

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”), 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/or distributes for sale in California, ceramic cleaning brush holders 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 defined as Ceramic Cleaning Brush Holders, UPC 066518318358, that are manufactured, sold, and/or distributed for sale in California by Robely Trading (hereinafter referred to as “Products”).

1.4 Notice of Violation

On June 20, 2023, Johnson served Robely Trading Inc., Tuesday Morning Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that they violated Proposition 65 by failing to warn their 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

Robely Trading 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, including Proposition 65. 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 November 14, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation/Warning Commitment

As of the Effective Date, Robely Trading shall not manufacture or import, the Products for sale in the State of California unless: (i) the Products are Reformulated Products pursuant to Section 2.2; or (ii) Robely Trading provides a clear and reasonable warning pursuant to Section 2.3. The Parties agree and intend that Robely Trading's compliance with the terms of this Settlement Agreement shall constitute Robely Trading's compliance with Proposition 65 with respect to exposures to Lead from the Products.

2.2 Reformulated Products.

“Reformulated Products” are defined as those 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.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must be related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).

2.3 Warnings.

To the extent that Products manufactured or imported after the Effective Date are not Reformulated Products, a clear and reasonable warning shall be provided, as set forth herein pursuant to this Section.

2.3.1 Warning Content. For purposes of this Settlement Agreement, the parties agree that a clear and reasonable warning shall consist of either of the following warning statements:

⚠WARNING: [Cancer and] Reproductive Harm - 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 [cancer and] birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The above warning statements must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color

yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "WARNING:".

2.3.2 Method of Transmission

Product Labeling. Robely Trading shall affix one of the foregoing warning statements to the packaging, labeling or directly to a specific Product. The warning statement shall be affixed to the Product, Products' packaging or labeling and placed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Where the short-form warning statement is provided on the label, the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product label. In no case shall the short-form warning statement appear in a type size smaller than six-point type.

Internet. In addition to the product labeling, where Robely Trading sells Products via its own proprietary internet website to customers located in California, or via third-party internet sellers where Robely Trading has the ability to control the website content relating to the Products, the warning statement shall appear either: (i) on the same web page on which a Product is displayed and/or described; (ii) on the same page as the price for the Product; or (iii) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, the warning statement shall be provided using a clearly marked hyperlink using the word "WARNING" on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If the product label warning is provided using the short-form warning statement, the warning provided on the website may use the same content. A warning is not prominently displayed if the purchaser must search for it in the general content of the website.

Where Robely Trading does not have the ability to post the warning on the websites of third-party distributors or retail sellers that sell the Products on the internet,

Robely Trading shall provide such third-party distributors or retail sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers who receive notice pursuant to 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit, release or protection afforded hereunder.

Catalog. In addition to the product labeling, if Robely Trading sells Products via its own proprietary catalog to customers located in California, or a catalog over which it has control one of the foregoing warnings statements must also be provided in the catalog in a manner that clearly associates it with the *specific* item being purchased. The catalog warning statement shall be placed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase. If a short-form warning is being provided on the label, the warning provided in the catalog may use the same content. Where Robely Trading does not have control over the content of third-party catalog sellers, Robely Trading shall provide such sellers with written notice in accordance with Title 27, California Code of Regulation, Section 25600.2 of their warning obligations. Third-party catalog sellers who receive notice pursuant to 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit, release or protection afforded hereunder.

Languages. Where a label or tag used to provide a warning statement includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

2.3.3 Safe Harbor Warnings. The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that Robely Trading may utilize “safe harbor” warning language and

methods promulgated by the Office of Environmental Health Hazard Assessment and contained in 27 CCR §§ 25602-25603, applicable to lead and the Products, in effect on or after the Effective Date, without being deemed in breach of this Agreement.

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, Robely Trading agrees to pay \$1,600 in civil penalties within ten (10) business days of 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. Robely Trading shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$1,200; and (2) “Dennis Johnson” in the amount of \$400.

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, 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, within ten (10) business days of the Effective Date, Robely Trading agrees to pay \$14,400, 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. The payments set forth in Section 3 are the exclusive payments due between the Parties and under this Agreement.

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, releases Robely Trading, its parents, subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, agents employees, suppliers, manufacturers, attorneys, and each entity to whom Robely Trading directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, vendors, purchasers, franchisees, shareholders, cooperative members, importers, licensees, and retailers, including but not limited to Tuesday Morning Inc and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 for Products manufactured on or before the Effective Date based on unwarned exposures to lead. This release includes Products in the stream of commerce prior to the Effective Date, as they have been included in the calculation of the civil penalty payment.

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,

including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products manufactured, distributed, and/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 the Products.

4.3 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.

4.4 General Release

The Parties acknowledge that the claims released in Sections 4.1, 4.2 and 4.3 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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, on behalf of himself only, and Robely Trading, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542. The Parties expressly waive and relinquish any and all rights and benefits that they may have under, or which may be conferred on them by any other state or federal statute or common law principle of similar effect, to the fullest

extent that they may lawfully waive such rights or benefits pertaining to the released matters.

4.5 Public Interest

The Parties understand that the commitments Robely Trading has agreed to herein, and actions to be taken by Robely Trading under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Robely Trading's failure to provide a Proposition 65 warning on the Products it has manufactured on or before the Effective Date, such private party action would not confer a significant benefit on the general public as to the Products addressed in this Settlement Agreement, provided that Robely Trading is in material compliance with this Agreement. The Parties agree that the understandings and intentions expressed in this Section are applicable only to the Notice and the Products at issue and are not to be construed as a general understanding or intention with respect to other products manufactured, distributed, sold or offered for sale in California by any other entity.

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 or the application of law to the Products as alleged in the Notice, 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. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Agreement, the Parties shall meet and confer in person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. Any party that fails to meet and confer or otherwise attempt in good faith to resolve any dispute arising under this Agreement prior to seeking judicial enforcement, shall forfeit any attorneys' fees and costs to which that Party may otherwise be entitled.

8. 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:

Current President/CEO
Robely Trading Inc.
1801 S. Carlos Ave.
Ontario, CA 91761

With a copy to:
Will Wagner
Arnold & Porter
Will.wagner@arnoldporter.com

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
839 Emerson Street
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.

9. **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.

10. **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).

11. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

12. **AUTHORIZATION**

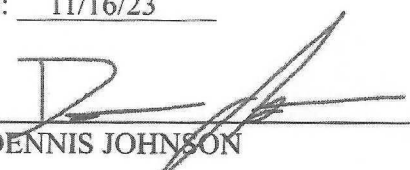
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

13. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

AGREED TO:

Date: 11/16/23

By: 
DENNIS JOHNSON

AGREED TO:

Date: 11/21/23

By: 
ROBELY TRADING INC.