

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Green Guard Industry Co. Ltd. (“Green Guard”). Johnson and Green Guard 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. Green Guard 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 Green Guard manufactures, sells, and distributes for sale in California, Pruners 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 Green Guard 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 Pruners with PVC grips including, but not limited to, the *Groundwork Drop-Forged Bypass Pruner; UPC: 7 49394 05808 1*, manufactured, sold, or distributed for sale in California by Green Guard (hereinafter the “Products”).

1.4 Notice of Violation

On June 9, 2021, Johnson served Tractor Supply Company 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. Green Guard was subsequently identified as the manufacturer/supplier of the Products, and indicated that they wanted to resolve certain claim contained in the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Green Guard 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 Green Guard 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 Green Guard of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Green Guard. This Section shall not, however, diminish or otherwise affect Green Guard'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 20, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION

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 Reformulation Commitment

As of the Effective Date, Green Guard shall not sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1.

The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP 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, Green Guard agrees to pay, no later than the Effective Date, \$5,000 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. Green Guard will provide its payment via wire transfer, on or before the Effective Date, with said wire transfer information to be provided to Green Guard by Johnson’s counsel. Johnson’s counsel will then distribute the penalty payment, in two checks as follows: (1) “OEHHA” in the amount of \$3,750; and (2) “Dennis Johnson” in the amount of \$1,250.

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, Green Guard 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, Green Guard agrees to pay \$18,000, via wire transfer no later than the Effective Date. Johnson’s counsel shall provide the relevant wire information to Green Guard prior to the Effective Date.

3.3 Future Violations

In the event that Johnson or his counsel become aware of any further violation(s) of Proposition 65 by Green Guard, within four (4) months of the Effective Date, they shall, within thirty (30) days, notify Green-Guard of the details of the alleged violation and shall provide Green Guard with thirty (30) days in which to cure the alleged violations (the “Cure Period”) prior to filing any Notice of Violation against Green Guard. Any such notice made pursuant to this paragraph shall be in writing and shall include the relevant and sufficient information and a thorough description of the alleged violation(s). If Green Guard cures the alleged violation(s) and provides Johnson and his counsel with sufficient evidence thereof, within the Cure Period, neither Johnson nor his counsel shall proceed with any legal or equitable action against Green Guard for the noticed violation.

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 Green Guard, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Green Guard directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Tractor Supply Company, franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DEHP in the Products. Johnson further understands and agrees 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 Green Guard.

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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Green Guard prior to the Effective Date. Johnson further understands and agrees 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 Green Guard.

4.3 Green Guard's Release of Johnson

Green Guard, 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. 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 Green Guard 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 Green Guard:

Green Guard Industry Co. Ltd.
c/o Beijing JT&N Law Firm
42th Floor Kaihua International Center
No.5 Xian Cun Road, Tian He District
GuangZhou, Guang Dong
People's Republic of China

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.

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. CONFIDENTIALITY

The Parties expressly agree that they shall keep this agreement confidential and may not disclose to any third party unless otherwise agreed to by the Parties or as required by applicable rules, regulations, laws and/or guidelines. The Parties understand and agree that pursuant to Cal.Code.Reg. Title 11 §3003 this settlement shall be reported to the California Office of the Attorney General.

12. 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.

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: September 17, 2021

Date: _____, 2021

By: 
DENNIS JOHNSON

By: _____
GREEN GUARD INDUSTRY CO. LTD.

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The Parties expressly agree that they shall keep this agreement confidential and may not disclose to any third party unless otherwise agreed to by the Parties or as required by applicable rules, regulations, laws and/or guidelines. The Parties understand and agree that pursuant to Cal.Code.Reg. Title 11 §3003 this settlement shall be reported to the California Office of the Attorney General.

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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:

Date: _____, 2021

By: _____
DENNIS JOHNSON

AGREED TO:

Date: 09. 18, 2021

For and on behalf of
GREEN GUARD INDUSTRY LTD.
By: Mavis Perry
GREEN GUARD INDUSTRY LTD.
Authorized Signatory(s)