

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Creative CO-OP, Inc. (“Creative CO-OP”). Together, Espinoza and Creative CO-OP are collectively referred to as the “Parties.” Espinoza is an individual who resides in the State of California, and 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 alleges that Creative CO-OP 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 both Creative CO-OP, Inc on the one hand and Barnes & Nobles, Inc. and Barnes & Nobles Booksellers, Inc. (collectively and together with its subsidiaries and affiliates, “B&N”) on the other hand, has exposed individuals to lead from its sales of Paula Joerling holiday house mugs, UPC # 191009562085 without first providing users and consumers of the product with a clear and reasonable health hazard 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 Paula Joerling holiday house mugs (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Creative CO-OP, Inc. and B&N.

1.4 Notice of Violation. On February 29, 2024, Espinoza served Barnes & Noble, Inc., Barnes & Noble Booksellers, Inc., Creative CO-OP, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Creative CO-OP and such others, including public enforcers, with notice that alleged that Creative CO-OP was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Each of Creative CO-OP and B&N denies the material factual and legal allegations contained in the Notice 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, including, without limitation, any Products sold at retail by B&N. Nothing in this Settlement Agreement shall be construed as an admission by Creative CO-OP or B&N 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 Creative CO-OP or B&N of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Creative CO-OP and B&N. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties of Creative Co-Op and B&N under this Settlement Agreement. Notwithstanding the allegations in the Notice, each of Creative CO-OP and B&N 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

2.1 Reformulation of Products. Commencing within sixty (60) days after the Effective Date, and continuing thereafter, Products that Creative CO-OP directly manufactures, imports, distributes, sells, or offers for sale in California shall be reformulated Products pursuant to § 2.2, below.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that produce a wipe test result no higher than 1 microgram (μg) of lead when analyzed pursuant to NIOSH method no. 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the Parties may use equivalent methodologies allowable under California state law.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all of the claims referred to in this Settlement Agreement, Creative CO-OP 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. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

3.1 Civil Penalty. Within fifteen (15) business days of the Effective Date, Creative CO-OP shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b) "Gabriel Espinoza" in the amount of \$500.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Espinoza, pursuant to § 3.1 shall be delivered to the following payment address:

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

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** Creative CO-OP agrees to provide Espinoza's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments

to Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Creative CO-OP agrees to provide a completed IRS 1099 for its payments 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) at the address provided in Section 3.2(a)(i); and

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

4. 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, Creative CO-OP shall reimburse Espinoza’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Creative CO-OP, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Creative CO-OP shall issue a check payable to “Brodsky Smith” in the amount of \$20,500.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Creative CO-OP and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Creative CO-OP, 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 Creative CO-OP and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Creative CO-OP directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Barnes & Noble, Inc. and Barnes & Noble Booksellers, Inc., its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees and each of their respective directors, officers, agents, employees and attorneys (collectively, the “Releasees”), from all claims for violations of Proposition 65 within 60 days after 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, penalties, fines 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.

5.2 Creative CO-OP’s Release of Espinoza. Creative CO-OP, 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.

5.3 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. Espinoza on behalf of himself only, on one hand, and Creative CO-OP, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 60 days after the Effective Date, including all rights of action therefor, including all rights of action therefor, including, without limitation, any claims by Esponiza and his attorneys and other representatives, against B&N for alleged exposures to lead from use of the Products. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, 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 Creative CO-OP each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Creative CO-OP with this Settlement Agreement constitutes compliance by Creative CO-OP with Proposition 65 with respect to exposure to lead from use of the Products.

5.5. Public Benefit. It is Creative CO-OP's understanding that the commitments it has agreed to herein, and actions to be taken by Creative CO-OP 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 Creative CO-OP that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Creative CO-OP's 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 Creative CO-OP is in material compliance with this Settlement Agreement.

6. 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.

7. 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, Creative CO-OP 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.

8. 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 Creative CO-OP:

R. Dewayne Young
Creative CO-OP, Inc.
6000 Freeport Ave., Ste. 101
Memphis, TN 38141

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.

9. 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.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

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. The Parties agree that B&N shall be a third party beneficiary of this Agreement.

13. 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.

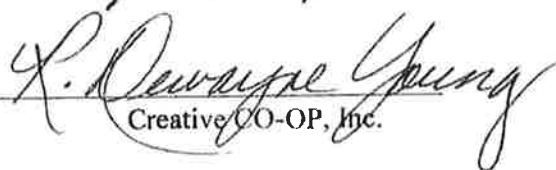
AGREED TO:

AGREED TO:

Date: 11 | 6 | 24

Date: 10/31/24

By: 
Gabriel Espinoza

By: 
Creative CO-OP, Inc.