

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Parties to the Agreement**

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EnviroProtect”) on the one hand and Lifetime Brands, Inc. (“Lifetime”) on behalf of its subsidiary Lifetime Brands Europe Limited’s Creative Tops Limited division (“CTL”) on the other hand, with EnviroProtect, Lifetime, and CTL collectively referred to as the “Parties.” EnviroProtect is an organization that seeks to promote, among other things, awareness of exposures to chemicals in consumer products. Lifetime and CTL are businesses which employ ten or more employees and manufacture and distribute consumer products, including ceramic tableware and mugs.

### **1.1 The Parties’ Allegations and Rationale for Settlement**

EnviroProtect generally alleges that Lifetime, through CTL, distributed certain ceramic mugs (“Blue Bird Mugs”) that were sold by Marshall’s of MA, Inc. (“Marshall’s”) in California, and failed to fully meet its responsibilities as an “opt-in” defendant under the Proposition 65 (California Health & Safety Code §§ 25249.5 et seq. (“Proposition 65”)) consent judgment entered into in *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”). More specifically, EnviroProtect alleges that the Blue Bird Mugs failed to meet the “lip and rim” lead standard for ceramic mugs as set forth in the Boelter CJ and did not otherwise contain the Proposition 65 warnings required under the Boelter CJ to the extent that they have been sold or offered for sale in California. Lifetime and CTL deny all of EnviroProtect’s allegations, and Lifetime and CTL further allege that the Blue Bird Mugs comply with all applicable requirements of the Boelter CJ, including with respect to lead decoration in the lip and rim area.

Notwithstanding their dispute concerning applicable facts, to avoid the need for litigation to resolve the competing allegations that have been made and in recognition of uncertainties facing the Parties if litigation concerning their competing allegations and evidence is

commenced, EnviroProtect and Lifetime (on behalf of CTL) have elected instead to enter into this Settlement Agreement.

### **1.2 Product Description**

The products referenced as the “Products” under this Settlement Agreement are the ceramic Blue Bird Mugs with exterior designs containing lead as such are defined under the Boelter CJ and which have been or are imported, sold and/or distributed for sale in California following entry of the Boelter CJ.

### **1.3 60-Day Notice and Exchange of Information**

On June 2, 2017, EnviroProtect sent Lifetime and Marshall’s a letter entitled “60-Day Notice of Violations of California Health & Safety Code Section 25249.5 Et Seq. (Proposition 65)” (“Notice”) that provided Lifetime and Marshall’s with notice of EnviroProtect’s allegations. EnviroProtect subsequently provided Lifetime with test results in EnviroProtect’s possession concerning its allegations and Lifetime/CTL then provided additional evidence, including test results and sales data, to EnviroProtect in response to the allegations.

### **1.4 No Admission**

Lifetime and CTL deny the material factual and legal allegations contained in EnviroProtect’s Notice and maintain that all products that they have imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws, including Proposition 65, and including as set forth in the Boelter CJ. Nothing in this Settlement Agreement shall be construed as an admission by Lifetime or CTL 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 Lifetime or CTL of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Lifetime’s obligations, responsibilities, and duties hereunder or under the Boelter CJ.

### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 17, 2017.

**2.Actions Required of CTL:**

Lifetime represents and warrants that, upon receipt of the Notice, it promptly followed up with CTL and reiterated to CTL the need to ensure compliance with the standard for lead associated with the Boelter CJ. Because of differences in the test data exchanged by the Parties, within sixty (60) days of the Effective Date, to the extent it or Lifetime has not already done so, CTL shall further instruct its manufacturers of ceramic mugs and its third-party testing labs to ensure that ceramic mugs supplied to CTL which may be imported into the United States, including but not limited to the Products, meet the requirements of the Boelter CJ. CTL shall not import ceramic mugs, including the Products, to the United States which may be offered for sale in California without first requiring a third party laboratory to conduct testing to ensure compliance with the Boelter CJ's requirements.

**3. Reimbursement of Fees and Costs**

CTLshall pay \$7,500 for fees and costs incurred by EnviroProtect's counsel as a result of investigating, bringing this matter to Lifetime and CTL's attention, and negotiating a settlement. CTLshall make the check payable to "Kawahito Law Group APC" and shall deliver payment on or before August 31, 2017, to the following address:

Kawahito Law Group APC  
Attn. EnviroProtect v. Lifetime/Marshalls  
222 North Sepulveda Blvd., Suite 2222  
El Segundo, CA 90245

To allow for the issuance of a timely payment to be rendered pursuant to the above, EnviroProtect shall provide Lifetime with a completed IRS Form W-9 for the Kawahito Law Group APC by no later than the Effective Date.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 EnviroProtect's Release**

This Settlement Agreement is a full, final and binding resolution between EnviroProtect and both Lifetime and CTL of any violation of Proposition 65 or the Boelter CJ that was or could have been asserted by EnviroProtect on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, against Lifetime or CTL, affiliated corporate entities, directors, officers, employees, attorneys and each entity to whom CTL directly or indirectly distributed or sold the Products including, but not limited to, CTL's downstream distributors, wholesalers, customers, retailers (including, but not limited to, The TJX Companies, Inc. and its subsidiaries, including Marshalls, T.J. Maxx, and HomeGoods) ("Releasees"), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by CTL (either directly or through the Releasees) in California before the Effective Date. The Releasees shall have no obligations under this Agreement and may, given the test results Lifetime/CTL provided to EnviroProtect, continue to sell the existing inventory of Products, as currently packaged and labeled without a Proposition 65 warning. However, CTL shall require a third party laboratory to conduct testing on all new Products to ensure compliance with the Boelter CJ's requirements before they are imported to the United States or offered for sale in California. This release is provided in EnviroProtect's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, EnviroProtect on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, but not on behalf of the public, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it or they may have including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys' fees -- arising with respect to Lifetime or CTL's compliance with the Boelter CJ or Proposition 65 before the

Effective Date.

**4.2 Lifetime and CTL's Release of EnviroProtect**

Lifetime, on behalf of itself and CTL, and their and its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against EnviroProtect and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by EnviroProtect and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 or the Boelter CJ's requirements in this matter or otherwise with respect to the Products.

**5. SEVERABILITY**

If any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining 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. Nothing in this Settlement Agreement shall be interpreted to relieve Lifetime or CTL from any obligation to comply with Proposition 65 or any other pertinent state or federal law.

**7. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To Lifetime or CTL:

Sara Shindel, General Counsel  
Lifetime Brands, Inc.  
1000 Stewart Avenue  
Garden City, NY 11530  
*with a copy to:*  
Robert Falk  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Fl.  
San Francisco, CA 94105

To EnviroProtect:

James K. Kawahito  
Kawahito Law Group APC  
Attn. EnviroProtect v. Lifetime/Marshalls  
222 North Sepulveda Blvd., Suite 2222  
El Segundo, CA 90245

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

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

**9. MODIFICATION**


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

**10. AUTHORIZATION**

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

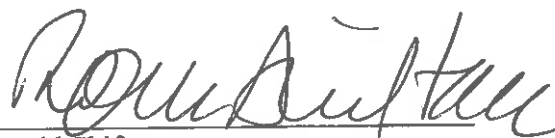
**AGREED TO:**

Date: 8/15/17

By:   
EnviroProtect, LLC (on behalf of itself and  
Kawahito Law Group APC)

**AGREED TO:**

Date: 8/15/17

By:   
Ronald Shiftan  
Vice Chairman and Chief Operating Officer,  
Lifetime Brands, Inc. (on behalf of itself  
and Lifetime Brands Europe Limited's  
Creative Tops Limited division)