

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson” or “Plaintiff”) and Unique Petz LLC (“Unique Petz”), with Johnson and Unique Petz 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 Unique Petz 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 Unique Petz manufactures, sells, and/or distributes for sale in California, ceramic pet bowls with exterior designs containing lead without first providing California consumers with a required Proposition 65 warning. Lead is listed pursuant to Proposition 65 by the State of California

1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as all ceramic pet bowls containing exterior decorations including but not limited to, the “*Isaac Mizrahi Set of Two Pet Bowls*” SKU: 4 92613 95831 9, that are manufactured, sold, or distributed for sale in California by Unique Petz (hereinafter referred to as “Products”).

1.4 Notice of Violation

On July 14, 2022, Johnson served Unique Petz, Macy’s Backstage, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipients violated Proposition 65 when they failed to warn its customers and

consumers in California to potential exposures to lead from use of the Products. To the best of the Parties' knowledge no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Unique Petz enters into this Settlement Agreement as a full and final settlement of all claims that were raised in the Notice, and solely to avoid prolonged and costly litigation. Unique Petz denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, and that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Unique Petz of any fact, finding, issue of law, or violation of law including, but not limited to, any fact or conclusion of law suggesting that it has violated Proposition 65, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Unique Petz of any or the above, such being specifically denied by Unique Petz. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Unique Petz may have in this or any other future legal proceedings. This Settlement Agreement is the product of negotiation and compromise and is accepted by Unique Petz solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement is fully executed.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products that yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

2.2 Reformulation/Warning Commitment

As of the Effective Date, Unique Petz shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are: (a) Reformulated Products pursuant to Section 2.1 above; or (b) labeled with a clear and reasonable warning pursuant to §§ 2.3 and 2.4, below. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute a compliance with Proposition 65 with respect to any alleged or actual exposures to lead from the Products.

2.3 Clear and Reasonable Warning

As of the Effective Date, and continuing thereafter, a clear and reasonable warning as set forth in this §§ 2.3 and 2.4 shall be provided for all Products that Unique Petz manufactures, imports, distributes, sells and/or offers for sale in California that do not qualify as Reformulated Products. There shall be no obligation for Unique Petz to provide a warnings hereunder for Products that were manufactured, distributed, sold, or that otherwise entered the stream of commerce prior to the Effective Date, as they have been included in the calculation of civil penalties due pursuant to Section 3.1 below. Unique Petz 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 or use. For purposes of this Settlement Agreement, a clear and reasonable warning shall contain one of the following statements (language in brackets optional):

⚠ [California Prop 65] **WARNING:** Cancer and Reproductive Harm-

www.P65Warnings.ca.gov

OR

⚠ [California Prop 65] **WARNING:** This product can expose you to chemicals including lead , which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

2.4 The warning provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Product itself, or on the Product’s packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Unique Petz sells Products via an internet website to customers located in the State of California, the warning requirements of this Section shall be satisfied if the foregoing warning or clearly marked hyperlink to the warning using the word(s) “[California Prop 65] **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

2.5 Compliance with Warning Regulations. The Parties agree that Unique Petz shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.2, 2.3 and 2.4 of this Settlement Agreement or by complying with applicable “Safe Harbor” warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

2.6 Public Benefit. It is Unique Petz’s understanding that the commitments it has agreed to herein, and actions to be taken by Unique Petz 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 tit. 11, § 3201. As such, it is the intent of Unique Petz 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 Unique Petz’s alleged failure to provide a warning concerning actual or alleged exposure to DEHP prior to the use of the Products it has manufactured, distributed, sold, or offered for sale in the State of 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 Unique Petz 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, Unique Petz agrees to pay \$1,000 in civil penalties within ten days of 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. Unique Petz will make its payment in two checks,

delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$750; and (2) to “Dennis Johnson” in the amount of \$250. The settlement checks above shall be delivered to the Plaintiff’s counsel specified in Section 3.3 below. Plaintiff shall be solely responsible for transmitting the settlement check made out to OEHHA.

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 attorney’s fees and expenses to be reimbursed them, thereby leaving the issue to be resolved after the other material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Unique Petz 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, Unique Petz agrees to reimburse Johnson’s counsel the total amount of \$11,500 for any and all of Johnson’s attorney’s fees and expenses, including but not limited to all investigative, expert, and testing expenses incurred as a result of investigating and bringing this matter to Unique Petz’s attention, and negotiating this settlement in the public interest. Within 10 days of the Effective date, Unique Petz shall issue a check payable to “Voorhees & Bailey, LLP” in the amount of \$11,500 for delivery to the address identified in § 3.3 below.

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 Unique Petz, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Unique Petz directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to Macy's Backstage, Inc., franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Unique Petz.

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, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Unique Petz prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Unique Petz. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Unique Petz's Products.

4.3 Unique Petz's Release of Johnson

Unique Petz, 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 California Civil Code § 1542.

It is possible that other claims not known to the Parties, including those arising out of the facts alleged in the Notice and relating to products manufactured by or for Unique Petz and its affiliates through the Effective Date will develop or be discovered. Johnson, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees only, on one hand, and Unique Petz and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims against the Releasees for products manufactured by or for Unique Petz and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1, 4.2, and 4.3 above may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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 and Unique Petz expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions

of Civil Code § 1542, as well as under any other state or federal statute common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters.

4.5 Deemed Compliance with Proposition 65

The Parties agree that compliance by Unique Petz with this Settlement Agreement constitutes compliance with Proposition 65, with respect to exposure to lead from use of 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 Unique Petz may provide written notice to Johnson of any asserted change in the law and shall have no further 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 Unique Petz:
Sammy Ayal or Current President/CEO
Unique Petz LLC
14C 53rd Street
Brooklyn, NY 11232

For Johnson:
Dennis Johnson
Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

Unique Petz, LLC.
10 West 33rd St - Suite 220
N.Y., NY 10001

With Copy to:

J. Robert Maxwell
Rogers Joseph O'Donnell, PC
311 California St., 10th Floor
San Francisco, CA, 94104

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. ENFORCEMENT

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. Plaintiff agrees that if Unique Petz produces evidence that the product was manufactured prior to the effective date of this settlement agreement and therefore subject to this settlement agreement's release, or produces a passing test result for alleged lead in the Products within a year of the Product's date of manufacture, that otherwise complies with 27 CCR § 25900, Unique Petz shall have no liability for violating this

settlement agreement or Proposition 65 with respect to the Products so long as the Parties can agree on appropriate corrective action to be taken by Unique Petz. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement. The prevailing party on any motion to enforce this settlement agreement shall be entitled to its reasonable attorney's fees and costs according to proof.

12. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

13. 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.

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14. 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: 2/17/23

Date: _____

By:  _____
DENNIS JOHNSON

By: _____
UNIQUE PETZ, INC.

14. **AUTHORIZATION**

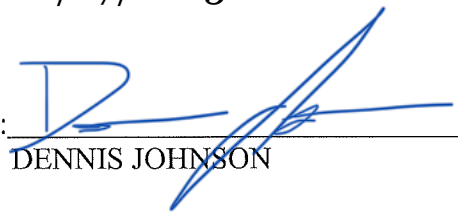
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: **2/27/2023**

Date: 2/23/23

By: 
DENNIS JOHNSON

By: 
UNIQUE PETZ LLC.