

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and PetSmart, Inc. (“PetSmart”). Johnson and PetSmart are 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.

1.2 General Allegations

Johnson hereby alleges that PetSmart 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”). Johnson more specifically alleges that PetSmart manufactures, sells, and distributes for sale in California, PVC travel kit 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 there was a failure 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 limited to the “TP Travel Kit Fresh & Clean;” UPC: 7 37257 87442 8, that were manufactured, sold, or distributed for sale in California by PetSmart (hereinafter referred to as “Products”).

1.4 Notice of Violation

On July 23, 2020, Johnson served PetSmart, Pacific Coast Distributing, Inc. (“Pacific Coast”) and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that they violated Proposition 65 by failing 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

PetSmart denies the material, factual, and legal allegations contained in the Notice and maintains that all 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 PetSmart 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 PetSmart of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. This Section shall not, however, diminish or otherwise affect PetSmart'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 the date this Settlement Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation/Warning Commitment

As of the Effective Date, PetSmart shall not manufacture, import, distribute, or otherwise acquire for sale in the State of California the Products, unless they are Reformulated Products pursuant to Section 2.2, or carry appropriate health hazard warnings per section 2.3. 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

2.2 Reformulation Standards

"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 to determine DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

As of the Effective Date, all Products PetSmart manufactures, imports, distributes, or otherwise acquires for sale in California which do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. PetSmart 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 containing one of the following statements:

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

OR

 **WARNING:** This product can expose you to chemicals, including DEHP, which are 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, PetSmart agrees to pay \$2,400 in civil penalties no later than 21 days after the Effective Date, or 21 days after receipt of W-9 forms for each payee identified in this Section 3.1, whichever is later. 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. PetSmart will provide its

payment in two checks as follows: (1) “OEHHA” in the amount of \$1,800; and (2) “Dennis Johnson” in the amount of \$600.

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, PetSmart 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, 21 days after the Effective Date, or 21 days after receipt of W-9 forms for each payee identified in this Section 3.2, whichever is later, PetSmart agrees to pay \$15,600, 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 PetSmart, 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, in his individual capacity only, releases PetSmart, its parents, subsidiaries, and affiliated entities under common ownership, and each of their respective directors, officers, agents employees, attorneys, and each entity to whom PetSmart directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and

licensees (including, but not limited to Pacific Coast) (collectively, “Releasees”), from all claims for violations of Proposition 65 based on unwarned exposures to DEHP in the Products as manufactured, imported, or otherwise acquired by PetSmart prior to the Effective Date.

4.2 Johnson’s Individual Release of Claims

——Johnson, in his individual capacity only, 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, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, or otherwise acquired by PetSmart prior to the Effective Date.

4.3 PetSmart’s Release of Johnson

PetSmart, 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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

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 PetSmart 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 PetSmart:

General Counsel
PetSmart, Inc.
19601 N. 27th Ave.
Phoenix, AZ 95027
Email: legal@petsmart.com
With copy to: mkats@petsmart.com

For Johnson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

With copy to:

Will Troutman
Norton Rose Fulbright US LLP
555 South Flower Street, 41st Floor,
Los Angeles, CA 90071

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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

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. 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:

Date: November 12, 2020

By: _____
DENNIS JOHNSON

By:  _____
PETSMART, INC.

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AGREED TO:

AGREED TO:

Date: **11-5-20**

Date:

By: 
DENNIS JOHNSON

By: _____
PETSMART, INC.