

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) on the one hand, and Disney Destinations, LLC d/b/a Disney Theme Park Merchandise and Disney Shopping, Inc. (collectively “Disney”) on the other hand. Johnson and Disney are 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 Disney 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 Disney manufactures, sells, and distributes for sale in California, alloy picture frames containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Disney 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 *Disney Picture Frame 4” x 6”*; *UPC: 4 00925 06535 2*, that are manufactured, sold, or distributed for sale in California by Disney (hereinafter referred to as “Products”).

1.4 Notice of Violation

On March 28, 2022, Johnson served Disney Enterprises, Inc. and Disney DTC Latam, 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. The UPC number for the Products was incorrectly identified in the Notice as “UPC: 4 00925 06535 2.” No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

The Parties enter into this Settlement Agreement to resolve disputed claims. Disney 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 Proposition 65 and all other laws and regulations. Nothing in this Settlement Agreement shall be construed as an admission by Disney 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 Disney of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Disney. This Section shall not, however, diminish or otherwise affect Disney’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 June 30, 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;

and (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.-

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).

2.2 Reformulation/Warning Commitment


As of the Effective Date, Disney 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 Disney 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. Disney 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:

 **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

Disney may also satisfy the warning requirements of this Settlement Agreement by complying with the safe harbor warning methods of transmission and content requirements set forth in 27 CCR §§ 25602 and 25603, as may be adopted or amended by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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, Disney agrees to pay \$5,000 in civil penalties no later than thirty (30) days after Disney receives the Deliverable, as that term is defined below. 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 OEHHA and the remaining 25% of the penalty amount paid to Johnson and delivered to the address in Section 3.3 herein. Disney will provide its payment in two checks as follows: (1) "OEHHA" in the amount of \$3,750; and (2) "Dennis Johnson" in the amount of \$1,250. Johnson's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

3.2 Attorneys' 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 for all work performed in this matter. Under these legal principles, Disney agrees to pay \$23,000, by check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to Disney's attention, and negotiating a settlement. Disney's payment obligation is subject to Disney's prior receipt of a copy of this Settlement Agreement signed by Johnson and a current and valid W-9 for Voorhees & Bailey, LLP (the "Deliverables").

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered within thirty (30) days of Disney's receipt of the Deliverables 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

In consideration of the promises and agreements contained herein and the payments to be made pursuant to Sections 3.1, 3.2 and 3.3, Johnson, on his own behalf and on behalf of his agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Products, including, without limitation, all actions and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including but not limited to investigation fees, expert fees and attorney's fees) of any nature whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent (collectively "Claims"), against Disney, and each of its parents, subsidiaries, divisions, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, and each of the entities that manufactured the Products, or any component parts thereof, including, but not limited to, downstream distributors, wholesalers, vendors, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), arising 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 Additional Release of Claims

Johnson, in his individual capacity and on behalf of his agents, representatives, attorneys, successors and/or assignees, provides a general release 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 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 Disney prior to the Effective

Date. Johnson acknowledges that he is familiar with California Civil Code section 1542, which provides:

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, on behalf of himself and his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve claims or allegations concerning the presence of lead in the Products.

4.2 Disney's Release of Johnson

Disney, 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 Disney shall have no further injunctive obligations pursuant to this Settlement Agreement.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided to any Party by the other pursuant to this Settlement Agreement shall be in writing and delivered 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 Disney:

CSC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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. ENTIRE AGREEMENT - NO ORAL MODIFICATION

This Settlement Agreement contains the entire agreement among the Parties and supersedes any and all prior understandings, representations, warranties, or agreements pertaining to the subject matter hereof. 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:

AGREED TO:

Date: June 29, 2022

Date: July 6, 2022

By: 
DENNIS JOHNSON

By: 
DISNEY DESTINATIONS, LLC d/b/a DISNEY
THEME PARK MERCHANDISE

Date: June 30, 2022

By: 
DISNEY SHOPPING, INC.