

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Dennis Johnson (“Johnson”) (collectively “Citizen Enforcers”), on the one hand, and Prima Donna Designs, Inc. (“Prima”) and Manna Hydration (“Manna”), (collectively the “Notice Recipients”), on the other. Donaldson, Johnson, Prima, and Manna are each individually referred to as a “Party” and collectively as the “Parties.” Citizen Enforcers are individuals 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. Citizen Enforcers allege that Notice Recipients are each 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

Citizen Enforcers allege, and Notice Recipients deny, that Prima manufactures, sells, and/or distributes for sale in California, PVC Coin Purses and PVC Wallets containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”) and that Manna manufactures, sells, and distributes for sale in California, PVC Straw Pouches containing DEHP. DEHP is listed pursuant to Proposition 65 as chemicals known to cause birth defects and other reproductive harm. Citizen Enforcers allege that Notice Recipients failed to provide the health hazard warnings required by Proposition 65 for exposures to DEHP from their respective products.

1.3 Product Description

The products covered by this Settlement Agreement are: (1) the *Prima Design Victoria Borges Phone Wallet, UPC 6 79215 21125 1, Item No. 21126* (“PVC Wallets”); (2) the coin purse sold with the *Prima Design “Queen Bee” Mug and Coin Purse* (“PVC

Coin Purses”); and (3) the “*Manna Reusable Straw and Cleaning Brush Set with Carry Pouch, UPC 8 48974 27210 4* (“PVC Straw Pouches”), that are manufactured, sold, or distributed for sale in California (hereinafter collectively the “Products”).

1.4 Notice of Violation

On August 17, 2020, Johnson served Manna Hydration, Core Home, Brumis Imports, Inc., Ross Stores, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Manna 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 PVC Straw Pouch Products.

On December 9, 2020, Donaldson served Prima Donna Designs, Inc., HomeGoods, Inc and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Prima 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 PVC Wallets.

On December 9, 2020, Donaldson served Prima Donna Designs, Inc., Stein Mart, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Prima 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 PVC Coin Purses.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

The Notice Recipients deny the material, factual, and legal allegations contained in the Notices and maintains that all of the products that they each have 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 Notice Recipients 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 Notice Recipients of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Notice Recipients. This Section shall not, however, diminish or otherwise affect Notice Recipients' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 9, 2021.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards (DEHP)

"Reformulated Products" are defined as those PVC Wallets, PVC Coin Purses and PVC Straw Pouches 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, Notice Recipients shall not manufacture, import, distribute, sell or offer their respective Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 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 their respective Products, as set forth in the Notice.

2.3 Product Warnings

As of the Effective Date, all Products sold or distributed for sale in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Notice Recipients further agree 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

2.4 Special Procedure for Future Claims

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Product without a warning pursuant to Section 2.3 and which is alleged to not be a Reformulated Product pursuant to Section 2.1, in actual or alleged violation of this Agreement, Citizen Enforcers shall provide a Notice of Violation (“NOV”) to Notice Recipients. The NOV shall include, for each Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data obtained by Citizen Enforcers regarding each such Product. Citizen Enforcers shall take no further action regarding any alleged violation nor seek any monetary recovery for themselves, their agents or their counsel if, within 30 days of receiving such NOV, Notice Recipients demonstrate: (1) that the Product was manufactured distributed, sold or offered for sale by Notice Recipients before the Effective Date; or (2) that Notice Recipients directed the retailer or distributor of the Product to take corrective action by placing an appropriate warning on the Product(s)

compliant with Section 2.3 of this Agreement following service of the NOV; or (3) the Products have been reformulated to meet the definition of Reformulated Products.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases provided in sections 4.1 and 4.2, Notice Recipients agree to collectively pay, no later than the Effective Date, \$4,000 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 Donaldson and Johnson and delivered to the address in Section 3.3 herein. Notice Recipients will provide the payments, no later than the Effective Date, in three checks as follows: (1) “OEHHA” in the amount of \$3,000; (2) “Audrey Donaldson” in the amount of \$500; and (3) “Dennis Johnson” in the amount of \$500.

3.2 Attorneys’ Fees and Costs

Shortly after the other settlement terms had been reached, the Notice Recipients expressed a desire to resolve Citizen Enforcers’ fees and costs. The Parties, after some negotiations, reached an accord as to the amount to be paid as compensation due to Citizen Enforcers’ counsel, acting pursuant to 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, and without admitting any liability, Notice Recipients agree to collectively pay, no later than the Effective Date, \$31,250 in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing these matters to the attention of Notice Recipients’ 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 Citizen Enforcers' Release of Proposition 65 Claims

Donaldson and Johnson acting on their own behalf, and *not* on behalf of the public, releases Notice Recipients, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom they directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the PVC Wallets, PVC Coin Purses and PVC Straw Pouches. 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 Notice Recipients.

4.2 Citizen Enforcers' Individual Release of Claims

Donaldson and Johnson, in their individual capacity only and *not* in their representative capacity, provide 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 Donaldson and 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 PVC Wallets, PVC Coin Purses and PVC Straw Pouches, manufactured, imported,

distributed, or sold by Notice Recipients 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 Notice Recipients.

4.3 Notice Recipients' Release of Citizen Enforcers

Notice Recipients, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against Citizen Enforcers and their attorneys and other representatives, for any and all actions taken or statements made by Citizen Enforcers and their 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. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Notice Recipients may provide written notice to Citizen Enforcers 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 Notice Recipients:

Donald S. Burris, Esq.
Burris, Schoenberg & Walden LLP
12121 Wilshire Boulevard, Suite 800
Los Angeles, California 90025

For Citizen Enforcers:

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)

Citizen Enforcers 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:

Date: 7/26/2021

By: _____
Audrey Donaldson

By:  _____
Prima Donna Designs, Inc.

AGREED TO:

AGREED TO:

Date: July 1, 2021

Date:

By:  _____
Dennis Johnson

By: _____
Manna Hydration

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 2, 2021

Date: 7/26/2021

By: 

Audrey Donaldson

By: 

Prima Donna Designs, Inc.

AGREED TO:

AGREED TO:

Date:

Date:

By: _____
Dennis Johnson

By: 

Manna Hydration