

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Audrey Kallander (“Kallander”) on the one hand (with Johnson and Kallander hereinafter referred to collectively as the “Citizen Enforcers”), and Home Essentials & Beyond, Inc. (“Home Essentials”) on the other hand, with Johnson and Home Essentials each individually referred to as a “Party” and collectively as the “Parties.” Citizen Enforcers are individuals residing in the State of California who seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Citizen Enforcers allege that Home Essentials 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

Citizen Enforcers allege that Home Essentials manufactures, sells, and/or distributes for sale in California: (i) ceramic pots with exterior decorations containing lead; (ii) ceramic mugs with exterior designs containing lead; (iii) glassware with exterior design containing lead; and (iv) ceramic incense holders with designs. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Citizen Enforcers allege that Home Essentials 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: (i) Home Essentials “*Apropos Home Collection*” Ceramic Pot UPC: 7 86460 23358 4, that are manufactured, sold, or distributed for sale in California by Home Essentials (“Products”); (ii) Kent “*With God All Things Are Possible*” Ceramic Mug,

UPC: 7 86460 93468 9 and the *Global Design "Laugh Lots" Ceramic Mug*; UPC: 7 86460 93877 9 that are manufactured, sold, or distributed for sale in California by Home Essentials ("Mug Products"); (iii) *"Bottoms Up" Confetti Glass and "Friends Make the Best Presents" Confetti Glass*; UPC: 7 86460 06310 5 that are manufactured, sold, or distributed for sale in California by Home Essentials and *"Drink It Up" Highball Glass*, UPC: 7 86460 06035 7 ("Glassware Products"); and (iv) *Incense Holder 4" Diameter*; UPC: 7 86460 44867 4 that are manufactured, sold, or distributed for sale in California by Home Essentials ("Incense Holder Products"). The Mug Products, Glassware Products and Incense Holder Products shall hereinafter be referred to collectively as the "Additional Products."

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

On May 16, 2022, Kallander served Ross Stores, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipient violated Proposition 65 when it failed to warn their customers and consumers in California of the health hazards associated with exposures to lead from the Kent "With God All Things" product. Home Essentials was subsequently identified as the manufacturer/supplier of the Kent "With God All Things" product.

On May 26, 2022, Johnson served Home Essentials, Nordstrom, Inc. 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 Pot Products.

On August 10, 2022, Kallander served Big Lots Stores, 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 "Bottoms Up" and "Friends Make the Best Presents" Confetti Glasses. Home Essentials was subsequently identified as the manufacturer/supplier of the "Bottoms Up" and "Friends Make the Best Presents" Confetti Glasses.

On August 25, 2022, Kallander served Tuesday Morning, 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 “Drink It Up” Highball Glass. Home Essentials was subsequently identified as the manufacturer/supplier of the “Dirnk It Up” Highball Glass.

On September 22, 2022, Johnson served Global Design Connections, LLC, The TJX Companies, Inc. 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 Global Design “Laugh Lots” product. Home Essentials was subsequently identified as the manufacturer/supplier of the Global Design “Laugh Lots” product.

On October 7, 2022, Kallander served 1616 Holdings, Inc., Inc., Five Below, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipient violated Proposition 65 when it failed to warn their customers and consumers in California of the health hazards associated with exposures to lead from ceramic incense holders with designs. Home Essentials was subsequently identified as the manufacturer/supplier of the products.

The May 16, 2022, Notice, May 26, 2022, Notice, August 10, 2022 Notice, August 25, 2022 Notice, September 22, 2022 Notice and October 7, 2022, Notice shall hereinafter be referred to collectively as the “Notices.” No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

### **1.5 No Admission**

Home Essentials 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 and Additional Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an

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

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 7, 2023.

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

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products and Additional Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol. In addition, the Mug Products and Glassware Products shall also yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations located in the upper 20 millimeters of a Product, i.e., the "Lip-and-Rim" area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a solid substance.

If the decoration is tested after it is affixed to the Products or Additional Products, 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., glass substrate).

## **2.2 Reformulation/Warning Commitment**

As of the Effective Date, Home Essentials shall not manufacture, import, distribute, sell or offer the Products or Additional 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 below.

## **2.3 Product Warnings**

As of the Effective Date, all Products and Additional Products Home Essentials 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. Home Essentials further agrees that the warning shall 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 Consent Judgment, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California, and 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, Home Essentials agrees to pay \$9,000 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 Citizen Enforcers. Home Essentials shall make its payment in three checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$6,750; (2) “Dennis Johnson” in the amount of \$1,125; and (3) “Audrey Kallander” in the amount of \$1,125.

#### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that Citizen Enforcers and their counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to their 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, Home Essentials expressed a desire to resolve Citizen Enforcers’ fees and costs. The Parties reached an accord on the compensation due to Citizen Enforcers’ 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, Home Essentials agrees to pay \$36,000, 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 Home Essential’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 Citizen Enforcers' Release of Proposition 65 Claims**

Citizen Enforcers acting on their own behalf, and *not* on behalf of the public, release Home Essentials, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Home Essentials directly or indirectly distributes or sells the Products or Additional Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, 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 understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or Additional Products or any component parts thereof, or any distributors or suppliers who sold the Products or Additional Products or any component parts thereof to Home Essentials.

### **4.2 Citizen Enforcers' Individual Release of Claims**

Citizen Enforcers, in their individual capacities only and *not* in their representative capacities, 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 Citizen Enforcers of any nature, character, or kind, whether known or unknown, suspected or unsuspected, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products and Additional Products manufactured,

imported, distributed, or sold by Home Essentials prior to the Effective Date. The Parties understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products or Additional Products, or any component parts thereof, or any distributors or suppliers who sold the Products or Additional Products, or any component parts thereof to Home Essentials. Nothing in this Section affects Citizen Enforcers' right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Home Essentials' Products or Additional Products.

#### **4.3 Home Essentials' Release of Citizen Enforcers**

Home Essentials, 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 Citizen Enforcers and their attorneys and other representatives, for any and all actions taken or statements made by Citizen Enforcers and their 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 or Additional 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 Home Essentials may provide written notice to Citizen Enforcers 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 Home Essentials:**

Avrom R. Vann, Esq.  
Avrom R. Vann, P.C.  
Two University Plaza; Suite 600  
Hackensack, NJ 07601

**For Citizen Enforcers:**

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)**

Citizen Enforcers and their 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:**

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Dennis Johnson

**AGREED TO:**

Date: 4/4, 2023

By: \_\_\_\_\_  
Home Essentials & Beyond, Inc.

**AGREED TO:**

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Audrey Kallander

**AGREED TO:**

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Dennis Johnson

**AGREED TO:**

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Home Essentials & Beyond, Inc.

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By: \_\_\_\_\_  
Audrey Kallander

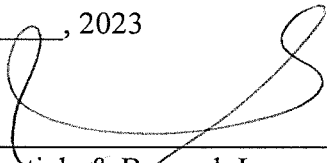
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Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Audrey Kallander