

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson ("Johnson") and CRE8 Direct Ningbo Ltd. ("Settling Entity"). Johnson and Settling Entity 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. Settling Entity 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 Walmart Inc. (erroneously identified through typographical error as "Walmart, Inc."), manufactures, sells, and distributes for sale in California, journals 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 Walmart Inc. failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP. The Settling Entity enters into this Settlement Agreement following its acceptance of a tender of defense and indemnity from Walmart Inc. The Settling Entity accepted the tender and approached Johnson to resolve Walmart Inc.'s alleged liability.

1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the *Pen + Gear Journal*; UPC: 6 946830 77454 1, which were sold on Walmart.com and in Walmart stores in California (hereinafter the "Products").

1.4 Notice of Violation

On February 2, 2022, Johnson served Walmart Inc. 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. Settling Entity was subsequently identified as the manufacturer/supplier of the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

The Settling Entity (and on behalf of Walmart Inc.) denies the material, factual, and legal allegations contained in the Notice and maintains that all of the Products that were sold and distributed in California have been, and are, in compliance with all laws and/or are within the safe harbor limits. The Settling Entity maintains that it did not knowingly or intentionally expose California consumers to DEHP. Nothing in this Settlement Agreement shall be construed as an admission by the Settling Entity (or Walmart Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., Wal-Mart.com USA, LLC, each of their respective parents, direct and indirect subsidiaries, affiliates, affiliated entities under common ownership, past and current agents, directors, officers, employees, representatives, attorneys, successors, assignees, and anyone else acting on their behalf (collectively, “Walmart”)) 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 the Settling Entity (or Walmart) of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Settling Entity (and Walmart). This Section shall not, however, diminish or otherwise affect Settling Entity'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 May 18, 2022.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNING

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/Warning Commitment

As of the Effective Date, the Settling Entity shall not sell the Products or supply them to a downstream distributor for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain a warning as set forth in Section 2.3 below. 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, as set forth in the Notice. The Settling Entity and its downstream retailers shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date, as they have been included in the calculation of civil penalty due pursuant to Section 3.1 below. The civil penalty set forth in Section 3.1 covers Products sold without warnings that inadvertently entered the stream of commerce prior to the Effective Date.


2.3 Warnings

As of the Effective Date, all Products the Settling Entity 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. The Settling Entity further agrees that the warning shall 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 use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and containing one of the following statements:

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

OR

 **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer, birth defects and 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 that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for lead different than those set forth above, the Settling Entity shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement.

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, the Settling Entity agrees to pay, no later than the Effective Date, \$3,000 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, and delivered to the address in Section 3.3 herein. The Settling Entity will provide its payment, on or before the Effective Date, in two checks as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Dennis Johnson” in the amount of \$750. Counsel for Johnson shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to the OEHHA.

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, the Settling Entity expressed a desire to resolve Johnson’s 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, the Settling Entity agrees to pay, no later than the Effective Date, \$16,000, 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 Walmart, and negotiating a settlement with the Settling Entity.

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

Johnson acting on his own behalf, and *not* on behalf of the public, releases the Settling Entity, Walmart, each of their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom the Settling Entity directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, 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. The Parties further understand and agree that this Section 4.1 release shall not extend to the sales of the Products transacted through Walmart.com or in Walmart stores by third party sellers that sell Products on Walmart.com or by third party suppliers that supply Products sold in Walmart stores (besides the Settling Entity).

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, supplied or sold by the Settling Entity, Walmart, or the other Releasees prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend to the sales of the Products transacted through Walmart.com or in Walmart stores by third party sellers that sell Products on Walmart.com or by third party suppliers that supply Products sold in Walmart stores (besides the Settling Entity).

4.3 Settling Entity's Release of Johnson

The Settling Entity, 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.

4.4 California Civil Code Section 1542

It is possible that other claims not known to Johnson arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Johnson, on behalf of himself only, on one hand, and The Settling Entity, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. Johnson acknowledges that the claims released in §§ 4.1 and 4.2 above, may include unknown claims, and nevertheless waives and relinquishes any and all rights and benefits he may have under, or may be conferred on him by the provisions California Civil Code § 1542 as to any such unknown claims, to the fullest extent that he may lawfully waive such rights or benefits. California Civil Code § 1542 reads 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.

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 the Settling Entity 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 The Settling Entity

CRE8 Direct Ningbo Ltd
c/o Michael Logan
Kane Russell Coleman Logan PC
901 Main Street, Suite 5200
Dallas, Texas 75202

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
535 Ramona Street; Suite 5
Palo Alto, CA 94301

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. 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.

12. 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: May 13, 2022

Date: _____, 2022

By: 
DENNIS JOHNSON

By: _____
CRE8 Direct Ningbo Co., Ltd.

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AGREED TO:

Date: May 13, 2022

By: 
DENNIS JOHNSON

AGREED TO:

Date: 5/18, 2022

By: 
CRE8 Direct Ningbo Co., Ltd.