

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Ningbo Qtop Import and Export Co., Ltd. (“Ningbo”). Johnson and Ningbo 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 Ningbo 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 Ningbo manufactures, sells, and distributes for sale in California, Stockings 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 cancer and birth defects and other reproductive harm. Johnson alleges that Ningbo failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP. Ningbo denies these allegations and contends that none of the products it has sold or distributed for sale in California violates Proposition 65.

### 1.3 Product Description

The products covered by this Settlement Agreement are defined as stockings that are manufactured, sold, or distributed for sale in California by Ningbo including but not limited to the Ningbo “Waves of Fun” Holiday Stocking, UPC: 6 97153 69145 4 (hereinafter the “Products”).

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

On May 16, 2022, Johnson served Packed Party, Inc., 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. Ningbo was subsequently identified as the manufacturer/supplier of the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Ningbo 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 Ningbo 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 Ningbo of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ningbo. This Section shall not, however, diminish or otherwise affect Ningbo’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 September 30, 2022.

### **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

#### **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, Ningbo shall not distribute, sell, or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or 2.4 or contain a warning as set forth in Section 2.3 below. 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 Ningbo actually knows will sell the Product in California. There shall be no obligation for Ningbo to reformulate or provide a warning for Products that entered the stream of commerce or were supplied by Ningbo to third parties prior to the Effective Date, which shall be permitted to be sold through without a warning, as they have been included in the calculation of civil penalties due pursuant to Section 3.1. 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 Ningbo 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. Ningbo 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 and 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:** [Cancer and] Reproductive Harm-  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

 **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause [cancer and] 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."

#### **2.4 Modification of Reformulation Standard**

In the event a court of competent jurisdiction approves a reformulation standard for DEHP for the Products that is higher than the reformulation level set forth in Section 2.1, Ningbo is permitted to use such reformulation standard provided that Ningbo provide written notice to Johnson prior to availing itself of such 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.

#### **2.5 Compliance with Warning Regulations**

In the event 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, Ningbo 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, Ningbo agrees to pay \$2,000 in civil penalties no later than the Effective Date via wire transfer to Johnson pursuant to Section 3.3. 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 (\$1,500) remitted by Johnson to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount (\$500) paid to 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 his counsel, 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, Ningbo 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, Ningbo agrees to pay, no later than five (5) days after the Effective Date, \$16,000, by wire transfer pursuant to Section 3.3 for all fees and costs incurred investigating, bringing this matter to the attention of Ningbo’s management, and negotiating a settlement.

#### **3.3 Payment Address**

All payments under this Settlement Agreement shall be made by Ningbo in a single wire payment to the bank account provided by Johnson’s counsel concurrently with Johnson’s execution of this Settlement Agreement. Johnson shall be solely responsible for allocating and distributing the payments pursuant to Section 3.1 and 3.2.

#### **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 Ningbo, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, and each entity to whom Ningbo 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 including, but not limited to Packed Party, Inc. (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; 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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Ningbo prior to the Effective Date. Johnson acknowledges that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 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 Section 1542.

**4.3 Ningbo's Release of Johnson**

Ningbo, 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 Ningbo with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from the Products.

**4.5 Public Benefit.** It is Ningbo's understanding that the commitments it has agreed to herein, and actions to be taken by Ningbo under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure Section 1021.5 and Cal. Admin. Code Tit. 11, Section 3201. As such, it is the intent of Ningbo that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Ningbo's failure to provide a warning concerning exposure to DEHP 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 Ningbo is in material compliance with this Settlement Agreement.

**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 Ningbo 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 Ningbo:

Ningbo Qtop Import and Export Co., Ltd.  
c/o H. Kim Sim  
Conkle, Kremer & Engel, PLC  
3130 Wilshire Boulevard Suite 500  
Santa Monica, California 90403

For Johnson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
990 Amarillo Avenue  
Palo Alto, CA 94303

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**

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

11. **ENTIRE AGREEMENT**

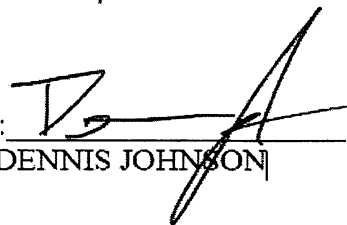
This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any 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.

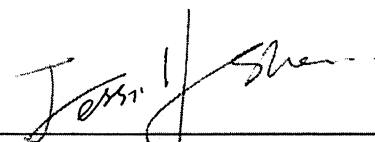
AGREED TO:

Date: 9/26, 2022

By:   
DENNIS JOHNSON

AGREED TO:

Date: SEP-27<sup>th</sup>, 2022

By:   
NINGBO QTOP IMPORT AND EXPORT CO.,  
LTD.