

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Bio World Merchandising, Inc. (“Bioworld”). Johnson and Bioworld shall each be referred to as a “Party” and collectively as the “Parties.” Johnson is an individual residing in the State of California who allegedly 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 Bioworld 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 Bioworld manufactures, sells, and distributes for sale in California, salt & pepper shakers with PVC components containing the phthalate chemical di-n-butyl phthalate (“DBP”). DBP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Bioworld failed to provide the health hazard warning required by Proposition 65 for exposures to DBP.

1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the Bioworld salt and pepper shakers with PVC components including, without limitation, *Star Wars R2-D2 and C-3PO Salt and Pepper Shakers; UPC: 0 13244 43771 8*, manufactured, sold, or distributed for sale in California by Bioworld (hereinafter the “Products”).

1.4 Notice of Violation

On or about October 10, 2024, Johnson served Bioworld 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 DBP from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Bioworld 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 Bioworld 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 Bioworld of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bioworld. This Section shall not, however, diminish or otherwise affect Bioworld’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 the date this Settlement Agreement is last executed by the Parties and both Parties have notice of such execution.

2. INJUNCTIVE RELIEF

2.1 Reformulation/Warning Commitment

Commencing within sixty (60) days after the Effective Date, Bioworld 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) Bioworld provides a clear and reasonable warning pursuant to Section 2.3. The

Parties agree and intend that Bioworld's compliance with the terms of this Settlement Agreement shall constitute its compliance with Proposition 65 with respect to exposures to DBP from the Products. There shall be no obligation for Bioworld to provide an exposure warning for Products that were manufactured, entered the stream of commerce, or are in Bioworld's inventory prior to the Effective Date through sixty (60) days after the Effective Date, as they were included in the calculation of civil penalties.

2.2 Reformulation Standards

"Reformulated Products" are defined as those Products containing DBP 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 DBP content in a solid substance.

2.3 Warnings.

To the extent that Products manufactured, imported, or otherwise acquired by Bioworld within sixty (60) days 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:

Short-Form Warning:


WARNING: Reproductive Harm- www.P65Warnings.ca.gov

OR


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



Long-Form Warning:

 **WARNING:** This product can expose you to chemicals including di-n-butyl phthalate (DBP), 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

OR

 **WARNING:** This product can expose you to chemicals including di-n-butyl phthalate (DBP), 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. Bioworld 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, 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 Bioworld offers Products to California customers via its own proprietary internet website or any third-

party website over which Bioworld has control, Bioworld 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 Bioworld does not have control over the content of third-party internet sellers, Bioworld 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 Bioworld sells Products via its own proprietary catalog or any third-party catalog over which Bioworld 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* item 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.

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 Bioworld 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 DBP and the Products, in effect on or after the Effective Date, without being deemed in breach of this Settlement Agreement.

2.3.4 Correction Notice. In the event that, within 24 months of the Effective Date, Bioworld is allegedly not in compliance with Section 2 of this Agreement, Bioworld upon receiving a written notice of non-compliance (the “Compliance Notice”), may bring the Products into compliance or demonstrate that the Products are already compliant within thirty (30) days of receipt of the Compliance Notice. If the Products are brought into compliance during this period, Bioworld shall not be required to make any additionally monetary payment or settlement amount.

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, Bioworld agrees to pay \$1,000 in civil penalties no later than December 23, 2024. 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. Bioworld shall make its payment in two checks, delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$750; and (2) to “Dennis

Johnson” in the amount of \$250.

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, Bioworld expressed a desire to resolve the attorneys’ 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, Bioworld agrees to pay, no later than December 23, 2024, \$14,000, 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 Bioworld’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. Bioworld shall issue complete IRS 1099 forms to each payee for their respective payment amount. In lieu of payment by checks, Bioworld may make one payment of \$15,000 by wire transfer to Voorhees & Bailey, LLP’s trust account as provided by Voorhees & Bailey, LLP (the “Wire Payment”). Voorhees & Bailey, LLP will allocate the Wire Payment in the amounts due to OEHHA, Dennis Johnson, and Voorhees & Bailey, LLP in accordance with this Settlement Agreement.

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 Bioworld, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Bioworld directly or indirectly distributes, obtains, or sells Products, including, but not limited, to upstream suppliers, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees including, without limitation, Steve's Hallmark (collectively, "Releasees"), from all claims for violations of Proposition 65 within sixty (60) days after the Effective Date relating to unwarned exposures to DBP in the Products.

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 DBP in the Products manufactured, imported, distributed, or sold by Bioworld prior to the Effective Date through sixty (60) days after the Effective Date.

4.3 Bioworld's Release of Johnson

Bioworld, 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 Bioworld 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 Bioworld:

Sedina L. Banks
Sherry E. Jackman
Greenberg Glusker LLP
2049 Century Park E., Ste. 2600
Los Angeles, CA 90067

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: 12/18/2024

Date: December 18, 2024 | 2:49 PM PST

By: 
DENNIS JOHNSON

By: 
Vivek Gandhi
Bioworld Merchandising, Inc.