasees” (as that term is defined below) as third party beneficiaries hereof, as well as any other benefits specifically afforded to any of them below.

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. Grupo Ruz is a business entity domiciled in Mexico. Johnson and Grupo Ruz are each individually referred to as a “Party” and collectively as the “Parties.” Johnson alleges that Grupo Ruz 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

- A. On March 6, 2020, Johnson served Sanrio, CVS Pharmacy, Inc., and requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”) under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”). The Notice alleged that Sanrio and CVS knowingly and intentionally exposed consumers to the Proposition 65 listed chemical lead, without first giving a

clear and reasonable warning, through the sale of “ceramic mugs with exterior designs” including, without limitation, the “Exemplar Product” identified as “*Hello Kitty ‘Plush in Mug’*”; UPC: 1 93849 00532 6. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

- B. The Parties agree and acknowledge that Sanrio’s only connection to the “ceramic mugs with exterior designs” referenced in the Notice is as the licensor of *Hello Kitty* intellectual property rights. It is further acknowledged and agreed that Sanrio is not and was not a manufacturer, supplier, or seller of any product or item described in the Notice, that Sanrio did not expose anyone to any risk described in the Notice, and that Sanrio should not be, nor have been, identified as a party or potential party to the Notice or to any claim or Proposition 65 enforcement action.
- C. Grupo Ruz, for itself and CVS, denies and disputes that the Notice sufficiently identifies any consumer product or products, other than the Exemplar Product. Nevertheless, the Parties understand and agree that the products covered by this settlement are all Hello Kitty “Plush in Mugs” distributed or supplied by Grupo Ruz for sale in California, regardless of UPC number (hereinafter referred to as the “Products”)
- D. Grupo Ruz, the entity that supplied the Exemplar Product to CVS, was not named in or served with the Notice. However, after Johnson’s issuance of the Notice, counsel for Grupo Ruz contacted Johnson’s counsel and notified them that it wanted to resolve any and all disputes concerning the Products, including any that could have been alleged in a Notice of Violation naming Grupo Ruz as a violator for failure to warn of the presence of lead in the Products.

E. No public enforcer has commenced or is prosecuting any allegations set forth in the Notice.

F. Johnson has not to date filed a civil action in connection with the matters alleged in the Notice.

1.3 No Admission

Grupo Ruz, for itself and for CVS and Sanrio, 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. Grupo Ruz, for itself and for Sanrio and CVS, further denies that any person or entity referenced herein knowingly or intentionally exposed any person to lead. CVS's only connection to the Exemplar Product is as retail seller, and, as noted above, Sanrio's only connection is as the licensor of the *Hello Kitty* intellectual property rights. Nothing in this Settlement Agreement shall be construed as an admission by Grupo Ruz 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 Grupo Ruz of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Grupo Ruz. This Section shall not, however, diminish or otherwise affect Grupo Ruz's obligations, responsibilities, and duties under this Settlement Agreement.

1.4 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 7, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNING

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; (b) 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 a Product, 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; *and* (c) 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/Warning Commitment

Grupo Ruz asserts that the Products were offered for sale on a seasonal basis in connection with Valentine’s Day, that they are no longer offered for sale by CVS, and they are no longer being supplied by Grupo Ruz to any retailer in California. However, in the event that the Products are distributed, offered for sale, or sold in the State of California in the future, as of the Effective Date, Grupo Ruz shall not do so unless they qualify as Reformulated Products pursuant to Section 2.1 or contain appropriate health hazard warnings pursuant to Section 2.3.


2.3 Clear and Reasonable Warnings

As of the Effective Date, all Products Grupo Ruz 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. Grupo Ruz 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

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.

The requirements of this Section 2, including any requirement to reformulate or provide clear and reasonable warnings, apply only to Products sold or supplied by Grupo Ruz after the Effective Date. Any Products that were shipped or delivered prior to the Effective Date, including any remaining in the inventory of CVS, shall not be subject to these provisions regarding Proposition 65 warnings. It is agreed, understood and acknowledged that the potential number of unsold units of the Products were included in the calculation of the Civil Penalty Payment provided for below.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in consideration of this Settlement Agreement, Grupo Ruz agrees to pay \$2,000 no later than the Effective Date. The payment will be termed a penalty paid in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% paid to Johnson, and delivered to the address in Section 3.3 herein. Grupo Ruz 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.

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, Grupo Ruz 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, on or before the Effective Date, Grupo Ruz agrees to pay \$16,000, 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 Grupo Ruz's management, and negotiating a settlement (Voorhees & Bailey, LLP, to provide a taxpayer ID and IRS Form W-9 a reasonable period of time before payment is issued).

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, hereby releases, acquits, and forever discharges Grupo Ruz, its parents, subsidiaries, affiliated entities under common ownership, partners, joint venturers, directors, officers, agents employees, attorneys, insurers, successors and assigns and each entity to whom Grupo Ruz directly or indirectly supplied, distributed, or sold the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including but not limited to CVS Pharmacy, Inc., and their respective affiliates, parent corporations, subsidiaries, principals, franchisees, cooperative members, importers, and licensees or licensors including, but not limited to Sanrio, (collectively, "Releasees"), of and from any

and all liabilities, alleged liabilities, potential liabilities, demands, suits, and claims for violations and alleged violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. This release includes and extends to any claims related to unsold Products in CVS's inventory and/or possession as of the Effective Date, which, as noted above, were included in the calculation of the Civil Penalty Payment provided for herein.

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 Grupo Ruz.

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

4.3 Grupo Ruz's Release of Johnson

Grupo Ruz, 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.

4.4 California Civil Code §1542

The Parties acknowledge that they are familiar with California Civil Code section 1542, 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.

The Parties hereby expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits.

4.5 No Further Notices, Claims, Or Actions

Johnson and his attorneys, Voorhees & Bailey, LLP, represent and warrant that they are unaware of any other Proposition 65 Notices of Violation or other claims or actions that could be filed, served or asserted against any party released herein in connection with the Products, that are not covered by the Section 4.1 and 4.2 releases.

5. NOTICE AND CURE

In the event that Johnson or his counsel become aware of any violation(s) of the terms of this agreement that they intend to enforce, withing one year of the Effective Date, they shall, within thirty (30) days, notify counsel for the violating party and shall provide that party with thirty (30) days in which to cure the alleged violations (the “Cure Period”) prior to filing any legal action of any type against the violating party.

Any such notice made pursuant to this paragraph shall be in writing and shall include the relevant and sufficient information and a thorough description of the alleged violation(s).

6. 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.

7. 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.

8. NOTICE

Unless specified herein, and without waiving any requirements for service of process or any notice of violation under California Health and Safety Code § 25294.7, 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 Grupo Ruz:

Grupo Ruz, S.A. de C.V.
Av. Pirules S/N Lt. 125 B3
Colonia San Martin Obispo
Tepetlixpa
Cuautitlán Izcalli, C.P. 54763
Mexico

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

With copies to:

GladstoneWeisberg, ALC
300 Corporate Pointe, Suite
400 Culver City, CA 90230
Attn: Leon Gladstone, Esq.

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.

9. 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.

10. 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).

11. MODIFICATION

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

12. CONFIDENTIALITY

The terms of this Settlement Agreement shall be kept and shall remain confidential between and among the Parties and their counsel. Disclosure of any of the terms of this Agreement to non-parties is prohibited with the following exceptions: (i) disclosure to business and tax professionals (e.g. accountants and attorneys) is permitted to the extent necessary for them to perform their duties; (ii) disclosure is permitted to the

extent required by court order; (iii) disclosure is permitted if and as required per Proposition 65 statutes and regulations; and (iv) disclosure is permitted to the extent a Party seeks to enforce any rights or obligations under this Agreement.

13. AUTHORIZATION

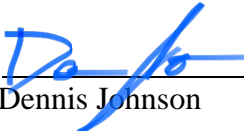
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: November 27, 2020

Date: _____, 2020

By: 
Dennis Johnson

By: _____
_____, Officer or Authorized
Representative
Grupo Ruz S.A. de C.V.

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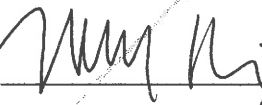
AGREED TO:

Date: _____, 2020

By: _____
Dennis Johnson

AGREED TO:

Date: 12/1/20, 2020

By:  _____
_____, Officer or Authorized
Representative
Grupo Ruz S.A. de C.V.