

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Office Depot, LLC (“Office Depot”), with Johnson and Office Depot 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. Office Depot 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 Office Depot manufactures, imports, sells, and/or distributes for sale in California, Lunch Bag Tags 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 Office Depot 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 Lunch Bag Tags containing DEHP, that are manufactured, sold, or distributed for sale in California by Office Depot including, but not limited to, the “*Office Depot Lunch Bag Tag, UPC: 7 35854 82095 4, sold as SKU numbers 311007, 515253 and 204962* (hereinafter referred to as “Products”).

1.4 Notice of Violation

On April 14, 2020, Johnson served Office Depot and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Office Depot violated Proposition 65 when it failed to warn its 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

Office Depot denies the material, factual, and legal allegations contained in the Notice and maintains that Products that it has sold and distributed in California have been, and are, in compliance with all laws and/or are within the safe harbor limits. Office Depot maintains that it did not knowingly or intentionally expose California consumers to DEHP. Nothing in this Settlement Agreement shall be construed as an admission by Office Depot 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 Office Depot of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Office Depot. This Section shall not, however, diminish or otherwise affect Office Depot’s obligations, responsibilities, and duties under this Settlement Agreement. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean 60 days from the date that this Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million), in each Accessible Component, 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.

“Accessible Component” means a poly vinyl chloride or other soft plastic, vinyl, or synthetic leather component of a Product that could be touched by a person during reasonably foreseeable use.

2.2 Reformulation Commitment

Within 30 days of the Effective Date, Office Depot shall not manufacture or cause to be manufactured import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1. The Parties agree and intend for compliance with the terms of this Settlement Agreement to constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. Office Depot and its downstream retailers shall have no obligation to reformulate or label Product that entered the stream of commerce prior to the Effective Date. The civil penalty set forth in Section 3.1 covers Products sold without warnings that entered the stream of commerce prior to the Effective Date.

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, Office Depot agrees to pay or cause to be paid the sum of \$2,000 in civil penalties on or before July 17, 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. Payment shall be made in two checks as follows: (1) “OEHHA” in the amount of \$1,500; and (2) “Dennis Johnson” in the amount of \$500. Counsel for Johnson shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to the OEHHA.

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, Office Depot expressed a desire to resolve Johnson’s fees and costs. The Parties reached an accord on the compensation due to Johnson and his 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 July 17, 2020, Office Depot agrees to pay or cause to be paid the sum of \$13,000 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 Office Depot’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 Office Depot its respective successors, predecessors, assigns, parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Office Depot directly or indirectly purchased the Products or to whom they distribute or sell Products, including, but not limited, to manufacturers, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including 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 Office Depot (collectively, "Releasees"), from all claims for violations of Proposition 65 based on unwarned exposures to DEHP in the Products manufactured, imported, distributed, or sold by Office Depot prior to the Effective Date, regardless of the date any other Releasee distributes or sells the Product.

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, fines, penalties, losses, claims, liabilities, and demands of Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Office Depot prior to the Effective Date.

4.3 California Civil Code Section 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 Office Depot, 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 waives and relinquishes any and all rights and benefits he may have under, or may be conferred on him by the provisions California Civil Code § 1542 as to any such unknown claims, to the fullest extent that he may lawfully waive such rights or benefits. 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.

4.4 Office Depot's Release of Johnson

Office Depot on its own behalf and on behalf of its predecessors, 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 Office Depot 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 Office Depot:

Michael A. Logan
Kane Russell Coleman Logan PC
901 Main Street, Suite 5200
Dallas, TX 75202

For Johnson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
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:

AGREED TO:

Date: July 9, 2020

Date: 7/10/2020

By: 
DENNIS JOHNSON

By: 
OFFICE DEPOT, LLC