

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Rituals Cosmetics USA Inc. (“Rituals”), with Johnson and Rituals 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 Rituals 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 Rituals manufactures, sells, and distributes for sale in California, PVC Cosmetic Bags 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 Rituals 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 specifically defined as, and limited to, the *Rituals Cosmetics “Ritual of Ayurveda” Red Cosmetic Bag*, UPC: 8 719134 015218, manufactured, sold, or distributed for sale in California by Rituals (hereinafter referred to as the “Products”).

1.4 Notice of Violation

On March 6, 2020, Johnson served Rituals, Burlington Stores, Inc. (“Burlington”), and the requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Rituals and Burlington violated Proposition 65 when

they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Rituals 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 Rituals 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 Rituals of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Rituals. This Section shall not, however, diminish or otherwise affect Rituals' 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 that this agreement is executed by both parties.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standard

"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/Warning Commitment

As of the Effective Date, Rituals 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. Compliance with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice.

2.3 Product Warnings

As of the Effective Date, all Products Rituals 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. Rituals further agrees that the warning shall 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 DEHP, which is known to the State of California to cause birth defects or 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 Notice or referred to in this Settlement Agreement, Rituals agrees to pay, no later than thirty (30) days after the Effective Date of this Agreement, \$1,500 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. Rituals will provide its payment by electronic bank wire: (1) “OEHHA” in the amount of \$1,150; and (2) “Dennis Johnson” in the amount of \$350.

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, Rituals 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, Rituals agrees to pay by electronic bank wire, \$7,500, no later than thirty (30) days after the Effective Date of this Agreement, to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of Rituals’ 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 Rituals, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Rituals directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Burlington Stores, Inc., 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.

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 Rituals prior to the Effective Date.

4.3 Rituals' Release of Johnson

Rituals, 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 Rituals 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 Rituals:

Jeffrey M. Lenkov, Esq.
Manning & Kass Ellrod,
Ramirez, Trester, LLP
801 South Figueroa Street, 15th Floor
Los Angeles, CA 90017

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).

10. MODIFICATION

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

11. NOTICE AND CURE

In the event that Johnson or his counsel become aware of any violation(s) of the terms of this agreement withing two years of the Effective Date, they shall, within thirty (30) days, notify Jeffrey M. Lenkov as Counsel for Rituals, and Kim Braber, in-house counsel with Rituals, of the details of the alleged violation and shall provide Rituals with sixty (60) days in which to cure the alleged violations (the “Cure Period”) prior to filing any legal action of any type against Rituals or any of the Released Parties.

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). If Rituals cures the alleged violation(s) and provides Johnson and his counsel with sufficient evidence thereof, within the Cure Period, neither Johnson nor his counsel shall proceed with any legal or equitable action against Rituals or any of the Released Parties for the noticed violation(s) of the terms of this agreement.

12. NON-DISCLOSURE/NON-DISPARAGEMENT

Except for disclosure as required by any State and/or Federal Agency, or as required by law, no other public disclosure of this settlement, including its terms and amount, may be permitted in any form or substance. No party to this agreement may publicly disparage or comment negatively on the other party.

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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: ~~September~~ 10/2 2020

Date: September 25, 2020

By:  _____
DENNIS JOHNSON

By: Marjolein Westerbeek _____

DocuSigned by:
Marjolein Westerbeek
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President/CEO
RITUALS COSMETICS USA INC.