

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Rapid Care, Inc. (“Rapid Care”), with Johnson and Rapid Care each individually referred to as a “Party” and collectively as the “Parties.” Johnson alleges he 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 Rapid Care 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 Rapid Care manufactures, sells, and distributes for sale in California, first aid kits 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 at certain levels and, in certain products, potentially triggers a warning obligation under Proposition 65 if a consumer is exposed to certain levels of DEHP from such products. Johnson alleges that Rapid Care failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP for certain of its products subject to this Settlement Agreement.

1.3 Product Description

The products covered by this Settlement Agreement are first aid kits with DEHP that are manufactured, sold, or distributed for sale in California by Rapid Care, including, but not limited to, the *Rapid Care 104 Piece First Aid Kits*, UPC: 8 91191 80102 2 (hereinafter referred to collectively as the “Products”).

1.4 Notice of Violation

On June 23, 2020, Johnson served Rapid Care, and the requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Rapid Care 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

Rapid Care 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 Rapid Care 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 Rapid Care of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Rapid Care. This Section shall not, however, diminish or otherwise affect Rapid Care’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 September 4, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNING

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 Commitment


As of the Effective Date, Rapid Care 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.

2.3 Clear and Reasonable Warnings

As of the Effective Date, all Products that Rapid Care 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. Rapid Care 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:¹

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This product can expose you to chemicals including chemical di(2-ethylhexyl) phthalate (“DEHP”), 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.

¹ Rapid Care shall be permitted to add cancer-related warnings required under, and in compliance with, Proposition 65 and/or its implementing regulations as appropriate, based on Rapid Care’s sole and absolute discretion. Further, the depicted triangle need not be in yellow, to the extent a Product’s label design does not otherwise utilize that color.

In the event the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission relevant to the Products that are different than those set forth above, Rapid Care shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement.

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, Rapid Care, for itself and on behalf of all entities named in the Notice, agrees to pay, no later than the Effective Date, \$1,700 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. Rapid Care will provide its payment, on or before the Effective Date, in two checks as follows: (1) “OEHHA” in the amount of \$1,275; and (2) “Dennis Johnson” in the amount of \$425.

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, Rapid Care 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, Rapid Care agrees to pay, no later than the Effective Date, \$13,800, 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 Rapid Care’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 Rapid Care, and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Rapid Care directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to, Grocery Outlet, Inc., franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 based on unwarned exposures to DEHP in the Products distributed or sold by Rapid Care prior to the Effective Date. The Parties further 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 Rapid Care.

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 failure to warn claims, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Rapid Care prior to the Effective Date. The Parties further 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 Rapid Care. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Rapid Care's Products.

4.3 Rapid Care's Release of Johnson

Rapid Care, 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 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice, and relating to the Product, will develop or be discovered. The Parties acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. The Parties acknowledge that the claims released in this Section 4 may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

The Parties acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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 Rapid Care 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 Rapid Care:

Kevin Alden
Rapid Care, Inc.
18685-A Main Street #630
Huntington Beach, CA 92648

For Johnson:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

with a copy to:

Bao M. Vu
Stoel Rives LLP
3 Embarcadero Center , Suite 1120
San Francisco, CA 94111

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 her 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.

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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: _____, 2020

Date: 8-31-2020, 2020

By: 
DENNIS JOHNSON

By: 

President/CEO
RAPID CARE, INC.