

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Garden House HK (“Garden House”), with Donaldson and Garden House 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. Garden House is a business with ten (10) or more employees and a supplier of consumer products to Kirkland’s, Inc. (“Kirkland’s”), among others, that do business in California. Donaldson hereby alleges that Garden House 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 more specifically alleges that Garden House manufactures, sells, and distributes for sale in California, glassware with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that there was a failure 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 glassware with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by Garden House including, but not limited to, the “*Kirkland’s Canister with Hinge and Wood Lid*”; SKU 26-192169 (hereinafter referred to as “Products”).

1.4 Notice of Violation

On April 12, 2019, Donaldson served Kirkland's and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Kirkland's violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Products. Garden House was subsequently identified as the supplier of the Products to Kirkland's and entered into negotiations with Donaldson as indemnitor to Kirkland's to resolve Donaldson's claims concerning the Products, including with respect to those set forth against Kirkland's in the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Garden House, on its own behalf and on behalf of Kirkland's, denies the material, factual, and legal allegations contained in the Notice and maintains that all the products that it or Kirkland's have 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 Garden House 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 Garden House of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. This Section shall not, however, diminish or otherwise affect Garden House'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 September 20, 2019.

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

2.1 **Reformulation Standards**

“Reformulated Products” are Products that (a) contain lead in concentrations that do not exceed 90 parts per million (ppm) in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency (EPA) testing methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In the event that any of the Products have exterior decorations in the upper 20 millimeters, i.e., the “lip and rim area,” such decorations shall yield a result of “non-detect” (defined as no more than 25 ppm (0.025%) by weight of lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B. In addition to the above test methodologies, the Parties may use equivalent methodologies utilized by a state or federal agency to determine lead content in a solid substance.

2.2 **Reformulation Commitment**

As of 60 days from the Effective Date, Garden House shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain appropriate health hazard warnings per sections 2.3 and 2.4.

2.3 **Clear and Reasonable Warnings**

To the extent that Products manufactured, imported, or otherwise acquired by Garden House after the Effective Date do not meet the standard for Reformulated Products set forth in Section 2.1 above, Garden House shall label them, if they are then distributed for potential sale in California, with a clear and reasonable warning which shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Garden House may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 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:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling and 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 or use.

2.5 In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission different than those set forth above, Garden House shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement

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, Garden House

agrees to pay \$2,500 in civil penalties no later than 10 days after 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 Donaldson and delivered to the address in Section 3.3 herein to be paid within 10 days of the Effective Date. Garden House will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,875; and (2) “Audrey Donaldson” in the amount of \$625.

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, Garden House expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson’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 10 days of the Effective Date, Garden House agrees to pay \$13,500, 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 Garden House, 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, in her individual capacity only, releases Garden House, its directors, officers, agents employees, attorneys, and each entity to whom Garden House directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Kirkland's), franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 based on unwarned exposures to lead in the Products as manufactured, imported, or otherwise acquired by Garden House prior to the Effective Date. 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 Garden House.

4.2 Donaldson's Individual Release of Claims

Donaldson, in her individual capacity only, 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 lead in the Products manufactured, imported, or otherwise acquired by Garden House prior to the Effective Date. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Garden House's Products. 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 Garden House.

4.3 Garden House's Release of Donaldson

Garden House, on its own behalf and on behalf of Kirkland's, 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.

4.4 California Civil Code §1542

The Parties acknowledge that they are 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.

The Parties hereby expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them 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 it may lawfully waive such rights or benefits pertaining to the releases.

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 Garden House 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 Garden House:

Ryan S. Landis
Polsinelli
2049 Century Park East, Suite 2900
Los Angeles, CA 90067

For Donaldson:

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

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

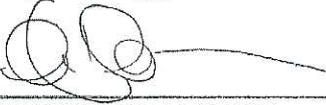
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

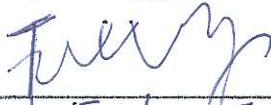
AGREED TO:

Date: September 26, 2019

Date: September __, 2019

By: 

AUDREY DONALDSON

By: 

Fred Tsang
GARDEN HOUSE HK

