

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”), Myers Industries, Inc. (“Myers Industries”) and Scepter Manufacturing, LLC (“Scepter”) (collectively with Myers Industries (“Myers”), with Johnson and Myers 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 Myers Industries 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 Myers manufactures, sells, and/or distributes for sale in California, hose menders containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Myers 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 *Scepter Hose Mender, UPC: 0 63923 07198 4*, that are manufactured, sold, or distributed for sale in California by Myers (hereinafter referred to as “Products”).

1.4 Notice of Violation

On March 10, 2023, Johnson served Myers Industries, Scepter Manufacturing, LLC, Walmart Inc. (“Walmart”) and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that the notice recipients violated

Proposition 65 by failing to warn 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

Myers 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 Myers 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 Myers of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Myers. This Section shall not, however, diminish or otherwise affect Myers' 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 that Myers receives Johnson's executed copy of this Agreement.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

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 accessible component 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.

2.2 Reformulation/Warning Commitment


As of the Effective Date, Myers 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 below. The warning requirement set forth in section 2.3 below shall not apply to any Reformulated Product. 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 Lead from the Products.

2.3 Product Warnings

As of the Effective Date, all Products Myers 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. Myers 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. There shall be no obligation for Myers to provide an exposure warning for Products that 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. For purposes of this 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 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 are known to the State of California to cause birth defects and other reproductive harm. For more information go to 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 Internet Warnings

In the event Myers sells Products via its own proprietary internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning 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; (c) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Products in the Stream of Commerce

Myers and its downstream distributors and downstream retailers shall have no obligation to label Products that 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. With respect to existing Products, meaning those that are currently in the channels of distribution, with distributors and/or retailers, Myers and its downstream distributors and retailers (including, but not limited to Walmart) may continue to sell-through those items. However, as of the Effective Date, no new Products may be distributed or sold in California unless they are reformulated pursuant to Sections 2.1 and 2.2 or contain the warnings set forth in Sections 2.3 and 2.4.

2.6 Compliance with Warning Regulations. The Parties agree that Myers shall be deemed to be in compliance with this Settlement Agreement by either adhering to Sections 2.3 and 2.4 of this Settlement Agreement or, in the event that State of California's Office of Environmental Health Hazard Assessment ("OEHHA") promulgated additional safe harbor language or methods of transmission, by complying with such safe harbor language or methods of transmission.

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, Myers agrees to pay \$3,400 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. Myers shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) "OEHHA" in the amount of \$2,550; and (2) "Dennis Johnson" in the amount of \$850. Johnson's counsel shall be responsible for forwarding the OEHHA portion of the civil penalty to OEHHA. Payment of the referenced amounts shall be made within ten (10) business days of the Effective Date.

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, Myers 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, within ten (10) business days of the Effective Date, Myers agrees to pay \$18,000, 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 Myers’ management, and negotiating a settlement. Payment of the referenced amount shall be made within ten (10) days of the Effective Date.

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 Release of Myers and Downstream Customers and Entities.

This Settlement Agreement is a full, final and binding resolution between Johnson, acting on his own behalf, and Myers, of any violation of Proposition 65 that was or could have been asserted by Johnson or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasers hereby release any such claims against Myers and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Myers directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Walmart, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on exposure to lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to § 3 above, Johnson, on behalf of himself, his past and

current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to lead from use of the Products.

Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Myers' Products.

4.2 Myers' Release of Johnson

Myers, 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.

4.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Johnson on behalf of himself only, on one hand, and Myers, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1 and 4.2, 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 Myers each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Myers with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

4.5. Public Benefit. It is Myers' understanding that the commitments it has agreed to herein, and actions to be taken by Myers under this Settlement Agreement, would 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 Myers that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Myers failure to provide a warning concerning exposure to lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in 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 Myers 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 Myers 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 Myers:

Adam S. Hamburg
Vorys, Sater, Seymour and Pease LLP
4675 MacArthur Court, Suite 700
Newport Beach, California 92660
Email: ashamburg@vorys.com

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
535 Ramona St.; 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. 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.

12. 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.

AGREED TO:

Date: 5/4/23

By: 
Dennis Johnson

AGREED TO:

Date: _____

By: _____
Myers Industries, Inc.

AGREED TO:

Date: _____

By: _____
Scepter Manufacturing, LLC

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.

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AGREED TO:

Date: _____

By: _____
Dennis Johnson


AGREED TO:

Date: 5/5/2023

By: 
Myers Industries, Inc.

AGREED TO:

Date: 5/5/2023

By: 
Scepter Manufacturing, LLC