

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Carnival Corporation (“Carnival”) on behalf of itself and its parents, subsidiaries, affiliates, sister lines, and related entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Carnival directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, with Johnson and Carnival 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 Carnival 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 Carnival sells and/or distributes ceramic mugs with exterior designs containing lead in California. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges Carnival failed to provide the health hazard warning required by Proposition 65 for exposures to lead. Carnival denies said allegations.

### 1.3 Product Description

The products covered by this Settlement Agreement are ceramic mugs sold and/or distributed by Carnival in California, including but not limited to, *Carnival Vessels Series Mardi Gras Excel Class Ceramic Mug* UPC: 7 23945 82081 5 (hereinafter referred to as “Products”).

#### **1.4 Notice of Violation**

On March 25, 2022, Johnson served Carnival 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 Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Carnival 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 Carnival 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 Carnival of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Carnival. This Section shall not, however, diminish or otherwise affect Carnival'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 November 15, 2022.

### **2. INJUNCTIVE RELIEF**

#### **2.1 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 related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).

## **2.2 Reformulation/Warning Commitment**

As of the Effective Date, Carnival shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or bear a warning pursuant to Section 2.3.

## **2.3 Warnings**

As of the Effective Date, all Products Carnival 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. Carnival 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 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products shall contain one of the following statements:

**⚠ WARNING:** Reproductive Harm- [www.P65Warnings.ca.gov](http://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](http://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."

### **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, Carnival agrees to pay \$1,200 in civil penalties within sixty 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. Carnival will provide its payment in two checks as follows: (1) "OEHHA" in the amount of \$900; and (2) "Dennis Johnson" in the amount of \$300.

#### **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, Carnival 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, within sixty days of the Effective Date, Carnival agrees to pay \$15,550, 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 Carnival'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**

Johnson acting on his own behalf, and not on behalf of the public, releases Carnival, its parents, subsidiaries, affiliates, sister lines, and related entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Carnival directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, 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 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, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Carnival prior to the Effective Date.

### **4.3 Carnival's Release of Johnson**

Carnival, on its own behalf, and on behalf of its parents, subsidiaries, affiliates, sister lines, and related entities under common ownership, directors, officers, past and

current agents, employees, attorneys, representatives, 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. NON-DISPARAGEMENT**

Johnson, on behalf of himself, his attorneys, agents, or anyone acting on his behalf, on the one hand, and Carnival, on its own behalf, and on behalf of its parents, subsidiaries, affiliates, sister lines, and related entities under common ownership, directors, officers, past and current agents, employees, attorneys, representatives, successors, and/or assignees, on the other hand, hereby agree not to disparage the other in any manner likely to be harmful to them, their businesses, their reputation, or their business reputation. Notwithstanding the foregoing, Johnson and Carnival, as well as their attorneys, agents, or anyone acting on their behalf, may respond accurately and fully to any question, inquiry or request for information when required by legal process or in connection with a government investigation. Johnson shall report this Settlement Agreement pursuant to California Health and Safety Code section 25249.7(f), and may seek to enforce the terms of this settlement agreement, without violating this non-disparagement section.

**6. Enforcement Procedure and Right to Cure**

Prior to bringing any motion or other proceeding to enforce Proposition 65 or any term of this Settlement Agreement against Carnival and/or any Releasees 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 Carnival specifying, for each Product alleged to be in violation of Proposition 65 or this Settlement Agreement: the date of alleged violation(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 sixty (60) days of receiving such notice, Carnival affirms in writing (a) that the Product was manufactured, distributed, sold or offered for sale by Carnival or Releasees before the Effective Date; (b) that Carnival or Releasees provided an appropriate warning in connection with the Product sold or offered for sale in California in compliance with Section 2.3; or (c) that the Product is a Reformulated Product pursuant to Section 2.1 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 Section 25900 et seq.

7. **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.

8. **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 Carnival 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.

9. **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 Carnival:**

Anita M. Eilert, Esq.  
Kaye, Rose & Partners, LLP  
402 W. Broadway, Suite 1220  
San Diego, CA 92101

**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.

**10. 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.

**11. 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).

**12. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**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: \_\_\_\_\_

By: \_\_\_\_\_  
DENNIS JOHNSON

**AGREED TO:**

Date: 10/25/2022

  
By: \_\_\_\_\_  
CARNIVAL CORPORATION.



**For Carnival:**

Anita M. Eilert, Esq.  
Kaye, Rose & Partners, LLP  
402 W. Broadway, Suite 1220  
San Diego, CA 92101

**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.

**10. 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.

**11. 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).

**12. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**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: 10/25/22

By:   
DENNIS JOHNSON

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CARNIVAL CORPORATION.