

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Mystic Apparel, LLC (“Mystic Apparel”), with Donaldson and Mystic Apparel 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 Mystic Apparel 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 Mystic Apparel manufactures, sells, and distributes for sale in California, PVC cleaning gloves 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 Mystic Apparel 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 cleaning gloves containing DEHP that are manufactured, sold, or distributed for sale in California by Mystic Apparel including, but not limited to, the “*Spotless Home Fashion Cleaning Gloves*” UPC: 7 09996 83111 6 (hereinafter referred to as “Products”).

1.4 Notice of Violation

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

Mystic Apparel denies the material, factual, and legal allegations contained in the Notice and maintains that all products that are being or have been sold and distributed by Mystic Apparel in California, including the Products, have been, and are, in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Mystic Apparel 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 Mystic Apparel of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mystic Apparel. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by Mystic Apparel, its officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for Mystic Apparel, or any direct or indirect customer of Mystic Apparel who sold or sells the Products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect Mystic Apparel’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 9, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 As of the Effective Date, Mystic Apparel, other than Products that are already in the stream of commerce, shall not distribute for sale, sell or offer the Products for sale in the State of California unless they are Reformulated Products or contain a warning as set forth in Sections 2.2 and 2.3, below. 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.

2.3 Warnings

As of the Effective Date, all Products Mystic Apparel sells and/or distributes for sale in California which do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Mystic Apparel further agrees that the warning will 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. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and containing one of the following statements:

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

OR

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

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Mystic Apparel shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement. If Mystic Apparel avails itself of any such future promulgated “Safe Harbor” provisions, it shall notify Donaldson of so doing. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Mystic Apparel may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations. If Proposition 65 warnings for DEHP should no longer be required, Mystic Apparel shall not have any further obligations pursuant to this Settlement 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, Mystic Apparel agrees to pay, no later than the Effective Date, \$2,200 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. Mystic Apparel will provide its payment, on or before the Effective Date, in two checks

as follows: (1) "OEHHA" in the amount of \$1,650; and (2) "Audrey Donaldson" in the amount of \$550.

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, Mystic Apparel 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, Mystic Apparel agrees to pay, as payment in full, no later than the Effective Date, \$17,800, 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 Mystic Apparel'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 Mystic Apparel, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, shareholders, employees, attorneys, successors and assignees and each entity to whom Mystic Apparel directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers,

retailers, including but not limited to, Ross Stores, Inc. (and its subsidiaries and affiliates), 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 that was or could have been asserted by Donaldson. 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 Mystic Apparel.

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

4.3 Mystic Apparel's Release of Donaldson

Mystic Apparel, 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 § 1542. It is possible that other claims not known to Donaldson arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Donaldson on behalf of herself and her past and current agents, representatives, attorneys, and successors and/or assignees acknowledges that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. Donaldson acknowledges that the claims released in §§ 4.1 and 4.2, above, may include unknown claims, and nevertheless waives California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Donaldson acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

5. PUBLIC BENEFIT

It is Mystic Apparel's understanding that the commitments it has agreed to herein, and actions to be taken by Mystic Apparel under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Mystic Apparel that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Mystic Apparel's failure (or failure of any Releasee) to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture,

distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Mystic Apparel is in material compliance with this Settlement Agreement.

6. 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.

7. 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 Mystic Apparel 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. This Settlement Agreement shall have no application to Products which are not distributed for sale or not sold to California consumers.

8. 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 Mystic Apparel:

Charles Mizrahi
1333 Broadway 6th Floor
New York, NY 10018

For Donaldson:

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.

9. 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.

10. 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).

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

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13. 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.

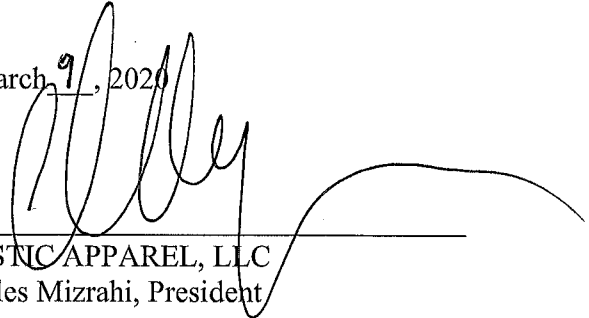
AGREED TO:

Date: March __, 2020

By: _____
AUDREY DONALDSON

AGREED TO:

Date: March ⁹ __, 2020

By:  _____
MYSTIC APPAREL, LLC
Charles Mizrahi, President

13. 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: March 8, 2020

Date: March __, 2020

By: 

AUDREY DONALDSON

By: _____
MYSTIC APPAREL, LLC
Charles Mizrahi, President