

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson ("Johnson"), on the one hand, and Family Dollar, Inc., Family Dollar Operations, Inc., and Midwood Brands, LLC (collectively "Family Dollar"), on the other hand, with Johnson and Family Dollar 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 Family Dollar 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 Family Dollar manufactures, sells, and distributes for sale in California, PVC Luggage/Identification 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 Family Dollar 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 defined as luggage/identification tags, including but not limited to the "*Sea You at the Beach*" Identification Tag; UPC: 0 32251 48330 1, that are sold, or distributed for sale in California by Family Dollar and manufactured by its supplier Suki Industry and Trading Development Ltd. (hereinafter referred to as the "Products").

#### **1.4 Notice of Violation**

On July 23, 2020, Johnson served Family Dollar, and the requisite public enforcement agencies, with a 60-Day Notice of Violation ("Notice"), alleging that Family Dollar violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from luggage/identification tags. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Family Dollar 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 Family Dollar 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 Family Dollar of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Family Dollar. This Section shall not, however, diminish or otherwise affect Family Dollar'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 December 23, 2020.

### **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 Commitment

As of the Effective Date, Family Dollar shall not distribute for sale, sell or offer the Products for sale in the State of California unless they qualify as Reformulated Products pursuant to Section 2.1 or contain appropriate health hazard warnings pursuant to Section 2.3 below. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products.

## 2.3 Product Warnings

All Products Family Dollar distributes for sale, sells or offers for sale in the State of California, that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Family Dollar 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 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:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**⚠ WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for DEHP different than those set forth above, Family Dollar shall be entitled to use 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, Suki Industry and Trading Development Ltd. will pay, no later than the Effective Date, \$1,250 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. The payment shall be provided by wire transfer to the trust account of "Voorhees & Bailey, LLP."

#### **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, Family Dollar 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, Suki Industry and Trading Development Ltd. will pay, no later than the Effective Date, \$13,750 by wire transfer to the trust account of "Voorhees & Bailey, LLP." for all fees and costs incurred investigating, bringing this matter to the attention of Family Dollar's management, and negotiating a settlement.

#### **3.3 Wire Transfer Instructions**

Counsel for Johnson shall provide written wire transfer instructions to counsel for Family Dollar at least five (5) business days in advance of the Effective Date.

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 Family Dollar, its parents, subsidiaries, affiliated entities, shareholders, members, marketplaces, directors, officers, agents employees, attorneys, predecessors, successors, and assignees, its supplier Suki Industry and Trading Development Ltd., and each entity to whom Family Dollar directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, 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 Family Dollar prior to the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Family Dollar's Products.

4.3 **Family Dollar's Release of Johnson**

Family Dollar, 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. **PAYMENT BY A THIRD PARTY**

The Parties understand and agree that the settlement amounts set forth in Section 3 shall be paid by Suki Industry and Trading Development Ltd. This Settlement Agreement shall be null and void up if the settlement amounts have not been received by Johnson on or before the Effective Date, or by such additional time as the Parties may agree to in writing.

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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Family Dollar 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.

8. **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 Family Dollar:

Peg Carew Toledo, Esq.  
Arnold & Porter Kaye Scholer LLP  
3 Embarcadero Ctr: 10<sup>th</sup> Floor  
San Francisco, CA 94111-4024

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.

**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.

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**12. 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: December 15, 2020

Date: December \_\_, 2020

By:  \_\_\_\_\_  
DENNIS JOHNSON

By: \_\_\_\_\_  
MIDWOOD BRANDS, LLC

**AGREED TO:**

**AGREED TO:**

Date: December \_\_, 2020

Date: December \_\_, 2020

By: \_\_\_\_\_  
FAMILY DOLLAR, INC.

By: \_\_\_\_\_  
FAMILY DOLLAR OPERATIONS, INC.



12. **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:**

Date: December \_\_\_\_, 2020

By: \_\_\_\_\_  
DENNIS JOHNSON

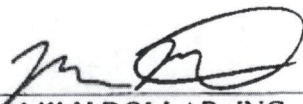
**AGREED TO:**

Date: December 16, 2020

By:  \_\_\_\_\_  
MIDWOOD BRANDS, LLC

**AGREED TO:**

Date: December 16, 2020

By:  \_\_\_\_\_  
FAMILY DOLLAR, INC.

**AGREED TO:**

Date: December 16, 2020

By:  \_\_\_\_\_  
FAMILY DOLLAR OPERATIONS, INC.