

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Lifetime Brands, Inc. (“Lifetime Brands”), with Donaldson and Lifetime Brands each individually referred to as a “Party” and collectively as the “Parties.” Donaldson 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. Lifetime Brands employs ten or more persons and 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

Donaldson alleges that Lifetime Brands manufactures, sells, and distributes for sale in California, measuring cup/spoon sets containing the phthalate chemical Di(2-ethylhexyl) Phthalate (“DEHP). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects and other reproductive harm. Donaldson alleges that Lifetime Brands failed to provide the warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are measuring cup/spoon sets containing DEHP that are manufactured, sold, or distributed for sale in California by Lifetime Brands including, but not limited to, the “*KitchenAid Measuring Cup/Spoon Set*”, UPC# 0 24131 36768 9 (hereinafter referred to as “Products”).

1.4 Notice of Violation

On February 22, 2019, Donaldson served Lifetime Brands and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Lifetime Brands violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Lifetime Brands 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 Lifetime Brands 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 Brands of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lifetime Brands. This Section shall not, however, diminish or otherwise affect Lifetime Brands’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean April 29, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any

other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Lifetime Brands shall only manufacture, import, or otherwise acquire Products for potential distribution to or sale in the State of California, if they are Reformulated Products pursuant to Section 2.1.

2.3 Extended Reformulation Commitment

In further consideration of this Settlement Agreement and as a basis for the reduced level of statutory penalties required to be paid under Section 3.1 below, as of the Effective Date, Lifetime Brands shall also only manufacture, import, or otherwise acquire Products for potential distribution to or sale in the State of California, if they contain butyl benzyl phthalate (BBP), di-n-butyl phthalate (DBP), di-isodecyl phthalate (DIDP), diisononyl phthalate (DINP), and Di-n-hexyl Phthalate (DnHP) (collectively, all of the foregoing together with DEHP are further referred to herein as the “Listed Phthalates”) in concentrations less than 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance.

2.4 The Parties agree and intend for compliance with the terms of Sections 2.2 and 2.3 to constitute compliance with Proposition 65 with respect to exposures to Listed Phthalates from the Products as of the Effective Date.

2.5. Products in the Stream of Commerce

Based on the civil penalties to be paid pursuant to Section 3.1 below, Products manufactured, imported, or acquired for sale in California by Lifetime Brands before the Effective Date shall be exempt from the requirements of Sections 2.2 and 2.3, and are covered by the releases in Section 4.

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 alleged in the Notice or referred to in this Settlement Agreement, Lifetime Brands agrees to pay \$4,000 in civil penalties no later than the Effective Date. This penalty amount reflects a reduction of \$6,000 due to the extended reformulation commitment Lifetime is making under Section 2.3 above. 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 Donaldson, and delivered to the address in Section 3.3 herein. Lifetime Brands will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$3,000; and (2) “Audrey Donaldson” in the amount of \$1,000.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, 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, Lifetime Brands expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson and her 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, on or before the Effective Date, Lifetime Brands agrees to pay \$18,500 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 Lifetime Brands’ 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 Donaldson's Release of Proposition 65 Claims

Donaldson acting on her own behalf, and *not* on behalf of the public, releases Lifetime Brands, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, licensors (including, but not limited to the licensor which provided the license to Lifetime for use of the *KitchenAid* brand name) and each entity to whom Lifetime Brands directly or indirectly distribute or sell the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products. The Parties further 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 Lifetime Brands.

4.2 Donaldson's Extended Release of Claims

Donaldson, in her individual capacity only and *not* in her 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 Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Listed Phthalates in the Products

manufactured, imported, otherwise acquired, distributed, or sold by Lifetime Brands prior to the Effective Date. The Parties further 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 Lifetime Brands. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Lifetime Brands' Products.

4.3 Lifetime Brands' Release of Donaldson

Lifetime Brands, 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 Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her 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.

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 Lifetime Brands may provide written notice to Donaldson 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 Lifetime Brands:

Sara Shindel
General Counsel & Secretary
Lifetime Brands, Inc.
1000 Stewart Avenue
Garden City, NY 11530

For Donaldson:

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

With a copy to:

Robert Falk
Morrison & Foerster LLP
425 Market Street, 32nd Fl.
San Francisco, CA 94105

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)**

Donaldson and her 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:

Dated:

4/8/19

By:



AUDREY DONALDSON

AGREED TO:

Dated:

By:



Name/Title:
LIFETIME BRANDS, INC.

Robert Kay, CEO