

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and The Hillman Group, Inc. (“Hillman”), with Donaldson and Hillman 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 Hillman 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 Hillman manufactures, sells, and distributes for sale in California, PVC coin purses 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 or other reproductive harm. Donaldson alleges that Hillman 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 PVC coin purses containing DEHP that are manufactured, sold, or distributed for sale in California by Hillman including, but not limited to, the “*Rubber Squeeze Coin Purse*” UPC: 0 18714 10038 1 (hereinafter referred to as “Products”).

1.4 Notice of Violation

On December 20, 2019, Donaldson served Hillman and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Hillman 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

Hillman 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, including, but not limited to, Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Hillman 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 Hillman of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Hillman. This Section shall not, however, diminish or otherwise affect Hillman’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 13, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 As of the Effective Date, Hillman shall not distribute for sale, sell or offer the Products for sale in the State of California unless: (1) such Products are “Reformulated Products” as that term is defined in Section 2.2; or (2) such Products contain a warning in accordance with Section 2.3 or (3) Hillman gives notice in accordance with Section 2.4. Products which are not Reformulated Products may comply


with Proposition 65 and this Settlement Agreement if warnings are given either on the product label or packaging or in the stores where the products are sold. Warnings shall be prominently displayed on the label, labeling or sign with such conspicuousness when compared with other words, statements, designs or devices on the label, labeling or sign, as to render the warnings likely to be read and understood by ordinary individuals under customary conditions of purchase or use. In store warnings shall be provided in a manner such that customers can be expected to understand to which specific product the warning applies, so as to minimize the risk of customer confusion. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products.

2.2 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. Reformulated Products shall be deemed to comply with Proposition 65 with regard to DEHP and exempt from any Proposition 65 warning requirements for DEHP.

2.3 Warnings

Products that Hillman sells and/or distributes for sale in California after the Effective Date and which do not qualify as “Reformulated Products” (as that term is defined in Section 2.2 above), may comply with Proposition 65 and this Settlement Agreement by having warnings affixed to their packaging, labeling or directly on each Product sold at retail in California which state:

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

OR

WARNING: This product can expose you to DEHP, 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

If the first warning identified above (commonly referred to as the “short form” warning) is used, the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

2.4 Notice Pursuant to 27 CCR Section 25600.2 et seq.

Alternatively, Hillman may comply with Proposition 65 and this Settlement Agreement by providing the authorized agents of the businesses to whom it sells the Products or the authorized agents of the retail sellers, the notice required under 27 California Code of Regulations Section 25600.2. If Hillman chooses to comply with this Settlement Agreement by providing such a notice, the notice must include all necessary warning materials such as labels, labeling, shelf signs or tags, with the warning language specified in section 2.3 above.

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, Hillman agrees to pay, no later than the Effective Date, \$1,200 in civil penalties. 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. Hillman will provide its payment, on or before the Effective Date, in two checks as follows: (1) “OEHHA” in the amount of \$900; and (2) “Audrey Donaldson” in the amount of \$300.

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, Hillman 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, Hillman agrees to pay, no later than the Effective Date, \$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 Hillman'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 Hillman, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Hillman directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including, but not limited to, Ace Hardware Corporation, franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date relating to 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 Hillman.

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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Hillman 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 Hillman. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Hillman's Products.

4.3 Hillman's Release of Donaldson

Hillman, 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 Hillman 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 Donaldson:

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

With a copy to Hillman's outside counsel:

John E. Dittoe
Law Office of John E. Dittoe
70 Hazel Lane
Piedmont, CA 94611

For Hillman

Doug Roberts
General Counsel
The Hillman Group, Inc.
10590 Hamilton Ave
Cincinnati, Ohio 45231-0012

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 or pursuant to Court order.

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 8, 2020

By: 
AUDREY DONALDSON

AGREED TO:

Date: March __, 2020

By: _____
Doug Roberts
General Counsel
THE HILLMAN GROUP, INC.

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

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AGREED TO:

Date: March 8, 2020

By: 
AUDREY DONALDSON

AGREED TO:

Date: March 10, 2020

By: 
Doug Roberts
General Counsel
THE HILLMAN GROUP, INC.