

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Gwen Studios, LLC (“Gwen Studios”). Johnson and Gwen Studios 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. Johnson alleges that Gwen Studios 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 Gwen Studios manufactures, sells, or distributes for sale in California, sewing kits 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 Gwen Studios failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

### 1.3 Product Description

The products covered by this Settlement Agreement are sewing kits including but not limited to, the *Gwen Studios 31 Piece Sewing Kit; UPC: 8 10056 34601 0*, manufactured, sold, or distributed for sale in California by Gwen Studios (hereinafter the “Products”).

### 1.4 Notice of Violation

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

### **1.5 No Admission**

Gwen Studios 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 Gwen Studios 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 Gwen Studios of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gwen Studios. This Section shall not, however, diminish or otherwise affect Gwen Studios' 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 22, 2022.

## **2. INJUNCTIVE RELIEF**

### **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, Gwen Studios shall not sell or offer the Products 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.

### **2.3 Warnings**

As of the Effective Date, all Products Gwen Studios 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. Gwen Studios 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:** Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

 **WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl) phthalate (DEHP), which are known to the State of California to cause birth defects and 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.”

### **2.3 Stream of Commerce**

The reformulation and warning requirements described in Sections 2.1 and 2.2 do not apply to any Product that is no longer in Gwen Studios possession and is already in the stream of commerce as of the Effective Date, as they have been included in the calculations of civil penalties due pursuant to Section 3.1.

### **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, Gwen Studios agrees to pay, no later than the Effective Date, \$1,000 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. Gwen Studios will provide its payment, on or before the Effective Date, 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, Gwen Studios 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, Gwen Studios agrees to pay \$15,000 for all fees and costs incurred investigating, bringing this matter to the attention of Gwen Studios’ management, and negotiating a settlement. Gwen Studios shall pay the attorney’s fees in three instalments as follows:

1. \$5,000 due on or before July 22, 2022;
2. \$5,000 due on or before August 22, 2022; and
3. \$5,000 due on or before September 22, 2002.

In the event that any of the above payments are not made on time, all payments shall immediately become due and payable, and Gwen Studios shall be liable for any costs and expenses incurred by Voorhees & Bailey, LLP in connection with acquiring said payments.

### **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 Gwen Studios, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, agents employees, attorneys, and each entity to whom Gwen Studios directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Walmart Inc., 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.

### **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, or sold by Gwen Studios prior to the Effective Date.

### **4.3 Waiver of California Civil Code Section 1542**

With respect to the foregoing waivers and releases in this Settlement Agreement, Johnson hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of 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.

### **4.4 Gwen Studios' Release of Johnson**

Gwen Studios, 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.

## **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 Gwen Studios 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 Gwen Studios:

Carey Edwards, CEO  
Gwen Studios, LLC  
1377 Broadcloth St., Suite 202  
Fort Mill, SC 29715

For Johnson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
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**

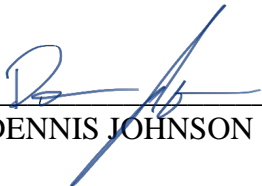
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: July 20, 2022

Date: \_\_\_\_\_, 2022

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

By: \_\_\_\_\_  
CAREY EDWARDS, CEO  
GWEN STUDIOS, LLC



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:**

Date: \_\_\_\_\_, 2022

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

**AGREED TO:**

Date: 07/20, 2022

By:   
CAREY EDWARDS, CEO  
GWEN STUDIOS, LLC