

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and The Shamrock Gift Company (Trading House) ULC (“Shamrock”), with Johnson and Shamrock 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 Shamrock 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 Shamrock manufactures, sells, and distributes for sale in California, glassware with exterior designs 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 Shamrock failed to provide the health hazard warning required by Proposition 65 for exposures to lead. Shamrock denies these allegations and contends that none of the Products it has sold or distributed for sale in California violate Proposition 65.

1.3 Product Description

The products covered by this Settlement Agreement are glassware with exterior designs, that are manufactured, sold, or distributed for sale in California by Shamrock including but not limited to, the *Guinness Ireland Collection Pint Glasses* (hereinafter referred to as “Products”).

1.4 Notice of Violation

On February 2, 2022, Johnson served Shamrock, The TJX Companies, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that they 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. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

Shamrock 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 Shamrock 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 Shamrock of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Shamrock. This Section shall not, however, diminish or otherwise affect Shamrock'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 Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation/Warning Commitment

As of the Effective Date, Shamrock shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Sections 2.2 and 2.3 or bear a warning pursuant to Section 2.4 and 2.5. As used in this Settlement Agreement, the term "distribute" for sale in the State of California shall mean to directly ship a Product into California for sale in California or to

sell a Product to a distributor that Shamrock actually knows will sell the Product in California. There shall be no obligation for Shamrock to reformulate or provide a warning for Products that entered the stream of commerce or were supplied by Shamrock to third parties prior to the Effective Date, which shall be permitted to be sold through without a warning, as they were included in the calculation of the civil penalties pursuant to Section 3.1 below.

2.2 Reformulation Standards

“Reformulated Products” are defined as those Products 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 Products 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).

2.3 Modification of Reformulation Standard.

In the event a court of competent jurisdiction approves a reformulation standard for lead in Products that is higher than any part of the reformulation level set forth in Section 2.2, Shamrock is permitted to use such reformulation standard provided that Shamrock provided written notice to Johnson prior to availing itself of said higher standard. In the event that the Parties disagree as to whether the new standard is


applicable to the Products, they shall meet and confer for a period of no less than 30 days prior to filing any action to enforce or interpret this Settlement Agreement.

2.4 Warnings

As of the Effective Date, all Products Shamrock 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. Shamrock 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 Products shall contain one of the following statements:

 **WARNING:** [Cancer and] 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 [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

2.5 Compliance with Warning Regulations.

In the event that the Office of Environmental Health Hazard Assessment (“OEHHA”), the California State Legislature, or the voters of the State of California, promulgate one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission relevant to the Products that are different than those set forth above, Shamrock 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.

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, Shamrock agrees to pay \$3,600

in civil penalties no later than ten (10) days after 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.

Shamrock will provide its payment via wire transfer pursuant to Section 3.3 and Johnson shall then distribute the civil penalty as follows: (1) “OEHHA” in the amount of \$2,700; and (2) “Dennis Johnson” in the amount of \$900.

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, Shamrock 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, no later than ten (10) days after the Effective Date, Shamrock agrees to pay \$18,000, via wire transfer pursuant to Section 3.3, for all fees and costs incurred investigating, bringing this matter to the attention of Shamrock’s management, and negotiating a settlement.

3.3 Wire Payment

All payments under this Settlement Agreement shall be made by wire transfer to the bank account provided by Johnson’s counsel concurrently with Johnson’s execution of this Settlement Agreement.

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 Shamrock, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, licensors, attorneys, and each entity who manufactures or supplies the specific Products to Shamrock and each entity to whom Shamrock directly or indirectly distributes or sells Products, including, but not limited to, The TJX Companies, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and each of their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, licensors and attorneys (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 Individual Release of Claims; California Civil Code Section 1542 Waiver

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 any Proposition 65 chemical, including but not limited to lead, in the Products manufactured, imported, distributed, or sold by Shamrock prior to the Effective Date. Nothing in this Section effects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Shamrock's Products. Johnson acknowledges that the claims released in Sections 4.1 through 4.2 may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. 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.

Johnson acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

4.3 Shamrock's Release of Johnson

Shamrock, 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 Deemed Compliance with Proposition 65. The Parties intend and agree that compliance by Shamrock with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from the Products.

4.5 Public Benefit. It is Shamrock's understanding that the commitments it has agreed to herein, and actions to be taken by Shamrock 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, Section 3201. As such, it is the intent of Shamrock that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect Shamrock's failure to provide a warning concerning exposure to lead from the Products it has manufactured, distributed, sold, or offered 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 Shamrock is in material compliance with this Settlement Agreement.

5. ENFORCEMENT

Prior to bringing any motion or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Product without a warning and which is alleged to not be a Reformulated Product, Johnson shall provide a written notice to Shamrock specifying, for each Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale and proof of purchase, and test reports obtained by Johnson regarding each such Product. Johnson shall take no further action regarding any alleged violation if, within thirty (30) days of receiving such notice, Shamrock affirms in writing (a) that the Product was manufactured distributed, sold or offered for sale by Shamrock before the Effective Date; (b) that Shamrock provided an appropriate warning in connection with the Product sold or offered for sale in California in compliance with Section 2.4 or 2.5; or (c) that the Product is a Reformulated Product pursuant to Section 2.2 or 2.3 as supported by a test report from an independent third party laboratory, that is dated no earlier than the one (1) year period predating Johnson's written notice, and that meets the requirements for establishing the affirmative defense contained in 27 CCR § 25900 et seq.

6. 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.

7. 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 Shamrock 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.

8. 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 Shamrock:

The Shamrock Gift Company (Trading House) ULC
c/o H. Kim Sim
Conkle, Kremer & Engel, PLC
3130 Wilshire Boulevard, Suite 500
Santa Monica, CA 90403

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.

9. 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.

10. 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).

11. MODIFICATION

Except as otherwise provided herein, this Settlement Agreement may be modified only by written agreement of the Parties.

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.

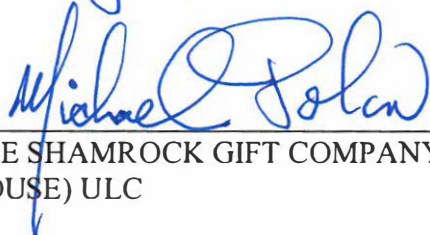
AGREED TO:

Date: June 9, 2022

By: 
DENNIS JOHNSON

AGREED TO:

Date: 8th of June 2022.

By: 
THE SHAMROCK GIFT COMPANY (TRADING
HOUSE) ULC