

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Audrey Donaldson ("Donaldson") and Jo-Ann Stores, LLC ("Jo-Ann Stores"), with Donaldson and Jo-Ann Stores 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 Jo-Ann Stores 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 Jo-Ann Stores has sold and/or distributed for sale in California ceramic pet bowls with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm. Donaldson alleges that Jo-Ann Stores 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 defined as ceramic pet bowls with exterior decorations containing lead that Jo-Ann Stores has sold or distributed for sale in California, specifically, the "*Jo-Ann Stores 'Meowy Christmas' Ceramic Pet Bowl*"; UPC: 4 894429 800022, and the "*Jo-Ann Stores 'May Your Days be Furry and Bright' Ceramic Pet Bowl*"; UPC 4 894429 800015 (hereinafter collectively referred to as the "Products").

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

On February 19, 2020, Donaldson served Jo-Ann Stores and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Jo-Ann Stores 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**

Jo-Ann Stores 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 Jo-Ann Stores 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 Jo-Ann Stores of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Jo-Ann Stores. This Section shall not, however, diminish or otherwise affect Jo-Ann Stores' obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 16, 2020.

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

#### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance;

and (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

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., ceramic substrate).

## **2.2 Reformulation/Warning Commitment**

As of the Effective Date, Jo-Ann Stores 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 appropriate health hazard warnings pursuant to Section 2.3.

## **2.3 Clear and Reasonable Warnings**

(a) As of the Effective Date, all Products Jo-Ann Stores sells and/or distributes for sale in California that do not qualify as Reformulated Products shall bear a clear and reasonable warning pursuant to this Section. Jo-Ann Stores 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. A warning affixed directly to the product or product packaging, label or tag, for Products sold in California that contains one of the following statements shall constitute a clear and reasonable warning for purposes of this Settlement Agreement:



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

OR



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

(b) The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the product

packaging, label or tag for the Products is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

(c) The Parties recognize that these are not the exclusive methods of providing a clear and reasonable warning under Proposition 65 and its implementing regulations. The Parties accordingly agree that Jo-Ann Stores shall be deemed to satisfy the warning obligations of this Settlement Agreement by either adhering to this Section or by conforming to the Office of Environmental Health Hazard Assessment ("OEHHA") safe harbor warning provisions in place as of the Effective Date or as may be amended.

### **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, Jo-Ann Stores agrees to pay \$2,000 in civil penalties within ten (10) business days of Jo-Ann Stores' receipt of the tax documentation specified in Section 3.3 below. 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 3.4 herein. Jo-Ann Stores 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, Jo-Ann Stores 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, within ten (10) business days of Jo-Ann Stores' receipt of the tax documentation specified in Section 3.3 below, Jo-Ann Stores agrees to pay \$14,000, 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 Jo-Ann Stores' management, and negotiating a settlement.

### **3.3 Tax Documentation**

Donaldson agrees to provide Jo-Ann Stores with IRS W-9 forms for each of the payees under this Settlement Agreement.

### **3.4 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 Jo-Ann Stores, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Jo-Ann Stores directly or indirectly distributes or sells the Products, including, but not limited, to any downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. The Parties 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 Jo-Ann Stores.

#### **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 Jo-Ann Stores prior to the Effective Date. 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 Jo-Ann Stores. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Jo-Ann Stores' Products.

#### **4.3 Jo-Ann Stores' Release of Donaldson**

Jo-Ann Stores, 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**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Donaldson on behalf of herself only, on one hand, and Jo-Ann Stores, on the other hand, acknowledge 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. The Parties acknowledge that the claims released in Sections 4.1, 4.2, and 4.2, above, may include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 1542 reads 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 and Jo-Ann Stores each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

**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 Jo-Ann Stores 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 Jo-Ann Stores:**

Lauren Hopkins, Esq.  
Beveridge & Diamond, PC  
456 Montgomery St., Suite 1800  
San Francisco, CA 94104

**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.

**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: July \_\_, 2020

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

**AGREED TO:**

Date: July 17, 2020

By: Robert D. Icsman  
Bob Icsman, Senior Legal Counsel  
Jo-Ann Stores, LLC



**11. AUTHORIZATION**

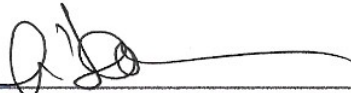
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: July 16, 2020

Date: July \_\_, 2020

By: 

Audrey Donaldson

By: \_\_\_\_\_

Bob Icsman, Senior Legal Counsel  
Jo-Ann Stores, LLC