

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Lord’s Rocks, LLC (“Lord’s Rocks”), with Johnson and Lord’s Rocks 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 Lord’s Rocks 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 Lord’s Rocks manufactures, sells, and/or distributes for sale in California, glassware with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Lord’s Rocks 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 Anheuser-Busch themed glassware with exterior designs containing lead including, but not limited to: (i) *Budweiser Clydesdales Glass; SKU: 400263704637*; (2) *Busch Light Pint Glass; SKU: 1259 048041320 00600 52*; and (3) *Budweiser Pint Glass; SKU: 5995-9520-435281-FLS13; 1259-027970177-01699-23-1*, that are manufactured, sold, or distributed for sale in California by Lord’s Rocks (collectively hereinafter referred to as “Products”).

1.4 Notices of Violation

On April 26, 2024, Johnson served Anheuser-Busch, LLC, Ross Stores, Inc., and the requisite public enforcement agencies with a 60-Day Notice 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 Clydesdale Glass.

On May 10, 2024, Johnson served Anheuser-Busch, LLC, The TJX Companies, Inc., and the requisite public enforcement agencies with a 60-Day Notice 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 Busch Light Pint Glass. Lord's Rocks was subsequently identified as the supplier of the Products.

On May 28, 2024, Johnson served Lord's Rocks and the requisite public enforcement agencies with a 60-Day Notice 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

Lord's Rocks 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 Lord's Rocks 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 Lord's Rocks of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied

by Lord's Rocks. This Section shall not, however, diminish or otherwise affect Lord's Rocks' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 31, 2024.

2. INJUNCTIVE RELIEF

2.1 Reformulation Commitment

As of the Effective Date, Lord's Rocks 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) Lord's Rocks provides a clear and reasonable warning pursuant to Section 2.3. The Parties agree and intend that Lord's Rocks' compliance with the terms of this Settlement Agreement shall constitute its compliance with Proposition 65 with respect to exposures to lead from the Products.

2.2 Reformulation Standards

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any "Exterior Decorations" defined as colored artwork, designs and/or marking on the exterior 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; (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations located in the upper 20 millimeters of a Product, i.e., the "Lip-and-Rim" area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in 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., glass substrate).

2.3 Warnings.

To the extent that Products imported after the Effective Date do not meet the standard for Reformulated Products, 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:** 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 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. Lord’s Rocks shall affix one of the foregoing warning statements to the packaging, labeling or directly to a specific Product. The warning statement shall be affixed to the Product, or the Products’ packaging or labeling, and placed 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. Where the short-form warning statement is provided on

the label, the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product label. In no case shall the short-form warning statement appear in a type size smaller than six-point type.

Internet. In addition to the product labeling, where Lord's Rocks offers Products to California customers via its own proprietary internet website or any third-party website over which Lord's Rocks has control, Lord's Rocks shall provide a clear and reasonable internet web page warning to customers located in California. The warning statement shall appear either: (i) on the same web page on which a Product is displayed and/or described; (ii) on the same page as the price for the Product; or (iii) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, the warning statement shall be provided using a clearly marked hyperlink using the word "WARNING" on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If the product label warning is provided using the short-form warning statement, the warning provided on the website may use the same content. A warning is not prominently displayed if the purchaser must search for it in the general content of the website. Where Lord's Rocks does not have control over the content of third-party internet sellers, Lord's Rocks shall provide such sellers with written notice, in accordance with Title 27, California Code of Regulation, Section 25600.2, of their warning obligations. Third-party internet sellers who receive notice pursuant to Section 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section, shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit or protection afforded hereunder.

Catalog. In addition to the product labeling, if Lord's Rocks sells Products via its own proprietary catalog or any third-party catalogue over which Lord's Rocks has control, to customers located in California, one of the foregoing warnings statements must also be provided in the catalog in a manner that clearly associates it with

the *specific* Product being purchased. The catalog warning statement shall be placed 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. If a short-form warning is being provided on the label, the warning provided in the catalog may use the same content. Where Lord's Rocks does not have control over the content of third-party catalog sellers, Lord's Rocks shall provide such sellers with written notice, in accordance with Title 27, California Code of Regulation, Section 25600.2, of their warning obligations. Third-party catalog sellers who receive notice pursuant to Section 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section, shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit or protection afforded hereunder.

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 Lord's Rocks 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 the 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, Lord's Rocks agrees to pay \$3,000 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. Lord’s Rocks shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Dennis Johnson” in the amount of \$750.

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, Lord’s Rocks 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, Lord’s Rocks agrees to pay a total of \$25,000 to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of Lord’s Rocks’ management, and negotiating a settlement. Lord’s Rocks shall make its payments under this section in the amount of \$17,500 to no later than the Effective Date and an additional \$7,500 no later than August 30, 2024.

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. Lord’s

Rocks 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 her own behalf, and not on behalf of the public, releases Lord's Rocks its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Lord's Rocks directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Ross Stores, Inc. and The TJX Companies, Inc. (together with each of their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees), franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to lead in the Products. 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 Lord's Rocks.

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 lead in the Products manufactured, imported, distributed, or sold by Lord's Rocks 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 Lord's Rocks.

4.3 Lord's Rocks' Release of Johnson

Lord's Rocks, 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 Lord's Rocks 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 Lord's Rocks:

David C. Faham
Faham Law LLC
294 Maplewood Ave
Oakhurst, NJ 07755

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: 8/1/24

Date: 7/31/2024

By: 
DENNIS JOHNSON

By: 
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LORD'S ROCKS, LLC