

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Brown & Haley (“B&H”), with Johnson and B&H 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 B&H 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 B&H manufactures, sells, and/or 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 B&H 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 mugs with exterior designs including “*Roca Hot Chocolate & Mug Gift Collection*” Ceramic Mug UPC: 0 41770 55520 8, that are manufactured, sold, or distributed for sale in California by B&H (hereinafter referred to as “Products”).

### 1.4 Notice of Violation

On May 26, 2022, Johnson served B&H, Walmart Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that it 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**

B&H 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 B&H 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 B&H of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by B&H. This Section shall not, however, diminish or otherwise affect B&H'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 August 1, 2022.

## **2. INJUNCTIVE RELIEF**

### **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.


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

As of the Effective Date, B&H 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 bear a warning pursuant to Section 2.3.


### **2.3 Warnings**

As of the Effective Date, all Products B&H 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. B&H 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 Settlement Agreement, a clear and reasonable warning for the Products shall contain one of the statements below. B&H shall include the bracketed text if it has reason to believe that it is required to do so to comply with Proposition 65. Furthermore, B&H may provide warnings for the Products pursuant to Proposition 65 “safe harbor” warning regulations promulgated by the Office of Environmental Health Hazard Assessment after the date the parties sign this Agreement, without being deemed in breach of this Agreement,

 **WARNING:** [Cancer and] 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 [cancer and] birth defects or 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 as consideration for the releases contained in Sections 4.1 and 4.2 below, B&H agrees to pay \$1,800 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. B&H will make its payment in two checks, delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$1,350; and (2) to “Dennis Johnson” in the amount of \$450.

### **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, B&H 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, B&H agrees to pay \$15,800, 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 B&H'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 B&H, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom B&H directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Walmart 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: (a) 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 B&H; and (b) compliance with Section 2 of this Agreement shall be deemed compliance with Proposition 65 with respect to alleged presence of 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 B&H 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 B&H. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve B&H's Products.

#### **4.3 B&H's Release of Johnson**

B&H, 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.

#### **4.4 Section 1542 Waiver**

**California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Johnson on behalf of himself only, on one hand, and B&H, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1 through 4.3, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

Johnson and B&H each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

#### **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 B&H 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 electronic mail and:

(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 B&H:**

John Melin, President and CEO  
Brown & Haley  
3500-C 20th Street E  
Fife, WA 98424  
[jmelin@brown-haley.com](mailto:jmelin@brown-haley.com)

**For Johnson:**

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
535 Ramona Street; Suite 5  
Palo Alto, CA 94301  
[troy@voorheesbailey.com](mailto:troy@voorheesbailey.com)

with copy to:

Ann Grimaldi  
Grimaldi Law Offices  
75 Broadway St., Suite 202  
San Francisco, CA 94111  
[ann.grimaldi@grimaldilawoffices.com](mailto:ann.grimaldi@grimaldilawoffices.com)

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: 7/26/22

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

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

By: \_\_\_\_\_  
BROWN & HALEY



**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: \_\_\_\_\_

Date: 7/27/2022

By: \_\_\_\_\_

DENNIS JOHNSON

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By John Melin  
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BROWN & HALEY