

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Jo-Ann Stores, LLC (“Jo-Ann”), with Johnson and Jo-Ann 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 Jo-Ann 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 Jo-Ann manufactures, sells, and/or distributes for sale in California, ceramic birdfeeders 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 Jo-Ann 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 birdfeeders with exterior designs, including but not limited to, the *Jo-Ann Greenhouse Place & Time Teapot Birdfeeder*; UPC: 4 895245 001341, that are manufactured, sold, or distributed for sale in California by Jo-Ann (hereinafter referred to as “Products”).

### 1.4 Notice of Violation

On August 24, 2023, Johnson served Win Hang Enterprise Limited, Jo-Ann 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 warn

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**

Jo-Ann 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 Jo-Ann 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 Jo-Ann of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Jo-Ann. This Section shall not, however, diminish or otherwise affect Jo-Ann'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 6, 2023.

## **2. INJUNCTIVE RELIEF**

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

As of the Effective Date, Jo-Ann 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) Jo-Ann provides a clear and reasonable warning pursuant to Section 2.3. Before providing a clear and reasonable warning, Jo-Ann shall employ its best efforts to manufacture, import, or otherwise acquire Reformulated Products for sale in the State of California. Products already in the stream of commerce shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold through as previously manufactured and labeled, as they

have been included in the calculation of civil penalties due pursuant to Section 3.1. The Parties agree and intend that Jo-Ann’s compliance with the terms of this Settlement Agreement shall constitute compliance by Jo-Ann 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; (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 relate 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, imported, or otherwise acquired by Jo-Ann 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, the parties agree that a clear and reasonable warning shall consist of either of the following warning 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 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.** Jo-Ann 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 Jo-Ann offers Products to California customers via its own proprietary internet website or any third-party website over which Jo-Ann has control, Jo-Ann shall provide a clear and reasonable internet, web page warning to customers 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 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 Jo-Ann does not have control over the content of third-party internet sellers, Jo-Ann 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 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, where Jo-Ann offers Products for sale in California via its own proprietary catalog 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 Jo-Ann does not have control over the content of third-party catalog sellers, Jo-Ann 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.

**Point-of-Sale.** The warning requirements shall be satisfied if Jo-Ann provides one of the foregoing warning statements to customers at the point-of-sale, provided all of the following requirements are met: (i) customers purchasing Products

directly from California retail stores shall receive one of the foregoing warning statements via customers' printed receipts; (ii) the warning statement appearing on the register display and the receipt shall be displayed 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, without requiring the purchaser to seek out the warning; (iii) the warning statement shall be displayed in a manner such that the consumer understands to which *specific* Product the warning statement applies so as to minimize if not eliminate the chances that an overwarming situation will arise.

**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 Jo-Ann 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 the lead and the Products, in effect on or after the Effective Date, without being deemed in breach of this Settlement 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, Jo-Ann agrees to pay \$1,200 in civil penalties by sending payment 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. Jo-Ann 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 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, Jo-Ann 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, Jo-Ann agrees to send payment of \$13,800, 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 Jo-Ann’ 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 Jo-Ann, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Jo-Ann directly or

indirectly distributes or sells the 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 any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Jo-Ann.

#### **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, imported, distributed, or sold by Jo-Ann 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 any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Jo-Ann. Nothing in this Section affects Johnson’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Jo-Ann’s Products.

#### **4.3 Jo-Ann’s Release of Johnson**

Jo-Ann, 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 Johnson's California Civil Code Section 1542 Waiver**

Johnson, on behalf of himself, acknowledges that he is familiar with California Civil Code section 1542, which provides 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, expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be conferred on him, by the provisions of California 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 that Johnson may lawfully waive such rights or benefits pertaining to the released matters. The Parties agree that compliance with the terms of this Settlement Agreement shall constitute compliance by any Releasee with Proposition 65.

#### **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 Jo-Ann 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 Jo-Ann:**

Michael Gleason  
Hahn Loeser & Parks, LLP  
One America Plaza  
600 West Broadway Suite 1500  
San Diego, CA 92101

**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.

**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: 11/10/23

Date: 11/13/2023

By:   
DENNIS JOHNSON

By:   
JC-ANN STORES, LLO