

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Dan Dee International, LLC (“Dan Dee”). Together, Espinoza and Dan Dee are collectively referred to as the “Parties.” Espinoza alleges that he is an individual who resides 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 contained in consumer products. Espinoza further alleges that Dan Dee is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Espinoza alleges that Dan Dee has exposed individuals to lead from its sales of (a) Easter mugs, UPC # 1 95511 05179 2, and (b) CVS mug gift sets, UPC # 050428473726, without first providing California users and consumers of the Products with a clear and reasonable consumer exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are (a) Easter mugs, UPC # 1 95511 05179 2, and (b) CVS mug gift sets, UPC # 050428473726, (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Dan Dee.

1.4 Notices of Violation. On April 14, 2023, Espinoza served Walmart Inc. (“Walmart”), Dan Dee, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “April Notice”). The April Notice provided Dan Dee and such others, including public enforcers, with notice that alleged that Dan Dee was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Easter mugs, UPC # 1 95511 05179 2, will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the April Notice.

On August 4, 2023, Espinoza served CVS Pharmacy, Inc., CVS Health Corporation (collectively, "CVS"), Dan Dee, and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.6, et seq." (the "August Notice"). The August Notice provided Dan Dee and such others, including public enforcers, with notice that alleged that Dan Dee was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the CVS mug gift sets, UPC # 050428473726, will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the August Notice.

The April Notice and the August Notice are collectively referred to herein, as the "Notices."

1.5 No Admission. Dan Dee denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all products that are or have been 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 Dan Dee of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Dan Dee of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Dan Dee. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Dan Dee maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS


2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Dan Dee directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement

Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that produce a wipe test result no higher than 1 microgram (μg) of lead per 100 square centimeter area ($1.0 \mu\text{g}/100 \text{ cm}^2$) when analyzed pursuant to NIOSH method no. 9100 from the colored artwork, designs and/or marking on the exterior surface of the Products.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Dan Dee manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Dan Dee to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

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

(b) **Alternative Warning:** Dan Dee may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

2.4 A **Warning** or **Alternative 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** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such conspicuousness,

as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative 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 Products and shall be at least the same size as those other safety warnings.

In addition to affixing the **Warning** or **Alternative Warning** to the Products' packaging or labeling, Dan Dee shall post the **Warning** or **Alternative Warning** on any Internet sales website owned, operated or controlled by Dan Dee on which it offers Products for sale to consumers in California by including either the **Warning** or **Alternative Warning** or a clearly marked hyperlink using the word "WARNING" on the product display page, or by otherwise prominently displaying the **Warning** or **Alternative Warning** to the purchaser prior to completing the purchase in accordance with Title 27, California Code of Regulations, Section 25602(b). For Products that Dan Dee manufactures, imports, distributes, or sells on or after the Effective Date to a third-party authorized retailer ("Third-Party Sellers") that may sell the Product over the Internet, Dan Dee shall provide such Third-Party Seller with written notice, in accordance with Title 27, California Code of Regulations, Section 25600.2, that includes the **Warning** or **Alternative Warning Language** for Products sold on the Internet. The release and discharge in Section 5 shall not extend to any Third-Party Seller of the Products if such Third-Party Seller has been duly notified, in writing, by Dan Dee that a warning is required for Internet sales of the Products, and such Third-Party seller fails to provide the required warning for Internet sales occurring more than 90 days after the Effective Date .

2.5 Compliance with Warning Regulations. The Parties agree that Dan Dee shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Products and the exposure at issue after the Effective Date. If "consumer information," as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from

time to time, is provided in a foreign language, Dan Dee shall provide the **Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

3. MONETARY SETTLEMENT TERMS

3.1 Penalties Pursuant To Health & Safety Code § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Dan Dee shall pay \$2,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Espinoza. Espinoza's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Agreement to OEHHA.

3.2 Reimbursement of Fees And Costs

The Parties acknowledge that Espinoza and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Espinoza and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Dan Dee agrees to pay \$23,000.00 for fees and costs incurred as a result of investigating and bringing this matter to the attention of Dan Dee, and negotiating a settlement in the public interest.

3.3 Payment Procedures.

Within ten (10) days of the Effective Date, Dan Dee shall make a total payment of \$25,000 for the civil penalties and attorneys' fees and costs set forth in Section 3.1 and 3.2 above by wire transfer to Espinoza's counsel, Brodsky Smith, in accordance with the wire instruction to be provided by Brodsky Smith, on or before the Effective Date.

(a) **Tax Documentation.** Dan Dee agrees to provide a completed IRS 1099 for the portion of its payment attributable to, and Espinoza agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Gabriel Espinoza” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky Smith” (EIN: 23-2971061) whose address is: Brodsky Smith, Two Bala Plaza, Suite 805, Bala Cynwyd, PA 19004

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814

3.4 ACH/WIRE Instructions. Dan Dee shall remit the Settlement Payment by Wire or ACH transfer. At the time of transfer, Dan Dee shall email Evan Smith at esmith@brodskysmith.com to inform him of the wire transfer and the method of transfer, (i.e. Wire or ACH transfer). ACH and Wire Transfer instructions are as follows:

(a) ACH Transfer Instructions:

BANK OF AMERICA

Brodsky Smith, LLP Trust Account
Account Number: 325179952900
Routing Number: 121000358

(b) Wire Transfer Instructions:

BANK OF AMERICA

Brodsky Smith, LLP Trust Account
Account Number: 325179952900
Routing Number: 026009593

4. RELEASE OF ALL CLAIMS

4.1 Release of Dan Dee and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Dan Dee, of any violation of Proposition 65 that was or could have been asserted by Espinoza 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 Dan Dee and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Dan Dee directly or indirectly distributes or sells the Products,

including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to CVS, Walmart, Wal-Mart Stores Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., Wal-Mart.com USA, LLC, and each of their respective direct or indirect corporate parents, subsidiaries, affiliates, as well as their past, present and future owners, shareholders, directors, officers, employees, attorneys, insurers, representatives, franchisees, cooperative members, successors, assigns 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 and 4 above, Espinoza, 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.

4.2 Dan Dee's Release of Espinoza. Dan Dee, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Espinoza and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to lead from 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 Notices and relating to the Products will develop or be discovered. Espinoza on behalf of himself only, on one hand, and Dan Dee, 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Dan Dee 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 Dan Dee with this Settlement Agreement constitutes compliance with Proposition 65 by Dan Dee with respect to exposure to lead from use of the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Dan Dee shall provide written notice to Espinoza 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, a Product is so affected.

7. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Dan Dee:

Aaron Belzer
Seyfarth Shaw LLP
2029 Century Part East, Ste. 3500
Los Angeles, CA 90067

For Espinoza:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .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)**

Espinoza agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by a 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 and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

Date: 11/3/23

By: 
Gabriel Espinoza


AGREED TO:

Date: 10/30/2023

By: 
Dan Dee International, LLC


APPROVED AS TO FORM AND CONTENT:

Dated: October 31, 2023

By: 
Aaron Belzer
SEYFARTH SHAW LLP

Attorneys for DAN DEE
INTERNATIONAL, INC.

Dated: 11/3/23

By: 
Evan J. Smith
BRODSKY SMITH,

Attorneys for GABRIEL ESPINOZA