

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Lifetime Brands, Inc. (“Lifetime Brands”), with Johnson and Lifetime Brands 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. Lifetime Brands employs ten or more persons and 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 Lifetime Brands manufactures, sells, and distributes for sale in California, glass bottles with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects and other reproductive harm. Johnson alleges that Lifetime Brands failed to provide the warning required by Proposition 65 for exposures to lead.

### 1.3 Product Description

The products covered by this Settlement Agreement are glass bottles with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by Lifetime Brands (or companies whose inventories it acquired as the result of corporate transactions) including, but not limited to, the “*Gemco Olive Oil Bottle, Style: 5125657 UPC: 0 24131 26928 0* (hereinafter referred to as “Products”).

#### **1.4 Notice of Violation**

On August 17, 2020, Johnson served Lifetime Brands and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Lifetime Brands violated Proposition 65 when it failed to warn its 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 Notice.

#### **1.5 No Admission**

Lifetime Brands 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 Lifetime Brands 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 Lifetime Brands of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lifetime Brands. This Section shall not, however, diminish or otherwise affect Lifetime Brands’ obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 15, 2021.

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

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products which comply with the requirements for “Glassware Food/Beverage Products” as set forth in Section 2.3.1 of the Proposition 65 consent judgment entered into in *Brimer v. The Boelter Companies, et al.*,

San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”), to which Lifetime previously opted-in.

## **2.2 Warnings**

Products which fail to meet the requirements for “Glassware Food/Beverage products” as set forth in Section 2.2(a)(i) of the Boelter CJ, shall be labeled in compliance with the Proposition 65 warning requirements set forth in Section of the Boelter CJ.

## **2.3 Reassurance of Compliance of Remaining Inventory**

To the extent that Lifetime retains any inventory of Gemco Olive Oil Bottles for which its third-party testing labs have not reassured compliance with Section 2.3.1 of the Boelter CJ, Lifetime shall randomly select at least three samples of each stock keeping unit (“SKU”) in such inventory and require a third-party lab based in the United States to test it to assess compliance. Should the result of such testing indicate compliance with the Boelter CJ, Lifetime may proceed to offer the inventory of the SKU in question for sale in California; otherwise, Lifetime shall apply Proposition 65 warnings to such inventory in accordance with Section 2.2 above or destroy or restrict any further distribution or sale of the inventory in question such that it cannot enter the California market.

**2.4** The Parties agree and intend for compliance with the terms of Sections 2.1 or 2.2 to constitute compliance with Proposition 65 with respect to exposures to lead from the Products.

## **2.5. Products in the Stream of Commerce**

Based on the civil penalties to be paid pursuant to Section 3.1 below, Gemco Products previously distributed for sale in California shall be exempt from the requirements of Sections 2.1, 2.2 and 2.3, and are covered by the releases in Section 4.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Lifetime Brands 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, and delivered to the address in Section 3.3 herein. Lifetime Brands will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$600; and (2) “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 them, 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, Lifetime Brands expressed a desire to resolve Johnson’s fees and costs. The Parties reached an accord on the compensation due to Johnson and his 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, on or before the Effective Date, Lifetime Brands agrees to pay \$11,950 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 Lifetime Brands’ management, and negotiating a settlement.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP  
Attn. Johnson v. Lifetime  
990 Amarillo Avenue  
Palo Alto, CA 94303

## **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 Lifetime Brands, its parents, subsidiaries, predecessors, successors, affiliated entities under common ownership, directors, officers, agents employees, attorneys, licensors and each entity to whom Lifetime Brands directly or indirectly distribute or sell the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Tuesday Morning, Inc.), franchisees, cooperative members, 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. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products.

### **4.2 Johnson's Extended 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, limited to and arising out of alleged or actual exposures to lead or cadmium in the Products manufactured, imported, otherwise acquired, distributed, or sold by Lifetime Brands or its predecessors (including corporations it previously acquired) 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. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

#### **4.3 Lifetime Brands' Release of Johnson**

Lifetime Brands, 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 Lifetime Brands 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 Lifetime Brands:

Sara Shindel  
General Counsel & Secretary  
Lifetime Brands, Inc.  
1000 Stewart Avenue  
Garden City, NY 11530

For Johnson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
990 Amarillo Avenue  
Palo Alto, CA 94303

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. 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:**

Dated: April 19, 2021

By:   
DENNIS JOHNSON

**AGREED TO:**

Dated: April 15, 2021

  
By: \_\_\_\_\_  
Robert B. Kay  
Authorized Representative of  
LIFETIME BRANDS, INC.