

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Pearhead, Inc. (“Pearhead”), with Johnson and Pearhead 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 Pearhead 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 by Johnson

Johnson alleges that Pearhead manufactures, sells, and distributes for sale in California, ceramic mugs and glassware 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 Pearhead 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, the (i) *Kate & Milo Pet Lover’s Mug Set*; UPC: 6 98904 95217 6 and (ii) *Pearhead Fatherhood “Promoted to Dad” Beer Glass*; UPC: 6 98904 83097 9, that are manufactured, sold, purchased, imported or distributed for sale in California by Pearhead (hereinafter collectively referred to as “Products”).

1.4 Notices of Violation

On February 5, 2022, Johnson served Pearhead, Tuesday Morning, 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 ceramic mug products.

On March 25, 2022, Johnson served Pearhead, Buy Buy Baby, 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 glassware products.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

Pearhead denies the material, factual, and legal allegations contained in the Notices 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 Pearhead 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 Pearhead of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Pearhead. This Section shall not, however, diminish or otherwise affect Pearhead'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 July 18, 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 be 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, Pearhead 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 Pearhead 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. Pearhead 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 Consent Judgment, a clear and reasonable warning for the Products shall contain one of the following statements or other “safe harbor” language promulgated by OEHHA:

 **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

2.4 Public Benefit

It is Pearhead's understanding that the commitments it has agreed to herein, and actions to be taken by Pearhead under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code title 11, § 3201. As such, it is the intent of Pearhead that, to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Pearhead's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer 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 Pearhead is in material compliance with 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, Pearhead agrees to pay \$2,400 (two thousand four hundred dollars) in civil penalties no later than two 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 (\$1,800) remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount (\$600) paid to Johnson and delivered to the address in Section 3.3 herein. Pearhead shall provide the penalty via

wire transfer to Voorhees & Bailey, LLP, which will provide wire instructions on or before the Effective Date. Voorhees & Bailey shall be responsible for distributing the penalty payment to OEHHA and Johnson.

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, Pearhead 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, on or before two days after the Effective Date, Pearhead agrees to pay \$15,600 (fifteen thousand six hundred dollars) by wire to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Pearhead's management, and negotiating a settlement.

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 Pearhead, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, and each entity to whom Pearhead directly or indirectly distributed or sold the Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including but not limited to Tuesday Morning and Buy Buy Baby, Inc., franchisees, cooperative members, and licensees, and each entity from which Pearhead procured the specific Products sold by Pearhead, including but not limited to suppliers, manufacturers, distributors and importers, (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 to all Releasees 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, which Johnson heretofore had, now has or hereafter may have by reason of any act, omission, event, contract, condition, agreement, representation, misrepresentation, report, disclosure, failure to disclose, warranty or transaction occurring on or before the Effective Date, arising out of or in any way connected with the Products. 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 Pearhead's Release of Johnson

Pearhead, 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 Waiver of Section 1542 of the California Civil Code

The releases in Paragraphs 4.1 and 4.2 extend to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, related to the Products. Johnson expressly and knowingly waives all corresponding rights under Section 1542 of the California Civil Code and all rights under similar statutes in all other relevant jurisdictions. Section 1542 of the California Civil Code reads as follows:

“A General Release does not extend to claims which the Creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the Debtor.”

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 Pearhead 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 email to the email address listed below, and one of: (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 Pearhead:

Pearhead, Inc.
67 35th Street, 6th Floor B-642
Brooklyn, NY 11232
Email: tsakaguchi@pearhead.com

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
535 Ramona Street; Suite 5
Palo Alto, CA 94301
Email: troy@voorheesbailey.com

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:

Date: 7/18/22

Date: 7/21/2022

By: 
DENNIS JOHNSON

PEARHEAD, INC.
By: 
Thomas Sakaguchi, CEO