

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Designpac Gifts LLC (“Designpac”), with Johnson and Designpac 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 Designpac 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 Designpac manufactures, sells, and/or distributes for sale in California ceramic mugs 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 Designpac 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 ceramic mugs with exterior designs containing lead, including without limitation the “*Designpac Gifts “K” Mug*” included in a Ghirardelli Gift Set; SKU: 85-6310-845244-000999-23-1, that are manufactured, sold, or distributed for sale in California by Designpac (hereinafter referred to as “Products”).

1.4 Notice of Violation

On June 29, 2022, Johnson served Designpac, The TJX Companies, 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. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Designpac 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 Designpac 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 Designpac of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Designpac. This Section shall not, however, diminish or otherwise affect Designpac'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 December 6, 2022.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products that: (a) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (b) 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 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, Designpac 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 contain appropriate health hazard warnings pursuant to Section 2.3.

2.3 Clear and Reasonable Warnings

(a) As of the Effective Date, all Products Designpac 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. Designpac 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. A warning affixed directly to the product or product packaging, label or tag, for Products sold in California that contains one of the following statements shall constitute a clear and reasonable warning for purposes of this Settlement Agreement:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This product can expose you to chemicals including lead, 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.

(b) The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the product packaging, label or tag for the Products 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".

In the event the Office of Environmental Health Hazard Assessment ("OEHHA") promulgates 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, Designpac 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 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, Designpac agrees to pay \$1,200 in civil penalties no later than 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. Designpac will make its payment in two checks, delivered to the address in Section 3.3, as follows: (1) to "OEHHA" in the amount of \$900; and (2) to "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 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, Designpac 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 the Effective Date, Designpac agrees to pay \$14,800, 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 Designpac’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 Designpac, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Designpac directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to The TJX Companies, Inc., franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 with respect to the products through the Effective Date based on unwarned exposures to lead in the Products.

4.2 Johnson's Individual Release of Claims

Johnson acting on his own behalf, and not on behalf of the public, releases Releasees from 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 Designpac prior to the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Designpac's Products.

4.3 Designpac's Release of Johnson

Designpac, 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, in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.4 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice, and relating to the Product, will develop or be discovered. The Parties acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. The Parties acknowledge that the claims released in this Section 4 may include unknown claims, and the Parties 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.

The Parties acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

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 Designpac 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 Designpac:

Bao Vu, Esq.
Stoel Rives LLP
1 Montgomery Street,
Suite 3230
San Francisco, CA 94104

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

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: Nov 22, 2022

Date: Nov 22, 2022

By: 
DENNIS JOHNSON

By: Ken Small
DESIGNPAC GIFTS LLC

LS