

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Cost Plus, Inc. (“Cost Plus”), with Johnson and Cost Plus 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. Cost Plus 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 Cost Plus manufactures, sells, and distributes for sale in California, certain Products, as defined in Section 1.3, containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects and other reproductive harm. Johnson alleges that Cost Plus failed to provide the warning required by Proposition 65 for exposures to lead from the Products.

1.3 Product Description

The products covered by this Settlement Agreement are: (1) Drawer/Cabinet Door Knobs containing lead including, but not limited to, the “*World Market White Stone and Brass Drawer/Cabinet Door Knob; SKU: DI 200598614*”; and (2) Artisan Gifts Chakra Flags with Brass Bells containing lead including, but not limited to, the “*Cost Plus Artisan Gifts Chakra Flags with Brass Bells; SKU: 2548 1594*” that are manufactured, sold, or distributed for sale in California by Cost Plus (hereinafter referred to as “Products”).

1.4 Notice of Violation

On December 13, 2019, Johnson served Cost Plus and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Cost Plus violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from Drawer/Cabinet Door Knobs containing lead. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

On September 22, 2020, Johnson served Cost Plus and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Cost Plus violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from Artisan Gifts Chakra Flags with Brass Bells containing lead. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Cost Plus 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 Cost Plus 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 Cost Plus of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cost Plus. This Section shall not, however, diminish or otherwise affect Cost Plus’ 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 11, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products which comply with the requirements for “Brass Decorative Products” as set forth in Section 3.3 of the Proposition 65 consent judgment entered into in *Mateel Environmental Justice Foundation v. Cost Plus, Inc.*, San Francisco Superior Court No. CGC-07-461734 (“Cost Plus CJ”).

2.2 Reassurance of Compliance of Remaining Inventory

To the extent that Cost Plus retains any inventory of the “*World Market White Stone and Brass Drawer/Cabinet Door Knob; SKU: D1 200598614*” or the “*Cost Plus Artisan Gifts Chakra Flags with Brass Bells; SKU: 2548 1594*” for which its third-party testing labs have not reassured compliance with Section 3.3 of the Cost Plus CJ, Cost Plus shall randomly select at least three samples of each stock keeping unit (“SKU”) in such inventory and require a third-party lab based in the United States to test it to assess compliance. Should the result of such testing indicate compliance with the Cost Plus CJ, Cost Plus may proceed to offer the inventory of the SKU in question for sale in California; otherwise, Cost Plus shall apply Proposition 65 warnings to such inventory in accordance with Section 3 of the Cost Plus CJ or destroy or restrict any further distribution or sale of the inventory in question such that it cannot enter the California market.

2.3 The Parties agree and intend for compliance with the terms of Sections 2.1 or 2.2 to constitute compliance with Proposition 65 with respect to exposures to lead from the Products.

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, Cost Plus agrees to pay \$1,000 in civil penalties no later than the Effective Date. 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. Cost Plus will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$750; and (2) “Dennis Johnson” in the amount of \$250.

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, Cost Plus 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 the Effective Date, Cost Plus agrees to pay \$14,000 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 Cost Plus’ 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
Attn. Johnson v. Cost Plus
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 Cost Plus, its parents, subsidiaries, predecessors, successors, affiliated entities under common ownership, directors, officers, agents employees, attorneys, licensors and each entity to whom Cost Plus directly or indirectly distribute or sell the 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 lead in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products.

4.2 Johnson's Extended 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, limited to and arising out of alleged or actual exposures to lead or cadmium in the Products manufactured, imported, otherwise acquired, distributed, or sold by Cost Plus or its predecessors 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. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

4.3 Cost Plus' Release of Johnson

Cost Plus, 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.

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 Cost Plus 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 Cost Plus, Inc.:

Merrit M. Jones
Bryan Cave Leighton Paisner, LLP
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4070

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:

Dated: **December 7, 2020**

Dated:

By:  _____
DENNIS JOHNSON

By: _____
Name/Title:
COST PLUS, INC.

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:

Dated:

Dated:

By: _____
DENNIS JOHNSON

By:  _____
JANE BAUGHMAN, PRESIDENT
COST PLUS, INC.