

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Pabst Brewing Company, LLC (“Pabst Brewing”). Johnson and Pabst Brewing 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. Pabst Brewing 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 Pabst Brewing manufactures, sells, and distributes for sale in California, Totes with PVC Components 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 Pabst Brewing 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 defined as, and limited to, the *Victoria Lu Pabst Blue Ribbon Beach Tote*, manufactured, sold, or distributed for sale in California by Pabst Brewing (hereinafter the “Products”).

#### 1.4 Notice of Violation

On June 9, 2021, Johnson served Pabst Brewing and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that the notice recipients violated Proposition 65 by failing to warn their customers and

consumers in California of the health hazards associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

Pabst Brewing 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 Pabst Brewing 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 Pabst Brewing of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Pabst Brewing. This Section shall not, however, diminish or otherwise affect Pabst Brewing'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**

As of the Effective Date, and continuing thereafter, Products that Pabst Brewing directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to Section 2.1, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to Sections 2.2 and 2.3, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in Section 2.1, below. The warning requirement set forth in Sections 2.3 and 2.4 shall not apply to any Reformulated Product.


## 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 Clear and Reasonable Warning

As of the Effective Date, and continuing thereafter, Pabst Brewing shall provide a clear and reasonable exposure warning as set forth in this Section 2.2 and Section 2.3, for all Products that Pabst Brewing manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Pabst Brewing to provide an exposure warning for Products that entered the stream of commerce or were supplied by Pabst Brewing to third parties prior to the Effective Date, as they were included in the civil penalty payment required pursuant to Section 3.1 below. The warning shall consist of either the **Warning** or **Alternative Warning** described in Sections 2.2(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Pabst Brewing may, but is not required to, use the alternative short-form warning as set forth in this Section 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### 2.3 Clear and Reasonable Warning

A **Warning** or **Alternative Warning** provided pursuant to Section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Pabst Brewing sells Products via an internet website to end user customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

### **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, Pabst Brewing agrees to pay, no later than seven (7) days after the Effective Date, \$2,500 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. Pabst Brewing will provide its payment, no later than seven (7) days after the Effective Date by wire transfer.

#### **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, Pabst Brewing 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, Pabst Brewing agrees to pay, no later than seven (7) days after the Effective Date, \$16,800, by wire transfer for all fees and costs incurred investigating, bringing this matter to the attention of Pabst Brewing’s management, and negotiating a settlement.

#### **3.3 Payment by Wire Transfer**

All payments under this Settlement Agreement shall be delivered by wire transfer in one lump sum amount of \$19,300. Voorhees & Bailey, LLP has provided the wire transfer instructions to Pabst Brewing.

**4. CLAIMS COVERED AND RELEASED**

**4.1 Johnson's Release of Proposition 65 Claims**

Johnson acting on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (collectively, "Releasors"), releases: (a) Pabst Brewing, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys; (b) each entity to whom Pabst Brewing directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees; and (c) each entity that manufactured the actual Products specifically sold by Pabst Brewing or any component parts thereof that were used in the Products actually sold by Pabst Brewing, or any distributors or suppliers who sold the specific Products or any component parts thereof to Pabst Brewing (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date, relating to unwarned exposures to DEHP in the Products.

**4.2 Johnson's Individual Release of Claims**

Johnson, in his individual capacity only, and on behalf of Releasors, provides a release herein to Releasees, 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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Pabst Brewing prior to the Effective Date.

**4.3 Johnson's Waiver of California Civil Code § 1542**

Johnson acknowledges that he is familiar with California Civil Code § 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 Releasors, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of California Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

#### **4.4 Pabst Brewing's Release of Johnson**

Pabst Brewing, 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. DEEMED COMPLIANCE WITH PROP 65**

The Parties agree that compliance by Pabst Brewing with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

#### **6. PUBLIC BENEFIT**

It is Pabst Brewing's understanding that the commitments it has agreed to herein, and actions to be taken by Pabst Brewing under this Settlement 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 Pabst Brewing that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Pabst Brewing's failure to provide a warning concerning

exposure to DEHP prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Pabst Brewing is in material compliance with this Settlement Agreement.

**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 Pabst Brewing 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 Pabst Brewing:

Emily Lamond, Esq.  
Cole Schotz, P.C.  
25 Main Street  
Hackensack, NJ 07601

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. 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.

**14. 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: 10/1, 2021

Date: 10/1, 2021

By:   
DENNIS JOHNSON

By:   
PABST BREWING COMPANY, LLC