

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Robely Trading, Inc. (“Robely Trading”), as indemnitor to At Home Group, Inc., At Home Procurement Inc., and At Home Stores, LLC (hereinafter collectively referred to as “At Home”) with Johnson and Robely Trading 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 Robely Trading 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 Robely Trading manufactures, sells, and distributes for sale in California, ceramic picture frames, tumblers and dishes 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 Robely Trading 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 ceramic pencil cups, ceramic paper clip trays, and ceramic photo frames, including but not limited to, the following products manufactured, sold, or distributed by Robely Trading for sale in California: (i) *At Home “AQ” Ceramic Picture Frame*, UPC: 0 66518 30802 1; (ii) *At Home Ceramic Tumbler With Blue Floral Design*; UPC: 0 66518 30667 6; and (iii) *At*

*Home Ceramic Dish With Blue Floral Design*; UPC: 0 66518 30668 3, (hereinafter collectively referred to as the “Products”).

#### **1.4 Notices of Violation**

On December 23, 2020, Johnson served At Home and the requisite public enforcement agencies with three 60-Day Notices of Violation (“Notices”), alleging that At Home 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.

Robely Trading was subsequently identified as the supplier of the Products to At Home and entered into negotiations with Johnson as indemnitor to At Home to resolve Johnson’s claims concerning the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Robely Trading 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 Robely Trading 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 Robely Trading of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Robely Trading. This Section shall not, however, diminish or otherwise affect Robely Trading’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 June 30, 2021.

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

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products that yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol. If the decoration/design is tested after it is affixed to the Product, the percentage of the lead by weight must related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).

### **2.2 Reformulation/Warning Commitment**


As of 60 days after the Effective Date, Robely Trading shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain appropriate health-hazard warnings pursuant to Section 2.3.

### **2.3 Product Warnings**

As of 60 days after the Effective Date, all Products Robely Trading distributes for sale, sells or offers for sale in California, that do not qualify as Reformulated Products per Section 2.2, shall bear a clear and reasonable warning pursuant to this Section. The warning will be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, and contain one of the following statements:

 **WARNING:** Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

 **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause birth defects and other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

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

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of certain claims alleged in the Notices or referred to in this Settlement Agreement, Robely Trading 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, and delivered to the address in Section 3.3 herein. Robely Trading will provide its payment in two checks 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 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, Robely Trading 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, on or before the Effective Date, Robely Trading agrees to pay \$21,800, 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 Robely Trading’s 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  
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 Robely Trading, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Robely Trading directly or indirectly distributes or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to At Home, 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.

##### **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, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Robely Trading prior to the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Robely Trading's Products.

##### **4.3 Waiver of Civil Code Section 1542**

With respect to the foregoing waivers and releases in this Settlement Agreement, Johnson hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

#### **4.4 Robely Trading's Release of Johnson**

Robely Trading, 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 Robely Trading 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 Robely Trading, Inc.:**

Peg Carew Toledo  
Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10<sup>th</sup> Floor  
San Francisco, CA 94111-4024

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
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:**

**AGREED TO:**

Date: June 23, 2021

Date: \_\_\_\_\_, 2021

By:   
DENNIS JOHNSON

By: \_\_\_\_\_  
ROBELY TRADING, INC.

**For Robely Trading, Inc.:**

Peg Carew Toledo  
Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10<sup>th</sup> Floor  
San Francisco, CA 94111-4024

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
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**AGREED TO:**

Date: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
DENNIS JOHNSON

**AGREED TO:**

Date: JUNE 28<sup>TH</sup>, 2021

  
By: \_\_\_\_\_  
ROBELY TRADING, INC.