

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Troy C. Bailey, State Bar No. 277424
David Joshua Voorhees, State Bar No. 241436
VOORHEES & BAILEY, LLP
535 Ramona Street; Suite 5
Palo Alto, CA 94301
Telephone: (650) 313-2154
Facsimile: (650) 618-1606
troy@voorheesbailey.com
josh@voorheesbailey.com

Attorneys for Plaintiff
AUDREY KALLANDER

Filed
August 1, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV409997
By: dprok

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

AUDREY KALLANDER,

Plaintiff,

v.

KAYTEE PRODUCTS INCORPORATED;
CENTRAL GARDEN & PET COMPANY;
and DOES 1-150, inclusive,

Defendants.

Case No.: 23CV409997

~~[PROPOSED]~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: July 18, 2023
Time: 9:00 a.m.
Dept.: 16
Judge: Hon. Amber Rosen

1 Plaintiff, Audrey Kallander, and defendants, Central Garden & Pet Company and
2 its subsidiary Kaytee Products, Inc., having agreed through their respective counsel that
3 Judgment be entered pursuant to the terms of their settlement agreement in the form of a
4 stipulated judgment (“Consent Judgment”), and following this Court’s issuance of an order
5 approving their Proposition 65 settlement and Consent Judgment, and for good cause being
6 shown,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
8 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
9 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
10 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
11 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

12 **IT IS SO ORDERED.**

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7/28/2023 5:00:31 PM
Dated: _____



JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Troy C. Bailey, State Bar No. 277424
David Joshua Voorhees, State Bar No. 241436
VOORHEES & BAILEY, LLP
535 Ramona Street; Suite 5
Palo Alto, CA 94301
Telephone: (650) 313-2154
Facsimile: (650) 618-1606
josh@voorheesbailey.com
troy@voorheesbailey.com

Attorneys for Plaintiff
AUDREY KALLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

AUDREY KALLANDER,
Plaintiff,

v.

KAYTEE PRODUCTS INCORPORATED;
CENTRAL GARDEN & PET COMPANY;
and DOES 1-150, inclusive,

Defendants.

Case No. 23CV409997

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Audrey Kallander
4 (“Kallander”) and defendants Central Garden & Pet Company and its subsidiary Kaytee Products,
5 Inc. (“Central Garden”), with Kallander, and Central Garden each referred to individually as a
6 “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Kallander is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Central Garden employs ten or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Kallander alleges that Central Garden manufactures, sells, and distributes for sale in
17 California glass chew proof water bottles with exterior decorations containing lead. Central Garden
18 has tested the product and discovered it also contains trace amounts of cadmium. Lead and
19 cadmium are listed pursuant to Proposition 65 as chemicals known to cause birth defects and other
20 reproductive harm. Kallander alleges that Central Garden failed to provide the health hazard
21 warnings required by Proposition 65 for exposures to lead.

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are glass water bottles used to provide
24 water to caged rodents. The products have exterior decorations containing lead and cadmium.
25 The products include, and are exemplified by, but are not limited to, the “*Kaytee Products Chew*
26 *Proof Water Bottle*” UPC: 0 45125 61982 9 (hereinafter “Covered Products”).
27
28

1 **1.6 Notices of Violation**

2 On May 16, 2022, Kallander served Kaytee Products Incorporated, Central Garden & Pet
3 Company, Western Feed & Pet Supply, Inc., and the requisite public enforcement agencies with a
4 60-Day Notice of Violation, alleging that Central Garden and Western Feed & Pet Supply, Inc.
5 violated Proposition 65 when they failed to warn their customers and consumers in California of the
6 health hazards associated with exposures to lead in the Covered Products. No public enforcer has
7 commenced and is diligently prosecuting the allegations set forth in the Notice.

8 **1.7 Complaint**

9 On January 17, 2023, Kallander commenced the instant action, naming Kaytee Products
10 Incorporated and Central Garden & Pet Company as the defendants for the alleged violations of
11 Proposition 65 related to the Covered Products.

12 **1.8 No Admission**

13 Central Garden denies the material, factual, and legal allegations contained in the Notice and
14 Complaint and maintains that all of the products that it has sold and distributed in California,
15 including the Covered Products, have been, and are, in compliance with all laws. Nothing in this
16 Consent Judgment shall be construed as an admission by Central Garden of any fact, finding,
17 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
18 constitute or be construed as an admission by Central Garden of any fact, finding, conclusion, issue
19 of law, or violation of law, such being specifically denied by Central Garden. This Section shall
20 not, however, diminish or otherwise affect Central Garden’s obligations, responsibilities, and duties
21 under this Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Central Garden as to the allegations contained in the Complaint, that venue is
25 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
26 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
27 section 664.6.

28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
3 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
4 including the date of any unopposed tentative ruling approving this Consent Judgment that becomes
5 the order of the Court.

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

7 **2.1 Reformulation Commitment**

8 After receipt of the Notice, Central Garden voluntarily ceased purchase of water bottles with
9 painted logos and explored alternatives to the existing painted logos. Central Garden shall not sell
10 or offer Covered Products for sale in the State of California after 180 days from the Effective Date
11 unless they are Reformulated Products (“Reformulation Commitment Date”). Central Garden’s
12 voluntary commitment to provide Reformulated Products, in lieu of Covered Products with a
13 warning, is a material factor considered by the parties in reaching an agreement on the civil penalty
14 set forth in Section 3. In no event shall Releasees or Downstream Releasees, as defined hereinafter
15 as Section 4.1, be deemed in violation of this Consent Judgment or Proposition 65 where Covered
16 Products subject to this Consent Judgment were distributed or sold by Central Garden before the
17 Reformulation Commitment Date, which sales are included and accounted for in the civil penalty
18 assessed in Section 3.1 (even if stocked in shelves sold to consumers or otherwise within the chain
19 of distribution).

20 The forgoing notwithstanding, it is anticipated that Central Garden may have some unsold
21 “Remaining Covered Products” in inventory as of the Reformulation Commitment Date. Central
22 Garden retains the right to either destroy those Remaining Covered Products or to label them as set
23 forth in Section 2.3 below.

24 **2.2 Reformulation Standards**

25 “Reformulated Products” are defined as those products that: (a) contain no more than 90
26 parts per million (“ppm”) lead or more than 85 ppm of cadmium in any painted or decaled
27 decoration, colored artwork, designs and/or marking on the surface of the Reformulated Products
28 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or

1 equivalent methodologies utilized by federal or state agencies for the purpose of determining lead
2 content in a solid substance, and (b) yield no more than 1.0 microgram of lead on any surface
3 sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

4 If the decoration, colored artwork, designs and/or marking on the surface of the
5 Reformulated Products is tested after it is affixed to the glass substrate, the percentage of the lead or
6 cadmium by weight must related only to the decorating materials and must not include any quantity
7 attributable to non-decorating material (e.g., glass substrate).

8 **2.3** To the extent that Remaining Covered Products are sold after the Reformulation
9 Commitment Date, Central Garden shall only sell them if, and only if, they display a clear and
10 reasonable warning pursuant to Proposition 65 law and regulations which shall consist of the
11 “warning” described hereinafter.

12 (a) **Warning:**

13
14 **⚠ WARNING:** This product can expose you to
15 chemicals including lead and cadmium, which are known
16 to the State of California to cause cancer and birth defects
or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

17 A warning provided pursuant to section 2.3 must print the word “**WARNING:**” in all
18 capital letters and in bold font, followed by a colon. The warning symbol to the left of the word
19 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a bold black
20 outline, except that if the sign or label for the Covered Products does not use the color yellow, the
21 symbol may be in black and white. The symbol must be in a size no smaller than the height of the
22 word “**WARNING:**”. The warning shall be prominently displayed on a label, labeling or sign and
23 must be displayed with such conspicuousness, as compared with other words, statements, designs or
24 devices as to render it likely to be read and understood by an ordinary individual under customary
25 conditions of purchase or use.

26 **2.4** Compliance with the terms of this Consent Judgment shall constitute compliance
27 with Proposition 65 with respect to exposures to lead from the Covered Products.
28

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
4 alleged in the Notice or referred to in this Consent Judgment, Central Garden agrees to pay \$3,000
5 in civil penalties within five (5) business days of the Effective Date. The penalty payment will be
6 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with
7 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
8 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Kallander and
9 delivered to the address in Section 3.3 herein. Central Garden will provide its payment in two
10 checks as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Audrey Kallander” in the
11 amount of \$750.

12 **3.2 Attorney’s Fees and Costs**

13 The Parties acknowledge that Kallander and her counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to Kallander’s counsel,
15 thereby leaving the issue to be resolved after the material terms of the agreement had been settled.
16 Shortly after the other settlement terms had been reached, Central Garden expressed a desire to
17 resolve Kallander’s fees and costs. The Parties reached an accord on the compensation due to
18 Kallander’s counsel under general contract principles and the private attorney general doctrine
19 codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under
20 these legal principles, within five (5) business days of the Effective Date, Central Garden agrees to
21 pay \$24,000, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and
22 costs incurred investigating, bringing this matter to the attention of Central Garden’s management,
23 and negotiating a settlement in the public interest, but exclusive of fees and costs on appeal, if any.

24 **3.3 Payment Address**

25 All payments under this Consent Judgment shall be delivered to the following address:

26 Voorhees & Bailey, LLP
27 990 Amarillo Avenue
28 Palo Alto, CA 94303

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Kallander's Release of Proposition 65 Claims**

3 Kallander, acting on her own behalf and in the public interest, releases Central Garden and
4 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
5 and attorneys ("Releasees") and each entity to whom Central Garden directly or indirectly
6 distributes or sells the Covered Products including, but not limited to, its downstream distributors,
7 wholesalers, customers, retailers including without limitation, Western Feed & Pet Supply, Inc.
8 franchisers, cooperative members, licensors and licensees, ("Downstream Releasees") for any
9 violations arising under Proposition 65 for unwarned exposures to lead in the Covered Products
10 manufactured, imported, distributed or sold by Central Garden prior to the Reformulation
11 Commitment Date.

12 **4.2 Kallander's Individual Release of Claims**

13 Kallander, in her individual capacity only and not in her representative capacity, also
14 provides a release to Central Garden, Releasees, and Downstream Releasees which shall be
15 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
16 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
17 Kallander, of any nature, character or kind, whether known or unknown, suspected or unsuspected,
18 arising out of alleged or actual exposures to lead or cadmium in the Covered Products,
19 manufactured, imported, distributed or sold by Central Garden before the Reformulation
20 Commitment Date.

21 **4.3 Central Garden's Release of Kallander**

22 Central Garden, on its own behalf and on behalf of its past and current agents,
23 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
24 Kallander and her attorneys and other representatives, for any and all actions taken or statements
25 made (or those that could have been taken or made) by Kallander and her attorneys and other
26 representatives, whether in the course of investigating claims, seeking to enforce Proposition 65
27 against it in this matter, or with respect to the Covered Products.
28

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by all Parties. Kallander and Central Garden agree to support the
5 entry of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a
6 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
7 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
8 which motion Kallander shall draft and file and Central Garden shall support, appearing at the
9 hearing if so requested. If any third-party objection to the motion is filed, Kallander and Central
10 Garden agree to work together to file a reply and appear at any hearing. This provision is a material
11 component of the Consent Judgment and shall be treated as such in the event of a breach.

12 **6. SEVERABILITY**

13 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
14 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
15 not be adversely affected.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
19 rendered inapplicable by reason of law generally, or as to the Covered Products, then Central
20 Garden may provide written notice to Kallander of any asserted change in the law and shall have no
21 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
22 that, the Covered Products are so affected.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required to be provided pursuant to
25 this Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class,
26 registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any
27 Party by the other at the following addresses:
28

1 For Central Garden:

For Kallander:

2 Daniel Rapaport
3 Fennemore Wendel
4 1111 Broadway, 24th Floor
Oakland, CA 94607

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

5 Any Party may, from time to time, specify in writing to the other a change of address to which all
6 notices and other communications shall be sent.

7 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or portable
9 document format (PDF) signature, each of which shall be deemed an original, and all of which,
10 when taken together, shall constitute one and the same document.

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

12 Kallander and her attorneys agree to comply with the reporting form requirements
13 referenced in California Health and Safety Code section 25249.7(f).

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
16 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
17 any party and the entry of a modified Consent Judgment by the Court thereon.

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understand, and agreed to all of the terms and conditions of this
21 Consent Judgment.

22 **AGREED TO:**

AGREED TO:

23 Date: 01-26-23

Date:

24 By: 
25
26 AUDREY KALLANDER

By: 
CENTRAL GARDEN & PET COMPANY