

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) Lifeguard Press, Inc. (“Lifeguard”) and Barnes & Noble Booksellers, Inc. (“BNB”), with Donaldson, Lifeguard and BNB 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 Lifeguard 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 Lifeguard and BNB each manufactures, sells, and/or distributes for sale in California, ceramic dishes with 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 Lifeguard 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 ceramic dishes with exterior decorations that are manufactured, sold, or distributed for sale in California by Lifeguard including, but not limited to, the *Vera Bradley Ceramic Dish “Small Ceramic Dish 25158-11 Pretty Posies”*; UPC: 8 25466 97390 9 (hereinafter referred to as the “Products”).

1.4 Notice of Violation

On March 6, 2020, Donaldson served Vera Bradley Designs, Inc. and BNB and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Vera Bradley and BNB violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to lead from the Products. Donaldson's counsel was thereafter contacted by Lifeguard and informed that Lifeguard was the upstream manufacturer/supplier of the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

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

Furthermore, BNB 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 BNB 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 BNB of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by BNB.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 29, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION

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 related 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, Lifeguard 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.

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, Lifeguard 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. Lifeguard 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, Lifeguard 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, Lifeguard agrees to pay \$15,400, in the form of checks made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Lifeguards' management, and negotiating a settlement, as follows: (i) \$3,800 due on or before the Effective Date; (ii) \$5,800 due on or before June 26, 2020; and (iii) \$5,800 due on or before July 31, 2020.

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

3.4 Payment Acceleration Clause

The timing of payments, set forth in Sections 3.1 and 3.2, are material terms of this agreement. Any payment that is not received within three (3) business days of the due date shall trigger this acceleration clause and all remaining payments shall be due and payable within five (5) business days of triggering this acceleration clause.

4. CLAIMS COVERED AND RELEASED

4.1 Donaldson's Release of Proposition 65 Claims

Donaldson acting on her own behalf, and on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees (collectively, "Releasers"), but *not* on behalf of the public, releases Lifeguard, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, shareholders, successors, assignees, and each entity to whom Lifeguard directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees, including but not limited to Vera Bradley Designs, Inc. and its subsidiaries, and Barnes & Noble, Inc. and its subsidiaries (including, without limitation, BNB), parent owner and affiliates and its and their directors, officers, employees agents and representatives (collectively, "Releasees"), from all claims for violations of Proposition 65 that were or could have been asserted by Releasers 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 Lifeguard.

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 and her attorneys, Voorhees & Bailey, LLP, 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 Lifeguard or the Releasees prior to the Effective Date.

The Parties understand and agree that this Section 4.2 release extends to the Releasees, but 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 Lifeguard. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Lifeguard's Products.

4.3 Lifeguard's Release of Donaldson

Lifeguard, 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 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 Lifeguard, on the other hand, acknowledge that this 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 4.3, above, may include unknown claims, and nevertheless waive 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 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 Lifeguard each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.5 Deemed Compliance with Proposition 65

The Parties intend and agree that compliance by Lifeguard with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

4.6 Public Benefit

It is Lifeguard's understanding that the commitments it has agreed to herein, and actions to be taken by Lifeguard 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 Lifeguard that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Lifeguard's failure to provide a warning concerning exposure to lead prior to purchase or use of 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 Lifeguard is in material compliance with this Settlement Agreement.

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 Lifeguard 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 Lifeguard:

Nick Dew
Lifeguard Press, Inc.
134 Beech Bend Road
Bowling Green, KY 42101

For Donaldson:

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

With a copy to:

Brian W. Chellgren
Dentons Bingham Greenebaum LLP
300 West Vine Street, Suite 1200
Lexington, KY 40507

For BNB:

Legal Department
Barnes & Noble, Inc.
122 Fifth Avenue
New York, NY 10011

With a copy to:

Brian W. Chellgren
Dentons Bingham Greenebaum LLP
300 West Vine Street, Suite 1200
Lexington, KY 40507

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: May __, 2020

By: _____
Audrey Donaldson

AGREED TO:

Date: May 21, 2020

By:  _____
David Coffey, President/CEO
Lifeguard Press, Inc.

AGREED TO:

Date: May __, 2020

By: _____
Bradley Feuer, Vice President, General Counsel
Barnes & Noble Booksellers, Inc.

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10. MODIFICATION

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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: May 26, 2020

By: 
Audrey Donaldson

AGREED TO:

Date: May __, 2020

By: _____
_____, President/CEO
Lifeguard Press, Inc.

AGREED TO:

Date: May __, 2020

By: _____
Bradley Feuer, Vice President, General Counsel
Barnes & Noble Booksellers, Inc.

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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: May __, 2020

By: _____
Audrey Donaldson

AGREED TO:

Date: May __, 2020

By: _____, President/CEO
Lifeguard Press, Inc.

AGREED TO:

Date: May ³⁰ 2020

By: Bradley Feuer
Bradley Feuer, Vice President, General Counsel
Barnes & Noble Booksellers, Inc.