

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and China Manufacturing Solutions Ltd. (“China Mfg.”), with Johnson and China Mfg. each individually referred to as a “Party” and collectively as the “Parties.” Johnson is an individual residing in the State of California, and it is his position that he 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 China Mfg. 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 China Mfg. manufactures, sells, and/or distributes for sale in California, certain ceramic food dishes with lids and platters as described below with surface decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that China Mfg. 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: (i) Ceramic Food Dishes/sets with Lids with exterior dragon designs including, but not limited to, *Dragon Dish With Lid; SKU: 8003-0399-864748-FLS7* that are manufactured, sold, or distributed for sale in California by China Mfg.; and (ii) Ceramic Platters with Dragon Decorations including, but not limited to, *Dragon Platter; SKU: 8003-0399864750-FLS8*, that are manufactured, sold, or distributed for sale in California by China Mfg. (collectively referred to hereinafter as the “Products”).

1.4 Notices of Violation

On May 10, 2024, Johnson served The TJX Companies, Inc., and the requisite public enforcement agencies with 60-Day Notices of Violation, 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. China Mfg. was subsequently identified as the manufacturer/supplier of the Products.

On July 24, 2024, Johnson served China Mfg., and the requisite public enforcement agencies with 60-Day Notices of Violation, 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 Notices.

1.5 No Admission

China Mfg. denies the material, factual, and legal allegations contained in the Notices 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 China Mfg. 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 China Mfg. of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by China Mfg. This Section shall not, however, diminish or otherwise affect China Mfg.'s obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, China Manufacturing Solutions 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 October 16, 2024.

2. INJUNCTIVE RELIEF

2.1 Reformulation/Warning Commitment

Commencing on the Effective Date, China Mfg. shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless: (i) the Products are Reformulated Products pursuant to Section 2.2; or (ii) China Mfg. provides a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulated Products.


“Reformulated Products” are defined as those Products that: (a) contain no more than 90 parts per million (“ppm”) lead in any decoration, colored artwork, designs and/or marking on the surface 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. or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must relate only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).


2.3 Warnings.

To the extent that Products manufactured, imported, or otherwise acquired by China Mfg. after the Effective Date do not meet the standard for Reformulated Products, commencing on the Effective Date, a clear and reasonable warning shall be provided, as set forth herein.

2.3.1 Warning Content. For purposes of this Settlement Agreement, the parties agree that a clear and reasonable warning shall consist of either of the following warning statements:

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

OR

 **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

The above warning statements 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:**”

2.3.2 Method of Transmission

Product Labeling. A 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 Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the 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.

Internet. In addition to affixing the warning to the Product’s packaging or labeling, the warning shall be posted on websites where China Mfg. offers Products for

sale to consumers in California. The requirements of this Section shall be satisfied if the warning, or a clearly marked hyperlink using the word “WARNING,” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, China Mfg. shall (a) post the warning on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the warning on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

Languages. Where a label or tag used to provide a warning statement includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

2.3.3 Safe Harbor Warnings. The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that China Mfg. may utilize “safe harbor” warning language and methods promulgated by the Office of Environmental Health Hazard Assessment and contained in 27 CCR §§ 25602-25603, applicable to lead and the Products, in effect on or after the Effective Date, without being deemed in breach of 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, China Mfg. agrees to pay \$1,200 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. China Mfg. shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$900; and (2) “Dennis Johnson” in the amount of \$300.

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, China Mfg. 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, China Mfg. agrees to pay, no later than the Effective Date, \$14,800, 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 China Mfg.’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

Within five (5) days of the Effective Date, Johnson shall provide IRS W-9 forms for: (i) “Office of Environmental Health Hazard Assessment”, (ii) Dennis Johnson, and (iii) Voorhees & Bailey, LLP. China Mfg. 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 China Mfg., its parents, subsidiaries and related entities, affiliates, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each person and/or entity to whom China Mfg. directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to, The TJX Companies, Inc., its subsidiaries and related entities, affiliates, parent(s), franchisees, cooperative members, importers, 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.

4.2 Johnson's Individual Release of Claims

Release of China Mfg. and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Johnson, acting on his own behalf, and China MFG., 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 China Mfg. and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom China Mfg. directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to TJX Companies Inc., its subsidiaries, and related entities, affiliates, parents, franchisees, cooperative members importers and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date that were alleged and/or could have been alleged in the Notice.

4.3 China Mfg.'s Release of Johnson

China Mfg., 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 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 China Mfg., 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 §§ 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.

Johnson and China Mfg. each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.5 Deemed Compliance with Proposition 65.

The Parties agree that compliance by China Mfg. with this Settlement Agreement constitutes China Mfg.'s compliance with Proposition 65 with respect to exposure to lead from use of the Products.

4.6. Public Benefit.

It is China Mfg.'s understanding that the commitments it has agreed to herein, and actions to be taken by China Mfg. 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 China Mfg. that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to China Mfg.'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 China Mfg. 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 China Mfg. 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 China Mfg.:

Christopher J. Bischoff
Bischoff & Associates, Ltd.
1650 Payne Street
Evanston, IL 60201
Ph: 847-491-9800
Cell: 312-498-5353
Email: chris@trademarksearch.com

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: 10/17/2024

Date: 10/16/2024

By: 
DENNIS JOHNSON

By: Bob WEN
CHINA MFG. SOLUTION LTD.