

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Grover Musical Products, Inc. (“Grover”). Johnson and Grover 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 Grover 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 Grover manufactures, sells, and distributes for sale in California, recorder pouches 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 birth defects and other reproductive harm. Johnson alleges that Grover failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

### 1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, recorder pouches with PVC components containing the phthalate chemical DEHP and includes, but is not limited to, the “*Candy Apples*” by *Tudor Blue Recorder in Pouch*, UPC: 0 82562 07600 6, that are manufactured, sold, or distributed for sale in California by Grover (hereinafter the “Products”).

### 1.4 Notice of Violation

On October 19, 2023, Johnson served Grover, Bird in Hand, 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.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Grover 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 Grover 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 Grover of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Grover. This Section shall not, however, diminish or otherwise affect Grover'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 January 30, 2024.

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

### **2.1 Reformulation/Warning Commitment**

As of the Effective Date, Grover 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 2.2. The parties acknowledge that Grover's commitment to reformulate the Products, in lieu of providing a clear and reasonable warning, is not the exclusive method of complying with Proposition 65. Grover's commitment to reformulate the product, such that no warning is required, was a material factor considered in assessing the civil penalty pursuant to Section 3.1 below. 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.

## **2.2 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.

## **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, Grover agrees to pay \$800 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. Grover shall make its payment in two checks, delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$600; and (2) to “Dennis Johnson” in the amount of \$200.

### **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, Grover 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, Grover agrees to pay, no later than the Effective Date, \$13,300, 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 Grover’s management, and negotiating a settlement.

### **3.3 Payment Address and Tax Documentation**

All checks under this Settlement Agreement shall be delivered to the following address and shall, thereafter, be delivered by Johnson to the respective payees:

Voorhees & Bailey, LLP  
839 Emerson Street  
Palo Alto, CA 94301

Johnson shall provide IRS W-9 forms for: (i) “Office of Environmental Health Hazard Assessment”; (ii) Dennis Johnson; and (iii) Voorhees & Bailey, LLP. Grover shall issue complete IRS 1099 forms to each payee for their respective payment amount.

## **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 Grover, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Grover directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Bird in Hand, franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 for all Products manufactured, distributed or sold by Grover through the Effective Date relating to unwarned exposures to DEHP in the Products in California. 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 Grover.

#### **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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Grover 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 Grover.

#### **4.3 Grover's Release of Johnson**

Grover, 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.

#### **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 Grover 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 Grover:**

Grover Musical Products, Inc.  
c/o Black River Corporate Services, Inc.  
35765 Chester Road  
Avon, OH 44011

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
839 Emerson Street  
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. 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:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 1/31/24

By: \_\_\_\_\_  
DENNIS JOHNSON

By:  \_\_\_\_\_  
GROVER MUSICAL PRODUCTS, INC.

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**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:**

**AGREED TO:**

Date: 01/26/2024

Date: \_\_\_\_\_

By:   
\_\_\_\_\_ DENNIS JOHNSON

By: \_\_\_\_\_  
GROVER MUSICAL PRODUCTS, INC.