

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Diageo North America, Inc. (“Diageo”), with Donaldson and Diageo 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 Diageo 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 Diageo manufactures, sells, offers for sale, 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 cancer, birth defects and other reproductive harm. Donaldson alleges that Diageo 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 Casamigos Tequila-branded glassware with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by Diageo including, but not limited to, the “*Casamigos Blanco Tequila With Two Glasses*” UPC: 8 56724 00629 9 (hereinafter referred to as “Products”). Casamigos Tequila LLC is a wholly-owned subsidiary of Diageo.

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

Donaldson served Diageo and the requisite public enforcement agencies with a 60-Day Notice of Violation dated December 13, 2019, alleging that Diageo and BevMo Holdings, LLC violated Proposition 65 when they failed to warn their 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**

Diageo 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 Diageo 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 Diageo of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Diageo. This Section shall not, however, diminish or otherwise affect Diageo'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 March 25, 2020.

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

As of the date 180 days after the Effective Date, Diageo 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 a clear and reasonable warning pursuant to sections 2.2. The Parties intend and agree that compliance with this Section 2 shall constitute compliance with Proposition 65 as it relates to lead in or on the Products.

## **2.1 Reformulated Products**

“Reformulated Products” are defined as those Products that satisfy the standard in subsection 2.1(a) and/or 2.1(b). Any Product that contains decorations located in the upper 20 millimeters of the Product, i.e., the “Lip-and-Rim” area also must satisfy the standard in subsection 2.1(c).

2.1(a). **Decorating Material Content-Based Standard:** Products meeting the decorating material content-based standard contain no more than 100 parts per million (“ppm”) lead in the exterior decorations, colored artwork, designs and/or marking on the surface of the Product when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance. If decorations are tested after they are affixed to the Product, the percentage of the lead by weight must be related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., glass substrate).

2.1(b). **Wipe Test-Based Standard:** Products meeting the wipe test-based standard yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.


2.1(c). **Lip and Rim Area Decoration Standard:** Any Product that contains decorations located in the upper 20 millimeters of the Product, i.e., the “Lip-and-Rim” area also must yield a result of no more than 0.5 micrograms/milliliter or less of lead when tested using ASTM Method C927-99.

## **2.2 Clear and Reasonable Warnings**


To the extent that Products manufactured, imported, or otherwise acquired by Diageo after the date 180 days after the Effective Date do not meet the standard for Reformulated Products set forth in Section 2.1 above and have not entered the stream of commerce, Diageo shall, before distributing or selling the Products in California, provide a clear and reasonable warning which shall consist of either the **Warning** or **Alternative**

**Warning** described in sections 2.2(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 cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Diageo may, but is not required to, use the alternative short-form warning as set forth in this § 2.2(b) (“**Alternative Warning**”) as follows:

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

**2.3** A **Warning** or **Alternative Warning** provided pursuant to section 2.2 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 bold 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 prominently displayed on a label, labeling or sign and must be displayed with such conspicuousness, as 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 purchase or use.

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 relevant to the Products that are different than those set forth above, Diageo 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 Total Payment**

Diageo shall pay \$24,500 in total through wire transfer to Voorhees & Bailey, LLP, which shall provide the wire transfer information to Diageo no later than the Effective Date. This payment shall be allocated by Voorhees & Bailey as set forth below:

#### **3.2 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 (or that could have been alleged in the Notice), Diageo agrees to pay \$3,200 in civil penalties no later April 24, 2020. 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. Diageo will provide this payment through wire transfer to Voorhees & Bailey, LLP, as part of the total amount set forth in Section 3.1. Voorhees & Bailey will then distribute the civil penalty in two checks as follows: (1) “OEHHA” in the amount of \$2,400; and (2) “Audrey Donaldson” in the amount of \$800.

#### **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. 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, no later than April 24, 2020, Diageo agrees to pay \$21,300, as part of the total payment set forth in Section 3.1, via wire transfer to Voorhees &

Bailey, LLP for all fees and costs incurred investigating, bringing this matter to the attention of Diageo's management, and negotiating a settlement.

#### **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 Diageo, its parents, subsidiaries, affiliated entities, directors, officers, agents employees, attorneys, and each entity to whom Diageo directly or indirectly distributes or sells or offers to sell the Products, including, but not limited, to Bevmo Holdings, LLC and other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 based on unwarned exposures to lead in the Products.

##### **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, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Diageo. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

##### **4.3 Diageo's Release of Donaldson**

Diageo, 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.

#### **4.4 California Civil Code Section 1542**

The Parties acknowledge that the claims released in sections 4.1 through 4.3 may include unknown claims. The Parties further 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 Diageo 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 Diageo:**

Jordan Toumey Razza  
Director of Litigation & Antitrust  
Diageo North America, Inc.  
200 Elm Street  
Stamford, CT 06901

**For Donaldson:**

Audrey Donaldson  
c/o Voorhees & Bailey, LLP  
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.

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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.

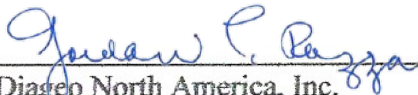
**AGREED TO:**

Date: March 24, 2020

By:   
\_\_\_\_\_  
Audrey Donaldson

**AGREED TO:**

Date: March 24, 2020

By:   
\_\_\_\_\_  
Jordan P. Piazza  
Diageo North America, Inc.