

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties


This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and CY Top Ltd. (“CY Top”), with Donaldson and CY Top 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. CY Top 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”), and was the distributor of the Products (as defined below) to Walmart Inc.

#### 1.2 General Allegations

Donaldson alleges that CY Top manufactures, sells, and distributes for sale in California, can openers with vinyl components containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that CY Top failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

#### 1.3 Product Description

The products covered by this Settlement Agreement are those products identified in the Notice of Violation described below (Sec. 1.4), including specifically can openers with vinyl components containing DEHP that are manufactured, sold, or distributed for sale in California by Cy Top including, but not limited to, the “*Mainstays™ Stainless Steel Can Opener*”, UPC 8 75217 00024 8 (hereinafter referred to as “Products”).

  
12/19/19

#### **1.4 Notice of Violation**

On May 16, 2019, Donaldson served Walmart Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Walmart 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. Subsequently, CY Top contacted Donaldson’s attorneys to confirm that CY Top was the distributor of the Products to Walmart Inc. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission of Proposition 65 Violations**

CY Top 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, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by CY Top 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 CY Top of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CY Top. This Section shall not, however, diminish or otherwise affect CY Top’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 December 23, 2019.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

### **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 Option**

Commencing 30 days after the Effective Date, CY Top shall not 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 Proposition 65-compliant health hazard warnings pursuant to Section 2.3.

## **2.3 Product Warning Option**

Commencing 30 days after the Effective Date, all Products CY Top sells into California and/or distributes for sale in California, that do not qualify as Reformulated Products, shall bear a Proposition 65-compliant warning which shall be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use and contain one of the following statements affixed directly to the product or product packaging, label, or tag, for Products sold in California:

**⚠ WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

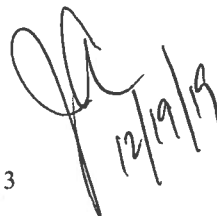
OR

**⚠ WARNING:** Cancer and Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

## **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, CY Top agrees to pay \$1,800 in civil penalties no later than 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

  
12/19/19

of Environmental Health Hazard Assessment (“OEHHA”)[Tax ID No. 68-0284486] and the remaining 25% of the penalty amount paid to Donaldson [Voorhees & Bailey, LLP will provide CY Top with Donaldson’s Tax ID No. prior to the Effective Date], and delivered to the address in Section 3.3 herein. CY Top will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,350; and (2) “Audrey Donaldson” in the amount of \$450.

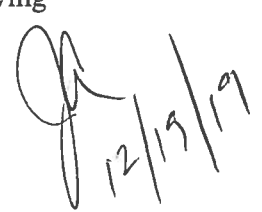
**3.2 Attorneys’ Fees and Costs**

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, CY Top 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, CY Top agrees to pay \$13,200, 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 CY Top’s 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 CY Top, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom CY Top directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including Walmart Inc.), 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 CY Top.

**4.2 Donaldson's Individual 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 DEHP in the Products manufactured, imported, distributed, or sold by CY Top 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 CY Top. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve CY Top's Products.

  
12/19/19

**4.3 Cy Top's Release of Donaldson**

CY Top, 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 CY Top 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 CY Top Ltd.:

Craig A. Livingston  
Livingston Law Firm  
1600 S. Main St, Ste 280  
Walnut Creek, CA 94596

For Donaldson:

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

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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: December \_\_, 2019

Date: December 19, 2019

By: \_\_\_\_\_  
AUDREY DONALDSON

By:  \_\_\_\_\_  
CYTOP LTD.

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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: December 18, 2019

Date: December     , 2019

By:   
\_\_\_\_\_  
AUDREY DONALDSON

By: \_\_\_\_\_  
CY TOP LTD.