

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and The Boelter Companies (“Boelter”), with Johnson and Boelter 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 Boelter is a supplier of consumer products to Anheuser-Busch, LLC, among others that do business in California. Boelter employs ten or more persons and 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 Boelter manufactures, sells, and distributes for sale in California, glassware with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects and other reproductive harm. Johnson alleges that Boelter failed to provide the warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are the “*Stella Artois Chalice*s UPC 1 92254 02115 0 (hereinafter referred to as “Products”).

1.4 Notice of Violation

On June 25, 2021, Johnson served Anheuser-Busch, LLC, Import Brands Alliance, Falling Prices, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that the noticed parties 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. Boelter was subsequently identified as the supplier of the Products to Anheuser-Busch, LLC and entered into negotiation with Johnson as indemnitor to Anheuser-Busch, LLC to resolve Johnson’s claims concerning the Products, including with respect to those set forth against Anheuser-Busch, LLC in the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Boelter 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 Boelter 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 Boelter of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Boelter. This Section shall not, however, diminish or otherwise affect Boelter’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean

DJ
JANUARY 8, 2022.
~~December 7, 2021.~~

*DRG, Esq.
For
Boelter*

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products which comply with the requirements for “Glassware Food/Beverage Products” as set forth in Section 2.3.1 of the Proposition 65 consent judgment entered into in *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”), to which Boelter was a party.

2.2 Warnings

Products which fail to meet the requirements for “Glassware Food/Beverage products” as set forth in Section 2.2(a)(i) of the Boelter CJ, shall be labeled in compliance with the Proposition 65 warning requirements set forth in Section of the Boelter CJ.

2.3 Reassurance of Compliance of Remaining Inventory

To the extent that Boelter retains any inventory of “*Stella Artois Chalice UPC 1 92254 02115 0*” for which its third-party testing labs have not reassured compliance with Section 2.3.1 of the Boelter CJ, Boelter shall randomly select at least three samples of each stock keeping unit (“SKU”) in such inventory and require a third-party lab based in the United States to test it to assess compliance. Should the result of such testing indicate compliance with the Boelter CJ, Boelter may proceed to offer the inventory of the SKU in question for sale in California; otherwise, Boelter shall apply Proposition 65 warnings to such inventory in accordance with Section 2.2 above or destroy or restrict any further distribution or sale of the inventory in question such that it cannot enter the California market.

2.4 The Parties agree and intend for compliance with the terms of Sections 2.1 or 2.2 to constitute compliance with Proposition 65 with respect to exposures to lead from the Products.

2.5. Products in the Stream of Commerce

Based on the civil penalties to be paid pursuant to Section 3.1 below, Products previously distributed for sale in California shall be exempt from the requirements of Sections 2.1, 2.2 and 2.3, and are covered by the releases in Section 4.

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, Boelter agrees to pay \$500 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, and delivered to the address in Section 3.3 herein. Boelter will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$375; and (2) “Dennis Johnson” in the amount of \$125.

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 to them, 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, Boelter expressed a desire to resolve Johnson’s fees and costs. The Parties reached an accord on the compensation due to Johnson and his 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, Boelter agrees to pay \$12,500 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 Boelter’ management, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
Attn. Johnson v. Boelter
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, and *not* on behalf of the public, releases Boelter, its parents, subsidiaries, predecessors, successors, affiliated entities under common ownership, directors, officers, agents employees, attorneys, licensors, manufacturers, and each entity to whom Boelter directly or indirectly distribute or sell the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Anheuser-Busch, LLC, Import Brands Alliance, and Falling Prices, Inc., including That’s Cheap!), 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.

4.2 Johnson’s Extended 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 or cadmium in the Products manufactured, imported, otherwise acquired, distributed, or sold by Boelter or its

predecessors (including corporations it previously acquired) prior to 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 the Products.

4.3 Boelter' Release of Johnson

Boelter, 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 Boelter 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 Boelter:

David Gabor
Weintraub Tobi Chediak Coleman Grodin
Law Corporation
10250 Constellation Blvd. Suite 2900
Los Angeles, CA 90067

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. 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:

Dated:

Dated: 1 - 4 - 2022

By: _____
DENNIS JOHNSON

By:  _____
THE BOELTER COMPANIES:

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:

Dated: December 10, 2021

Dated:

By: 
DENNIS JOHNSON

By: _____
THE BOELTER COMPANIES: