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Attorney for Plaintiff, Elise Roskopf

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELISE ROSKOPF, an individual,

Plaintiff,

v.

WILLIAMS-SONOMA, INC., a corporation, and DOES 1 through 100, inclusive,

Defendants.

CASE NO. BC564533

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Yvette M. Palazuelos
Dept.: 28
Compl. Filed: November 21, 2014

Unlimited Jurisdiction

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an admission by Williams-Sonoma of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Williams-Sonoma of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Williams-Sonoma, who maintains that all products it has sold comply with all laws including but not limited to Proposition 65. However, this section shall not diminish or otherwise affect Williams-Sonoma's obligations, responsibilities, and duties under this Consent Judgment.

1.4 Compromise

The Parties enter into this Consent Judgment in order to resolve Plaintiff's claims described above in a manner consistent with the prior Proposition 65 industry consent judgment entered in the public interest in *Brimer v. The Boelter Companies*, et al., San Francisco County Superior Court Case No. CGC-05-440811 concerning Listed Chemicals in the Products and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which this Consent Judgment is approved and entered by the Court.

2. REFORMULATION

2.1 Reformulation Standards

After the Effective Date, Williams-Sonoma shall not manufacture or distribute for sale in California, or sell in California, any Products containing the Listed Chemicals in their non-food contact (exterior) surfaces unless they meet the Reformulation Standards set forth below. Products that meet the Reformulation Standards below are "Reformulated Products" that do not require a Proposition 65 warning:

(a) For purposes of this Consent Judgment, the following definitions apply:

"*Children's Product*" means any Product that is primarily intended for use by children under twelve years of age, such as: Products with designs on their exterior surface which are affiliated with children's toys or entertainment (e.g., cartoon characters), Products of a

reduced size so to be marketed primarily for children, or Products of a type or category which typically would be used by children.

"*Exterior Decorations*" is defined as all colored artwork, designs and/or markings on the exterior surface of the Products.

"*Lip and Rim Area*" is defined as the exterior top 20 millimeters of the Products, as defined by the ASTM Method C927-99.

"*No Detectable Lead*" shall mean that no lead is detected at a level above 200 parts per million (ppm) based on a sample of at least 50 milligrams of the decorating material in question.

(b) A Product that is not a *Children's Product* shall be deemed to be a Reformulated Product with respect to the Listed Chemicals in Exterior Decorations if Williams-Sonoma demonstrates that it satisfies any one of the alternative standards set forth in subsections 2.1(c)(1), (2) or (3) below. However, if a Product is decorated in the *Lip and Rim Area*, subsection 2.1(c)(4) must also be satisfied.

(c)(1) **Wipe Test-Based Standard**: Under this Standard, the Product must produce a test result no higher than 1.0 micrograms (ug) of lead using EPA Test Method 3050(b) based on a wipe sample applied specifically to the area of the Product that contains the majority of the *Exterior Decorations* as outlined in NIOSH Method No. 9100.

(c)(2) **Total Acetic Acid Immersion Test-Based Standard**: Under this Standard, the Product must achieve a result of 0.99 ppm or less for lead when tested pursuant to ASTM Method C927-99 as modified for total immersion with results corrected for internal volume. [1]

(c)(3) **Content-Based Standard.** Under this standard, the *Exterior Decorations*, exclusive of the Lip and Rim Area, must only utilize decorating materials that

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[1] For this testing protocol, refer to Exhibit B of the Consent Judgment entered in Brimer v. The Boelter Companies, et al., San Francisco County Superior Court Case No. CGC-05-440811.

contain six one-hundredths of one percent (0.06%) of lead by weight or less, as measured either before or after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050(b).

(c)(4) Additional **Lip and Rim Area Decoration Standard**: If the Product contains *Exterior Decorations* in the *Lip and Rim Area*:

(i) Any *Exterior Decorations* that extend into the *Lip and Rim Area* may only utilize decorating materials that contain *No Detectable Lead*, or

(ii) The Product must yield a test result showing a concentration level of 0.5 ug/ml or less of lead using ASTM Method C927-99 on the *Lip and Rim Area*.

(d) A Product that is a *Children's Product* shall be deemed to be a Reformulated Product with respect to Listed Chemicals provided the Product complies with the children's lead standards set forth in the federal Consumer Product Safety Improvement Act.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims made in the Notice and Complaint, and covered by this Consent Judgment, Williams-Sonoma shall pay a total civil penalty of three thousand five hundred dollars ($3,500) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% ($2,625.00) paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% ($875.00) paid to Roskopf.

Williams-Sonoma shall issue two (2) separate checks for the civil penalty: (1) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for Office of Environmental Health Hazard Assessment" in the amount of two thousand six hundred twenty five dollars ($2,625.00); and (2) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for Elise Roskopf" in the amount of eight hundred seventy five dollars ($875). Williams-Sonoma shall remit the payments within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

Plaintiff and her counsel shall be responsible for transmitting to OEHHA its portion of the civil penalty payment herein.

3.2 Reimbursement Of Roskopf's Fees And Costs

Williams-Sonoma shall reimburse Roskopf's reasonable experts' and attorney's fees and costs incurred in prosecuting the Notice and Complaint, and for all work performed through execution of this Consent Judgment in the total amount of nineteen thousand dollars ($19,000). Accordingly, Williams-Sonoma shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of nineteen thousand dollars ($19,000). Williams-Sonoma shall remit the payment within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

Williams-Sonoma's payment of this amount shall completely resolve Plaintiff's claim for any and all expert and attorney's fees and costs related to the claims made in the Notice and Complaint and settled herein, exclusive of fees and costs that may be incurred on appeal.

4. RELEASES

4.1 Roskopf's Release Of Williams-Sonoma

This Consent Judgment is a full, final and binding resolution between Plaintiff, and Williams-Sonoma, of any violation of Proposition 65 with respect to alleged Listed Chemicals in the Exterior Decorations of the Products that was asserted by Plaintiff in the public interest, and on behalf of Plaintiff herself, her past and current agents, representatives, attorneys, successors, and/or assignees, against Williams-Sonoma, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Williams-Sonoma directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Williams-Sonoma in California prior to the Effective Date. Williams-Sonoma's compliance with the terms of this Consent Judgment shall be deemed

compliance with Proposition 65 with respect to any actual or alleged exposures to Listed Chemicals in the Exterior Decorations of the Products.

Plaintiff further acknowledges that she is familiar with Civil Code section 1542, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Plaintiff, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and relinquishes any right or benefit she has or may have under Section 1542 of the California Civil Code, or any similar provision under the statutory or non-statutory law of any other jurisdiction, to the full extent that she may lawfully waive all such rights and benefits, with respect to any violation or alleged violation of Proposition 65 regarding the Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Williams-Sonoma in California prior to the Effective Date. Plaintiff acknowledges that she may subsequently discover facts in addition to, or different from, those that she believes to be true with respect to the claims released herein. Plaintiff agrees that this Consent Judgment and the releases contained herein shall remain effective in all respects notwithstanding the discovery of such additional or different facts.

4.2 Williams-Sonoma's Release Of Roskopf

Williams-Sonoma, its parents, subsidiaries, affiliated entities under common ownership, shareholders, directors, members, officers, employees, attorneys, and on behalf of each entity to whom Williams-Sonoma directly or indirectly distributes or sells Products, by this Consent Judgment, waives all rights to institute any form of legal action against Roskopf, her past and current agents, representatives, attorneys, experts, successors, and/or assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Williams-Sonoma in this matter.

Williams-Sonoma acknowledges that it is familiar with Section 1542 of the California Civil Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Williams-Sonoma, on behalf of itself and its parents, subsidiaries, affiliated entities under common ownership, shareholders, directors, members, officers, employees, attorneys, and each entity to whom Williams-Sonoma directly or indirectly distributes or sells Products, waives and relinquishes any right or benefit it has or may have under Section 1542 of the California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. Williams-Sonoma acknowledges that it may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. Williams-Sonoma agrees that this Consent Judgment and the releases contained herein shall remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Consent Judgment for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California.

7. NOTICES

All correspondence and notices required or provided under this Consent Judgment shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO WILLIAMS-SONOMA:	TO ROSKOPF:
Danielle Hohos Associate General Counsel Williams-Sonoma, Inc. 3250 Van Ness Avenue San Francisco, CA 94109	Lucas T. Novak, Esq. LAW OFFICES OF LUCAS T. NOVAK 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069

With Copy to: Robert C. Goodman. Esq. James Robert Maxwell, Esq. Rogers Joseph O'Donnell 311 California Street, 10th Floor San Francisco, California 94104	

8. INTEGRATION

This Consent Judgment constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing.

9. COURT APPROVAL

Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This Consent Judgment is not effective until it is approved by the Court and shall be null and void if, for any reason, it is not approved by the Court within one (1) year after its full execution by all Parties. It is the intention of the Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement in a timely manner, including cooperating on drafting and filing any papers in support of the required motion for judicial approval.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Roskopf and her attorneys agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the originals.

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Consent Judgment by said party.

AGREED TO:

Date: 12/29/14

By: _____

Authorized Officer of Williams-Sonoma, Inc.

AGREED TO:

Date: _____

By: _____

Elise Roskopf

IT IS SO ORDERED.

Dated: _____

_____

JUDGE OF THE SUPERIOR COURT

12. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Consent Judgment by said party.

AGREED TO:

Date: 12/29/14

By: _____

Authorized Officer of Williams-Sonoma, Inc.

AGREED TO:

Date: 12/30/14

By: _____

Elise Roskopf

IT IS SO ORDERED.

Dated: APR 27 2015

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JUDGE OF THE SUPERIOR COURT

YVETTE M. PALAZUELOS