

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and B&B Acquisition, Inc. (“B&B Acquisition”). Johnson and B&B Acquisition are each sometimes individually referred to as a “Party” and collectively as the “Parties.” Johnson alleges that he 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&B Acquisition 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&B Acquisition manufactures, sells, and/or distributes for sale in California, fragrance warmers with exterior designs containing lead. Lead is listed pursuant to Proposition 65. Johnson alleges that B&B Acquisition failed to provide a Proposition 65 warning required by Proposition 65 for consumer products that can cause an exposure to lead.

### 1.3 Product Description

The products covered by this Settlement Agreement are fragrance warmers and/or candle warmers with exterior decorations, including but not limited to the *Pluggable Fragrance Warmer; UPC: 8 33245 02623 4*, that are manufactured, sold, or distributed for sale in California by B&B Acquisition (hereinafter referred to as the “Products”).

### 1.4 Notice of Violation

On August 3, 2023, Johnson served B&B Acquisition, At Homes Stores, LLC, and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipients violated Proposition 65 by failing to provide customers

and consumers in California with a warning that the Products can potentially expose a person to lead (the “Notice”). To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

B&B Acquisition enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice solely to avoid potentially prolonged and costly litigation. B&B Acquisition denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and/or distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by B&B Acquisition of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusion of law suggesting or demonstrating that B&B Acquisition has sold any products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by B&B Acquisition of any of the above, such being specifically denied by B&B Acquisition. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense B&B Acquisition may have in this or any other future legal proceedings, including B&B Acquisition’s position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by B&B Acquisition solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties’ obligations, responsibilities and duties under this Settlement Agreement.

## **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date B&B Acquisition received Johnson’s executed copy of this Settlement Agreement.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation/Warning Commitment**

As of the Effective Date, B&B Acquisition shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless: (i) the Products are Reformulated Products pursuant to Section 2.2; or (ii) B&B Acquisition provides a clear and reasonable warning pursuant to Section 2.3. The Parties agree and intend that B&B Acquisition’s compliance with the terms of this Settlement Agreement shall constitute compliance by B&B Acquisition with Proposition 65 with respect to actual or alleged 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; or (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol. or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must relate only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate). B&B Acquisition shall be able to determine compliance with the reformulated Products standard by testing a production sample of each lot or shipment of the Products.


### **2.3 Warnings for Non Reformulated Products.**

To the extent that Products manufactured, imported, or otherwise acquired by B&B Acquisition after the Effective Date do not meet the standard for Reformulated Products, a clear and reasonable warning shall be provided, as set forth herein.

**2.3.1 Warning Content.** For purposes of this Settlement Agreement and Proposition 65, the parties agree that a clear and reasonable warning shall consist of either of the following warning statements:

 [California Prop 65] **WARNING:** Cancer and Reproductive Harm-  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

 [California Proposition 65] **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)

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:**” Language in brackets is optional.

#### **2.3.2 Method of Transmission**

**Product Labeling.** B&B Acquisition 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, of the Products’ packaging or labeling, and placed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably 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 warning must be in a type size no smaller than the

type size used for other warnings on the product label or 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 warning, where B&B Acquisition offers Products to California customers via its own proprietary internet website or any third-party website over which B&B Acquisition has control, B&B Acquisition shall provide a clear and reasonable internet web page warning in one of the forms above to purchasers located in California. 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 California purchaser prior to completing the purchase. A warning is not prominently displayed if the purchaser must search for it in the general content of the website. Where B&B Acquisition does not have control over the content of third-party internet sellers and has actual knowledge that those internet resellers are selling the Product in California, B&B Acquisition shall provide such sellers with written notice to provide an internet Proposition 65 warning for Products sold to California consumers.

**Catalog.** In addition to the product labeling warning, where B&B Acquisition offers Products for sale in California via its own proprietary catalog or a catalog over which it has control, one of the foregoing Proposition 65 warnings statements shall also be provided in the catalog in a manner that clearly associates it with the *specific* Product being purchased. The catalog warning statement shall be placed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase.

**Languages.** Where a Product label or tag used to provide a Proposition 65 warning statement pursuant to this Settlement Agreement 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 B&B Acquisition 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 Product, in effect on or after the Effective Date, without being deemed in breach of this Settlement Agreement.

**2.3.4 Public Benefit.** It is the Parties’ understanding that the commitments B&B Acquisition has agreed to herein, and actions to be taken by B&B Acquisition under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of B&B Acquisition that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to B&B Acquisition’s alleged failure to provide a warning concerning actual or alleged exposure to lead prior to the use of the Products it has manufactured, distributed, sold, or offered for sale in the State of California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that B&B Acquisition is in material compliance with this Settlement Agreement.

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

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

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims for monetary relief of any kind related to the Notice, alleged in the Notice, or

referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 3.2 below), and as consideration for the releases contained in Sections 4.1 and 4.2 below, B&B Acquisition agrees to pay a total of \$1,200 in civil penalties within 5 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. B&B Acquisition shall make its payment in two checks, delivered to the address in section 3.3, 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 agreement on the amount of attorney's fees and expenses 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&B Acquisition expressed a desire to resolve the claims for attorney's fees and expenses. The Parties reached an accord on the compensation allegedly 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, B&B Acquisition agrees to pay, within 5 days of the Effective Date, \$16,300, in the form of a check made payable to "Voorhees & Bailey, LLP," for all attorney's fees and expenses incurred in this matter, including, but not limited to all fees and costs incurred for investigating, testing, consulting with experts, bringing this matter to the attention of B&B Acquisition, and negotiating this settlement in the public interest.

### **3.3 Payment Address and Tax Documentation**

All checks under this Settlement Agreement shall be delivered to the following address and shall, thereafter, be delivered by Johnson and/or his counsel to the respective payees:

Voorhees & Bailey, LLP  
839 Emerson Street  
Palo Alto, CA 94301

Johnson shall provide IRS W-9 forms for: (i) “Office of Environmental Health Hazard Assessment”; (ii) Dennis Johnson; and (iii) Voorhees & Bailey, LLP. B&B Acquisition shall issue complete IRS 1099 forms to each payee for their respective payment amount. The Parties acknowledge that B&B Acquisition cannot issue any settlement payments pursuant to Sections 3.1 and 3.2 above until after B&B Acquisition receives the requisite W-9 forms from Johnson’s counsel.

## **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, and on behalf of his past and current agents, representatives, attorneys, successors and assignees, releases B&B Acquisition, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, and each entity to whom or from whom B&B Acquisition directly or indirectly acquires, distributes or sells the Products, including, but not limited to, all suppliers, downstream distributors, wholesalers, customers, retailers (including but not limited to At Home Stores, LLC), franchisees, cooperative members, importers, licensors, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 for alleged or actual failure to warn about alleged exposures to lead from Products manufactured, imported, distributed, or sold through the Effective Date based on alleged or actual 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, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, 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 from Products manufactured, imported, distributed, or sold by B&B Acquisition 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 B&B Acquisition's Products.

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

B&B Acquisition, 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 California Civil Code Section 1542: Mutual Release of Known and Unknown Claims**

It is possible that other claims not known to the Parties relating to products manufactured, imported, distributed, and/or sold by or for B&B Acquisition and its affiliates through the Effective Date will develop or be discovered. Johnson on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, on one hand, and B&B Acquisition on behalf of itself and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover

and include all such claims for products manufactured, imported, distributed, and/or sold by or for B&B Acquisition and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims for products manufactured, imported, distributed, and/or sold by or for B&B Acquisition and its affiliates released in Sections 4.1 and 4.2 may include unknown claims, and 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 and B&B Acquisition expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Civil Code section 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters.

**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&B Acquisition 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 B&B Acquisition:**

Brian K. Beesley; Registered Agent for  
B&B Acquisition, Inc.  
12397 South 300 East; Suite 400  
Draper, UT 84020

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
839 Emerson Street  
Palo Alto, CA 94301

With copy to:

J. Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
311 California Street, 10th Fl  
San Francisco, CA 94104  
jmaxwell@rjo.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. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**9. ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If B&B can produce a test result from an accredited lab utilizing a methodology set forth in Section 2.2 and that meets the requirements of Section 2.2 showing that the Product is a Reformulated Product or that such Product was labeled with a Warning hereunder, neither Johnson nor his counsel shall bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs in accordance with applicable law.

**10. 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.

**11. 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).

**12. MODIFICATION**

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

**13. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**14. 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: May 22, 2024

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

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

By: \_\_\_\_\_  
B&B Acquisition, Inc.

**13. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**14. 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: \_\_\_\_\_

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

**AGREED TO:**

Date: 5-23-2024

By: Brian Busby  
B&B Acquisition, Inc.