

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Tablecraft Products Company, Inc. (“Tablecraft”), with Donaldson and Tablecraft 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. Donaldson alleges that Tablecraft 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 Tablecraft manufactures, sells, and distributes for sale in California, food/beverage glasses 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 Tablecraft failed 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 food/beverage glasses with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by Tablecraft including, but not limited to, the “*Tablecraft Products 4oz Measured Pourer; UPC 7 27875 10598 1*” (hereinafter collectively referred to as the “Products”).

1.4 Notice of Violation

On July 15, 2019, Donaldson served Tablecraft and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Tablecraft violated

Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from its Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Tablecraft 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 Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Tablecraft 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 Tablecraft of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Tablecraft. This Section shall not, however, diminish or otherwise affect Tablecraft'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 the date on which this Agreement is signed by both Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

"Reformulated Products" are defined as those glassware food/beverage Products that satisfy either the standards outlined in subsection 2.1 (a) or (b):

2.1(a) **Wipe Test-Based Standard.** The glassware food/beverage Products must yield a result no higher than 1.0 micrograms (µg) of lead on any exterior decorations sampled and analyzed pursuant to the NIOSH test method 9100; or


2.1(b) **Decorating Material Content-Based Standard:** The exterior decorations on the Products must contain no more than 100 parts per million ("ppm"), one-hundredth of one percent (0.01%) of lead by weight when measured either before or after the material is fired onto (or otherwise affixed to) the Products and as analyzed pursuant to

U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content. If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must relate only to the decorating materials and must not include any quantity attributable to non-decorating material (*e.g.* glass substrate).


2.2 Reformulation Commitment

As of the Effective Date, Tablecraft 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. Tablecraft agrees and represents that, as of the Effective Date, to the extent that it ships or sells any Products in existing inventory that have not been reformulated, it will provide warnings on such Products that comply with this section 2.2. Warnings shall be prominently placed 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.

The Parties agree that on-product/packaging labeling stating one of the following shall constitute compliance with Proposition 65 with respect to the lead in the Products:

 **WARNING:** This product can expose you to chemicals including lead, which is 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.

or

 **WARNING:** Cancer and Reproductive Harm
www.P65Warnings.ca.gov.

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, Tablecraft 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, Tablecraft agrees to pay \$2,000 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 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. Tablecraft will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,500; and (2) “Audrey Donaldson” in the amount of \$500.

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, Tablecraft 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, on or before the Effective Date, Tablecraft agrees to pay \$17,500, 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 Tablecraft’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 Tablecraft, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, (collectively, "Releasees") and each entity to whom Tablecraft directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, (including Target Corporation and its parents, subsidiaries and affiliates), franchisees, cooperative members, importers, and licensees (collectively, " Downstream Releasees"), from any and all claims that have been or could have been brought, or may in the future be asserted against the Releasees or Downstream Releasees regarding violations of Proposition 65 for exposures to lead or failure to warn about exposures to lead, arising out of or in connection with sales of the Products manufactured, shipped and/or otherwise distributed by Tablecraft prior to the Effective Date, even if sold by Downstream Releasees after 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 distributors or suppliers who sold the Products or any component parts thereof to Tablecraft.

4.2 Donaldson's Individual Release of All Claims

Donaldson, in her individual capacity only and *not* in her representative capacity, provides a release herein on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assigns, 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 any nature, character, or kind, whether known or unknown, suspected or unsuspected, and hereby waives and releases with respect to the Products all rights to institute or participate in, directly or indirectly any form of legal action, including without limitation, all actions and causes of action, in law or inequity suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees, (collectively "Claims")), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products or failure to warn of lead in the Products manufactured, imported, distributed, or sold by Tablecraft prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Products are limited to those manufactured, distributed, or sold by Tablecraft.

Donaldson acknowledges that she is familiar with section 1542 of the Civil Code, 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.

Donaldson, her past and current agents, representatives, attorneys, successors and assigns 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 Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the violations of Proposition 65 for exposures to lead or failure to warn about

exposures to lead, arising out of or in connection with sales of the Products manufactured, shipped and/or otherwise distributed by Tablecraft prior to the Effective Date. The release in this section shall have no force or effect until the full amount of payments set forth in Section 3.2 are paid in full.

The Parties 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 Tablecraft

Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee or Downstream Releasee that does not involve Tablecraft's Products.

4.3 Tablecraft's Release of Donaldson

Tablecraft, 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 Tablecraft 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 Tablecraft:

Marian Krupa, CFO
Tablecraft Products Company, Inc.
801 Lakeside Drive
Gurnee, IL 60031

For Donaldson:

Audrey Donaldson
c/o Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

With copy to:

Renee D. Wasserman, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104
rwasserman@rjo.com

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) and shall report this Settlement Agreement to the Attorney General's Office within five (5)

days of the Parties' execution of this Settlement Agreement.

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: November 15, 2019

Date: November 15, 2019

By: 
Audrey Donaldson

By: 
Tablecraft Products Company, Inc.