

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Paper Source LLC (“Paper Source”), with Johnson and Paper Source 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 Paper Source 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 Paper Source manufactures, sells, or distributes for sale in California, ceramic mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Paper Source 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 defined as, and limited to, ceramic mugs manufactured by The Found, Inc., including, but not limited to, “*Ew, Work*” Ceramic Mug; UPC: 8 10027 32051 3 and “*Stay Golden*” Ceramic Mug; Product No. 10015596, that are sold or distributed for sale in California by Paper Source (hereinafter referred to as “The Found Brand Mugs”).

1.4 Notice of Violation

On December 28, 2021, Johnson served Paper Source, and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that it violated

Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from The Found Brand Mugs. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Paper Source 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 Found Brand Mugs, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Paper Source 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 Paper Source of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Paper Source. This Section shall not, however, diminish or otherwise affect Paper Source'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 the date this Settlement Agreement is executed by both parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards


"Reformulated Products" are defined as those The Found Brand Mugs 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 Found Brand Mugs 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; (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol;

and (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations located in the upper 20 millimeters of a product, i.e., the “Lip-and-Rim” area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a solid substance.


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., ceramic substrate).

2.2 Warning Commitment

As of the Effective Date, all The Found Brand Mugs Paper Source sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Paper Source further agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the The Found Brand Mugs shall contain one of the following statements:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

The above warning statements shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

In the event the Office of Environmental Health Hazard Assessment (“OEHHA”)

promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission that are different than those set forth above, Paper Source shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement.

2.3 Special Acknowledgment

Furthermore, Paper Source asserts, and Plaintiff concedes, that it is not the manufacturer of The Found Brand Mugs and that the manufacturer of The Found Brand Mugs is The Found, Inc. As of the Effective Date, Paper Source shall not manufacture, import, distribute, sell or offer The Found Brand Mugs for sale in the State of California unless they are reformulated to meet the standard in Section 2.1 or contain a warning pursuant to section 2.2. In no event shall Releasees, as defined hereinafter in Section 4.1, be deemed in violation of this Settlement Agreement or Proposition 65 where The Found Brand Mugs subject to this Settlement Agreement were distributed or sold by The Found, Inc. to Paper Source before the Effective Date, which sales are included and accounted for in the civil penalty assessed in Section 3.1, or if The Found Brand Mugs were sold by any another retailer, distributor, importer or manufacturer other than Paper Source, including, without limitation, The Found, Inc.

2.4 Special Procedure for Future Claims

Prior to bringing any motion, order to show cause, Proposition 65 Notice of Violation, or other proceeding to enforce Proposition 65 or any terms of this Settlement Agreement relating to the sale in California of any The Found Brand Mugs alleged to be in violation of this Settlement Agreement, Johnson shall provide notice (including a copy to Keller and Heckman LLP as set forth in Section 7 below) and the right to cure the alleged violation to Paper Source. The notice shall include, for each product alleged to be violation of this Settlement Agreement: the date of alleged violations(s), place of sale, date and proof of purchase, and any test data obtained by Johnson regarding each such

product. Johnson shall take no further action regarding any alleged violation nor seek any monetary recovery for himself, his agents or his counsel if, within 60 days of receiving such notice and right to cure, Paper Source demonstrates: (1) that The Found Brand Mugs subject to the notice and right to cure were manufactured, distributed, sold or offered for sale by The Found, Inc. before the Effective Date; or (2) that Paper Source was informed in writing by its supplier, before Paper Source sold the product in California, that The Found Brand Mugs subject to the notice and right to cure were Reformulated Products; and (3) that Paper Source ceased the sale of the products within 60 days of receiving the notice and right to cure pursuant to this Section 2.4.

2.5 Point of Sale and Internet Warnings

If Paper Source sells Products via its own proprietary internet website to customers located in California, the warning requirements of this section, and Section 2.3, shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a The Found Brand Mugs is displayed and/or described; (b) on the same page as the price for The Found Brand Mugs; (c) on one or more web pages displayed to a California purchaser prior to completion of the checkout process; or (d) via the "product details" section of the product page. 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 Found Brand Mugs, 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.

2.6 The Parties agree and intend for compliance with the terms of this Sections 2 to constitute compliance with Proposition 65 with respect to exposures to lead from The Found Brand Mugs.

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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, Paper Source agrees to direct and ensure the payment of \$1,000 in civil penalties within 30 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. Paper Source will ensure such payment is made in two checks as follows: (1) "OEHHA" in the amount of \$750; and (2) "Dennis Johnson" in the amount of \$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 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, Paper Source expressed a desire to resolve Johnson's fees and costs. The Parties then 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, and within 30 days of the Effective Date, Paper Source agrees to direct and ensure the payment of \$13,250, 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 Paper Source's 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
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Johnson's Release of Proposition 65 Claims

This Settlement Agreement is a full, final, and binding resolution between the parties of the claims and allegations set forth herein. Johnson, in his individual capacity and *not* on behalf of the public, releases Paper Source and the Releases defined below of any violation of Proposition 65 related to The Found Brand Mugs that was or could have been asserted by Johnson, on his own behalf, or on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Paper Source, its parents, subsidiaries, affiliated entities under common ownership, and its and their directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors (including corporations it previously acquired), successors, assignees, and each entity to whom Paper Source directly or indirectly distributes, ships or sells The Found Brand Mugs, including, but not limited to, its downstream distributors, wholesalers, customers, retailers and their affiliates, franchisees, cooperative members, licensors, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to lead contained in The Found Brand Mugs manufactured, sold, or distributed for sale by Paper Source in California before the Effective Date.

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, related to The Found Brand Mugs, 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 Found Brand Mugs manufactured, imported, otherwise acquired, distributed, or sold by Paper Source or the Releasees prior to the Effective Date.

Johnson acknowledges that he is familiar with Section 1542 of the California Civil Code, 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, as an individual and not on behalf of the public, 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 Section 1542 of the California Civil Code 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 lead and cadmium in The Found Brand Mugs manufactured, imported, distributed or sold by Paper Source before the Effective Date.

4.3 Paper Source's Release of Johnson

Paper Source, 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 Found Brand Mugs.

4.4 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Paper Source under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Paper Source's intent by entering into this Agreement that to the extent any other private party initiates an action against Paper Source alleging a violation of Proposition 65 with respect to failure to provide a clear and reasonable warning concerning exposure to lead from The Found Brand Mugs manufactured, distributed, sold or offered for sale by Paper Source in California, and subject to Paper Source's material compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those The Found Brand Mugs and Proposition 65-listed chemicals addressed under this Agreement.

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 Found Brand Mugs, then Paper Source 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 Found Brand Mugs 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 Paper Source:

Paper Source LLC
125 S. Clark Street, 15th Floor
Chicago, IL 60603
Attn: Legal Department

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
535 Ramona Street, Suite 1
Palo Alto, CA 94301

With a copy to:

Rohit A. Sabnis
Keller and Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

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.

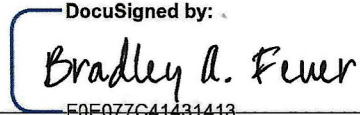
AGREED TO:

Date: 3/8/23

By: 
DENNIS JOHNSON

AGREED TO:

Date: 3/10/2023

By: 
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PAPER SOURCE LLC