

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Michel Design Works Ltd. (“Michel Design”), with Johnson and Michel Design 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 Michel Design 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 Michel Design manufactures, sells, and distributes for sale in California, salt and pepper shakers with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Michel Design failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are salt & pepper shakers with exterior decorations containing lead including, but not limited to, the *Flamingo Glass Salt & Pepper Shakers*, UPC: 6 08666 72602 1, that are manufactured, sold, or distributed for sale in California by Michel Design (hereinafter referred to as “Products”).

1.4 Notice of Violation

On November 3, 2020, Johnson served Michel Design and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Michel Design violated Proposition 65 when it failed to provide a clear and reasonable Proposition 65

warning to consumers in California of the alleged exposures to lead from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

Michel Design 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Michel Design 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 Michel Design of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Michel Design. This Section shall not, however, diminish or otherwise affect Michel Design's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Michel Design maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 19, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance;

and (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must relate only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., glass substrate).

2.2 Reformulation Commitment

As of the Effective Date, Michel Design has ceased manufacturing the Products. Should it manufacture, distribute for sale or sell the Products in the State of California in the future, the Products shall be Reformulated Products pursuant to Section 2.1.

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, Michel Design agrees to pay \$1,800 in civil penalties within five business days of 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. Michel Design will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,350; and (2) “Dennis Johnson” in the amount of \$450.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that the injunctive and penalty terms agreed to were resolved first, then the amount of fees and costs to be reimbursed to Johnson’s counsel was resolved later. 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, within five business days of the Effective Date, Michel Design agrees to pay \$15,200, 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 Michel Design’s management, and negotiating a settlement. The payments set forth in Section 3 are the exclusive payments due between the Parties.

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 acting on his own behalf, releases Michel Design, its parents, subsidiaries, affiliated entities under common ownership, directors, supplier, manufacturers, officers, agents, employees, attorneys, and each entity to whom Michel Design directly or indirectly distributes 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 for Products manufactured on or before the Effective Date based on lack of clear and reasonable warnings in the Products. This release includes Products in the stream of commerce prior to the Effective Date as they have been included in the calculation of the civil penalty payments contained in Section 3.1.

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 violation of Proposition 65 concerning Products manufactured by Michel Design prior to or on the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Michel Design's Products.

4.3 Michel Design's Release of Johnson

Michel Design, 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.

4.4 GENERAL RELEASE

The Parties acknowledge that the claims released in Sections 4.1, 4.2 and 4.3 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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, on behalf of himself only, and Michel Design, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

4.5 PUBLIC INTEREST

The Parties understand that the commitments Michel Design has agreed to herein, and actions to be taken by Michel Design under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Michel Design's failure to provide a Proposition 65 warning on the Products it has manufactured prior to the Effective Date, such private party action would not confer a significant benefit on the general public as to the Products addressed in this Agreement, provided that Michel Designs is in material compliance with this Agreement. The Parties agree that the understandings and intentions expressed in this Section are applicable only to the Notice and the Products at issue and are not to be construed as a general understanding or intention with respect to other products manufactured, distributed, sold or offered for sale in California by any other entity.

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 Michel Design 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; (c) a recognized overnight courier; or (d) by email on any Party by the other at the following addresses:

For Michel Design Works Ltd:

Will Wagner
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814
wagnerw@gtlaw.com

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
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.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

AGREED TO:

AGREED TO:

Date: February 12, 2021

Date: February 18, 2021

By: 
DENNIS JOHNSON

By: *Stuart Teller*
MICHEL DESIGN WORKS LTD