

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Orly Shoe Corp. (“Orly”), with Johnson and Orly 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 Orly 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 Orly manufactures, sells, and distributes for sale in California, ceramic mugs 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 Orly 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, the *Old East Main Co. Ceramic Mug With Rose Gold Handle; UPC: 6 91466 14355 6*, that are manufactured, sold, or distributed for sale in California by Orly (hereinafter referred to as “Products”).

### 1.4 Notices of Violation

On August 27, 2021, Johnson served Dollar General Corporation, Old East Main Co., Dolgen California, LLC., and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that they violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with

exposures to lead from the Products. Shortly thereafter, Orly was identified as the manufacturer/distributor of the Products.

On October 22, 2021, Johnson served Dollar General Corporation, Old East Main Co., Dolgen California, LLC., Orly Maison LLC and Orly Shoe Corp., and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation, alleging that they violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to lead from the Products. The August 27, 2021 Notice of Violation and October 22, 2021 Notice of Violation shall hereinafter collectively be referred to as the “Notices.” No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

### **1.5 No Admission**

Orly 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 Orly 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 Orly of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Orly. This Section shall not, however, diminish or otherwise affect Orly’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 March 15, 2022.

## **2. INJUNCTIVE RELIEF**

**2.1** As of the Effective Date, Orly 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 2.2 or contain a warning pursuant to Section 2.3.

## 2.2 Reformulation Standards


“Reformulated Products” are defined as those Products which comply with the requirements for “Ceramicware Food/Beverage Products” as set forth in Section 2.3.2 of the Proposition 65 consent judgment entered in *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”).

## 2.3 Warnings

As of the Effective Date, all Products Orly sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Orly further agrees that 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 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products shall 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 is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

The above warning statements shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

## 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, Orly agrees to pay \$2,500 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. Orly will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,875; and (2) “Dennis Johnson” in the amount of \$625.

### **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, Orly 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, Orly agrees to pay \$16,250, 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 Orly’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 Orly, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Orly directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to Dollar General Corporation and all of its related entities and affiliates, Old East Main Co., and Dolgen California, LLC, 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 or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Orly.

##### **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 Orly or through any of the retailers identified herein 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 Orly. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not

involve Orly's Products.

#### **4.3 Orly's Release of Johnson**

Orly, 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 Orly 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 Orly:**

Carol R. Brophy, Esq.  
One Market Street  
Spear Tower, Suite 3900  
San Francisco, CA 94105

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
535 Ramona Street; Suite 5  
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. 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: 3/11/22

Date: \_\_\_\_\_

By:   
DENNIS JOHNSON

By: \_\_\_\_\_  
ORLY CORPORATION

**For Orly:**

Carol R. Brophy, Esq.  
One Market Street  
Spear Tower, Suite 3900  
San Francisco, CA 94105

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
535 Ramona Street; Suite 5  
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**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 3/14/2022

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

DocuSigned by:  
*Albert Antebi*  
By: \_\_\_\_\_  
ORLY CORPORATION  
Albert Antebi  
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