

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Hobby Lobby Stores, Inc. (“Hobby Lobby”). Johnson and Hobby Lobby shall each be 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. Hobby Lobby 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 Hobby Lobby manufactures, sells, and distributes for sale in California, certain handheld nets with PVC grips 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 Hobby Lobby 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 Bug Nets *With Extendable Handle (PVC Grips)*; SKU #1364538, manufactured, sold, or distributed for sale in California by Hobby Lobby (hereinafter the “Products”).

1.4 Notice of Violation

On November 3, 2020, Johnson served Hobby Lobby and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Hobby Lobby violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of

the parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

By execution of this Settlement Agreement, Hobby Lobby, and each of its respective affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom Hobby Lobby directly or indirectly distributes or sells the Products, including but not limited to downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), 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 Releasees 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 Releasees of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Releasees. This Section shall not, however, diminish or otherwise affect Hobby Lobby'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 has been fully executed.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNING

No later than 90 days after the Effective Date, and continuing thereafter, Products that Hobby Lobby directly manufactures, imports, distributes, sells or offers for sale in California shall be: (a) Reformulated Products pursuant to Section 2.1 below; or (b) labeled with a clear and reasonable warning pursuant to Section 2.2 below; or (c) discontinued for sale in California. Section 2 of this Settlement Agreement shall not apply to Products that


are in the stream of commerce at any time up to 90 days after the Effective Date, as they have been included in the calculation of civil penalties required under Section 3.1.

2.1 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 for the purpose of determining the DEHP content in a solid substance.

2.2 Warning

(a) Where required, Hobby Lobby shall provide Proposition 65 warnings as follows:

 **WARNING:** This product can expose you to phthalates, 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.

Or

 **WARNING:** Cancer and Reproductive Harm - Phthalates
www.P65Warnings.ca.gov.

This shall constitute compliance with Proposition 65 with respect to DEHP in the Products.

(b) If Hobby Lobby elects to use the warning statements identified in Section 2.2(a), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

(c) 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 for providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for DEHP should no longer be required by the State of California, Hobby Lobby shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different from those set forth above, Hobby Lobby shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Settlement 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 certain claims alleged in the Notice or referred to in this Settlement Agreement, Hobby Lobby agrees to pay \$1,000 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. Johnson’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement.

3.2 Attorneys’ 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, Hobby Lobby agrees to pay \$13,750 for all attorneys’ fees, investigation fees, and related costs associated with this matter and the Notice.

3.3 Payment Information

On the Effective Date, Johnson shall provide Hobby Lobby with an IRS W-9 form for Voorhees & Bailey, LLP. Within fourteen (14) days of the Effective Date, Hobby Lobby shall send a check payable to "Voorhees & Bailey, LLP" in the amount of fourteen thousand seven hundred fifty dollars (\$14,750) to the following address for the civil penalties and attorney's fees/costs described in Sections 3.1 and 3.2 above:

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

Voorhees & Bailey, LLP shall then distribute the civil penalty payments to OEHHA and Johnson, in the amounts of \$750 and \$250, respectively. Johnson's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement and Hobby Lobby assumes no responsibility or liability for insuring these payments are made by Johnson's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 Release of Hobby Lobby and Downstream Customers and Upstream Vendors Involved in the Sale of The Products

In further consideration of the promises and agreements contained in this Settlement Agreement, and for the payments to be made pursuant to Section 3.1 and 3.2 above, Johnson, in his representative capacity, and acting on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors and/or assigns, hereby, and *not* on behalf of the public, waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims related to the Products, including, without limitation, all causes of action, in law or 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 Hobby

Lobby, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Hobby Lobby directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees and upstream vendors involved in the sale of the Products (collectively, "Released Parties").

4.2 Johnson's Individual Release of Claims

Johnson, in his individual capacity and on behalf of 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 Claims against Hobby Lobby and the Released Parties with regard to 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 RELEASING 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 he 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.

4.3 Hobby Lobby's Release of Johnson

Hobby Lobby, 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 (or those that could have been taken or 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 Hobby Lobby may provide written notice to Johnson of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement.

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) first-class, registered or certified mail, return receipt requested; (b) a recognized overnight courier; or (c) email on any party by the other at the following addresses:

For Hobby Lobby:

Clint B. Sloan
Associate General Counsel
7707 SW 44th Street
Oklahoma City, OK 73179
clint.sloan@hobbylobby.com

For Johnson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303
troy@voorheesbailey.com

With a copy to:

Anne Marie Ellis, Esq.
Buchalter
18400 Von Karman Avenue; Suite 800
Irvine, CA 92612aellis@buchalter.com

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. 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.

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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:

Date: 9/23, 2021

By: 
DENNIS JOHNSON

AGREED TO:

Date: 9-24, 2021

By: 
HOBBY LOBBY STORES, INC.