

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Churchill China PLC (“Churchill China”), with Johnson and Churchill China 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 Churchill China 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 Churchill China manufactures, sells, and distributes for sale in California, mugs 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 Churchill China 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 specifically identified as “James Sadler” labelled ceramic mugs including, but not limited to, the *James Sadler “Sights of London” Ceramic Mug*; UPC: 5 011109 292932, that are manufactured, sold, or distributed for sale in California by Churchill China (hereinafter referred to as “Products”).

1.4 Notice of Violation

On December 9, 2020, Johnson served Churchill China, HomeGoods, Inc. (“HomeGoods”) and the requisite public enforcement agencies with a 60-Day Notice of

Violation, alleging that Churchill China and HomeGoods violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with 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

Churchill China 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 Churchill China 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 Churchill China of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Churchill China. This Section shall not, however, diminish or otherwise affect Churchill China'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 September 30, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 As of the Effective Date, Churchill China 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 2.2.

2.2 Reformulation Standards

"Reformulated Products" are defined as those Products which comply with the requirements for "Ceramicware Food/Beverage Products" as set forth in Section 2.3.2 of the Proposition 65 consent judgment entered in *Brimer v. The Boelter Companies, et al.*,

San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”), which Churchill China represents its manufacturers and suppliers currently follow.

2.3 Existing Inventory

To the extent that Churchill China retains any inventory of the *James Sadler “Sights of London” Ceramic Mug*; UPC: 5 011109 292932, Churchill China shall destroy or restrict any further distribution or sale of the inventory in question, such that it cannot enter the California market. Should Churchill China reintroduce *James Sadler “Sights of London” Ceramic Mug*; UPC: 5 011109 292932 into the California market in the future, such products shall meet the requirements of Section 2.1.

2.4 The Parties agree and intend for compliance with the terms of this Section 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 as consideration for the releases contained in Sections 4.1 and 4.2 below, Churchill China agrees to pay \$3,000 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

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, 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, Churchill China expressed a desire to resolve the 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, on or before the Effective Date, Churchill China agrees to pay \$19,000, for all fees and costs incurred investigating, bringing this matter to the attention of Churchill China's management, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered via wire transfer to Voorhees & Bailey, LLP, no later than the Effective Date. Voorhees & Bailey shall then distribute the civil penalty payments to OEHHHA, in the amount of \$2,250, and to Johnson in the amount of \$750. Voorhees & Bailey shall provide the wire transfer instructions to Churchill China no later than three days prior to the Effective Date.

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 Churchill China, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Churchill China directly or indirectly distributes or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to HomeGoods, 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 or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Churchill China.

4.2 Johnson's Individual 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 in the Products manufactured, imported, distributed, or sold by Churchill China 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 Churchill China. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Churchill China's Products.

Plaintiff acknowledges that the claims released may include unknown claims, and nevertheless intend to release such claims, and in doing so waives California Civil Code § 1542 which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure to warn with

respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim for those damages against any of the Released Parties.

4.3 Churchill China's Release of Johnson

Churchill China, 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. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

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 Churchill China 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 Churchill China PLC:

David Taylor
CFO
Churchill China
2709505 No.1 Marlborough Way
Stoke-on-Trent, ST6 5NZ

Jeffrey Brian Margulies
Norton Rose Fulbright US LLP
555 South Flower Street
Los Angeles, CA 90071

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.

AGREED TO:

AGREED TO:

Date: 9/23, 2021

Date: _____, 2021

By: 
DENNIS JOHNSON

By: _____
CHURCHILL CHINA PLC

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: _____, 2021

Date: September 23, 2021

By: _____
DENNIS JOHNSON

By: Jul _____
CHURCHILL CHINA PLC