

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Horizon Group USA, Inc. (“Horizon Group”). Johnson and Horizon Group 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. Johnson alleges that Horizon Group 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 Horizon Group manufactures, sells, and distributes for sale in California, PVC Zipper Top Pouches 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 Horizon Group 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 specifically identified as the *Horizon Group USA Felt Lacing Shapes With Zipper Top PVC Bag, UPC 1 94356 02928 7*, that are manufactured, sold, or distributed for sale in California by Horizon Group (hereinafter “Products”).

1.4 Notice of Violation

On September 22, 2020, Johnson served Horizon Group USA, Inc., Target Corporation (“Target”), and the requisite public enforcement agencies with a 60-Day

Notice of Violation (“Notice”), alleging that Horizon Group and Target violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the Products.

1.5 No Admission

Horizon Group denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products 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 Horizon Group 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 Horizon Group of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Horizon Group. This Section shall not, however, diminish or otherwise affect Horizon Group’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 November 27, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as Products in which the Accessible Components (meaning any Component of the Products that could be touched by a person during reasonably foreseeable use) of those Products contain 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, Horizon Group 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 carry appropriate health hazard warnings per section 2.3.

2.3 Product Warnings

- (a) As of the Effective Date, all Products Horizon Group sells and/or distributes for sale in California which do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Horizon Group 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 the avoidance of any doubt, Products that were supplied to third parties by Horizon Group prior to the Effective Date shall be deemed exempted from these requirements and shall be permitted to be sold through as previously manufactured, packaged and labeled, and have been included in the calculation of civil penalties. 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: Cancer and 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 cancer, birth

defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

- (b) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.
 - (c) In the event that the Office of Environmental Health Hazard Assessment (“OEHHA”) or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above Horizon Group shall be entitled to use, at its discretion, such other “Safe Harbor” warning text and/or method of transmission without being deemed in breach of this Settlement Agreement.
 - (d) If Proposition 65 warnings for DEHP should no longer be required by OEHHA, Horizon Group shall have no further obligations pursuant to this Settlement Agreement.
3. Compliance with Settlement Terms. The Parties intend and agree that compliance with the terms of this Settlement Agreement by Horizon Group shall be deemed to be compliance with Proposition 65 by all Releasees with respect to any exposures to DEHP in the Products.

4. **MONETARY SETTLEMENT TERMS**

4.1 **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, Horizon Group agrees to pay, no later than seven days after 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 Johnson and delivered to the address in Section 3.3 herein. Horizon Group will provide its payment, no later than seven days

after the Effective Date, in two checks as follows: (1) "OEHHA" in the amount of \$3,000; and (2) "Dennis Johnson" in the amount of \$1,000.

4.2 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, Horizon Group 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, Horizon Group agrees to pay, no later than seven days after the Effective Date, \$20,300, 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 Horizon Group's management, and negotiating a settlement.

4.3 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

5. Release of Horizon Group, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 4.1 and 4.2 above, Johnson, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to DEHP in the Products, including,

without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Horizon Group, (b) each of Horizon Group downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, (c) each of Horizon Group's upstream vendors and entities that manufactured the Products or any component parts thereof, (d) Target Corporation, and its corporate affiliates, subsidiaries, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities, and (e) Horizon Group's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Johnson also, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees and *not* in his representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against Horizon Group and the Releasees pertaining to the presence of DEHP in the Products. Johnson acknowledges that he is familiar with California Civil Code section 1542, which provides 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.

Johnson, in his individual capacity only, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6. Horizon Group's Release of Johnson

Horizon Group, 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.

7. 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.

8. 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 Horizon Group 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.

9. 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 Horizon Group:

David Callet, Esq.
CalletLaw, LLC
5335 Wisconsin Ave. NW, Suite 440
Washington, D.C. 20015

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.

10. 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.

11. **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).

12. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

13. **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: 11.27.20

By: _____
DENNIS JOHNSON

By:  _____
HORIZON GROUP USA, INC.

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AGREED TO:

AGREED TO:

Date: **November 27, 2020**

Date:

By:  _____
DENNIS JOHNSON

By: _____
HORIZON GROUP USA, INC.