

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Settlement Agreement”) is hereby entered into by and between Evelyn Wimberley (“Wimberley”) and Williams-Sonoma, Inc. (“Williams-Sonoma”). Wimberley and Williams-Sonoma are collectively referred to as the “Parties,” and each of them sometimes individually as a “Party.” Wimberley alleges that she is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.2 Allegations and Representations

Wimberley alleges that Williams-Sonoma is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code § 25249.6 et seq., (“Proposition 65”). As set forth below, Wimberley sent Williams-Sonoma a 60-day notice alleging that Williams-Sonoma has offered for sale and sold in the State of California a “Looflighter Electric Firestarter” and other similar charcoal starter products without a Proposition 65 warning that when used as intended with charcoal, wood, or other similar fuel, produce carbon monoxide, soot, and other combustion by-products. Carbon Monoxide, Soot, and other combustion by-products are listed under Proposition 65 as chemicals known to the State of California to cause cancer and/or reproductive harm.

1.3 Covered Products

The products that are covered by this Settlement Agreement are defined as the “Looflighter Electric Firestarter” and all similar products manufactured, distributed, sold, or offered for sale by Williams-Sonoma in the State of California that when used as intended with charcoal, wood, or other similar fuel, produce carbon monoxide, soot, and other combustion by-products (“Covered Products”).

1.4 Notice of Violation

On or about July 28, 2020, Wimberley served Williams-Sonoma, Looft Industries AB

("Looft") and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Williams-Sonoma, Looft, and such public enforcers with notice that alleged that Williams-Sonoma and Looft Industries AB were in alleged violation of Proposition 65 for failing to warn California consumers that the Covered Products allegedly expose users in California to carbon monoxide, soot, and other combustion by-products when used as intended with charcoal, wood, or other similar fuel. To the best of the Parties knowledge, no public enforcer diligently prosecuted the claims alleged in the Notice within sixty days plus service time relative to the provision of Notice by Wimberley.

1.5 No Admission

The Parties enter into this Settlement Agreement as a full and final settlement of all claims that were raised in the Notice, or that could have been raised in the Notice, arising out of the facts and/or conduct alleged therein. Williams-Sonoma denies the material factual and legal allegations contained in the Notice, and maintains that all of the products it has manufactured, imported, distributed and/or sold, including the Covered Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. By execution of this Settlement Agreement and agreeing to comply with its terms, Williams-Sonoma does not admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating that it has committed any violations of Proposition 65, or any other statutory, common law or equitable requirements relating to exposure to carbon monoxide, soot, or other combustion by-products from use of Covered Products, such being specifically denied by Williams-Sonoma. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed as an admission by Williams-Sonoma of any fact, conclusion of law, issue of law or violation of law, nor shall this Settlement Agreement be admissible in any legal proceeding for purposes of establishing such an admission. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Williams-Sonoma may have in any future legal proceeding. This Settlement Agreement is the product of negotiation and compromise and


is accepted by Williams-Sonoma solely for purposes of settling, compromising, and resolving issues disputed in the Notice. The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning the Covered Products set forth in the Notice, including claims against manufacturers, distributors, customers, retailers, and affiliates, who allegedly violated Proposition 65 by distributing the Covered Products to Williams-Sonoma for sale in California.

1.6 Execution/Effective Date


For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Settlement Agreement is fully executed by the Parties hereto.

2. INJUNCTIVE RELIEF: WARNINGS


2.1 Covered Products manufactured, imported, distributed, and/or sold in California by Williams-Sonoma more than 60 days after the Effective Date are deemed to comply with Proposition 65 and this Settlement Agreement if Williams-Sonoma provides Proposition 65 warnings as set forth in Section 2.2. Pursuant to Section 2.2, Williams-Sonoma shall provide one of the three following warning statements for Covered Products manufactured, imported, distributed, and/or sold in California more than 60 days after the Effective Date:

 **[California Proposition 65] WARNING:** This product can expose you to chemicals including carbon monoxide and other combustion byproducts which are 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.

Or

 **[California Proposition 65] WARNING:** This product can expose you to chemicals including lead and carbon monoxide which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or

 **[California Proposition 65] WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets is optional. The word “WARNING” shall be in all capital letters and bold print. The warning symbol to the left of the word “WARNING:” must be a black exclamation

point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white.

2.2. The warning statement shall be affixed to or printed on the Covered Product itself, or its packaging, or its labeling. The warning shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the Covered Product, its packaging, or its labeling, so as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The type size of the warning must be legible, and no smaller than any other warning provided with the Covered Product. The warning requirements of this Settlement Agreement only apply to Covered Products sold in California. Covered Products that were manufactured, packed, or labeled prior to 60 days after the Effective Date shall be permitted to be sold as previously manufactured, packed and/or labeled. Compliance with this Settlement Agreement shall be deemed compliance with Proposition 65 with respect to actual or alleged exposures to listed chemicals from the purchase or use of Covered Products.

3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS

3.1 In complete resolution of any claim for monetary relief of any kind related to the Notice, Covered Products, and this Settlement Agreement (except Wimberly's attorney's fees as set forth in Section 3.2 below), Williams-Sonoma shall pay a total of \$500 in civil penalties to be apportioned in accordance with California Health & Safety Code Section 25192, with 75% of these funds (\$375) remitted to the State of California's Office of Environmental Health Hazard Assessment (CCR Title 11 Div 4-Proposition 65 Private Enforcement) and the remaining 25% of the funds (\$125) remitted to Wimberley, as provided by California Health & Safety Code Section 25249.7.

3.2 As complete reimbursement and resolution of any claim for Wimberly's attorneys' fees, costs, and expenses of any kind incurred in connection with the Notices, the Covered Products, and the negotiation of this Settlement Agreement, Williams-Sonoma shall pay

Wimberley's counsel an all-inclusive total of \$16,000 for all attorneys' fees, expert and investigation fees, and any other costs or expenses of any kind associated with the Notice, the Covered Products, bringing this matter to Williams-Sonoma's attention, and negotiating this Settlement Agreement.

3.3 Payment by Williams-Sonoma of all monies due under this Settlement Agreement shall be made via either settlement check(s) delivered to Plaintiff's counsel's address set forth in Section 7 below, or by bank wire transfer to the "Law Offices of Stephen Ure, PC" no later than ten (10) days following the Effective Date. Wimberley's counsel shall be solely responsible for transmitting any monies required under this Settlement Agreement to Wimberley and OEHHA.

3.4. The Law Offices of Stephen Ure, PC agrees to provide Williams-Sonoma with tax identification information for all settlement payees within one (1) day following the Effective Date.

3.5 Other than the payment specified herein, each side is to bear its own attorneys' fees and costs.

4. CLAIMS COVERED AND RELEASED

4.1 Release

Wimberley, on behalf of herself, releases Williams-Sonoma and all entities and persons from whom Williams-Sonoma obtained and to whom Williams-Sonoma directly or indirectly distributes or sells Covered Products, including but not limited to each of its suppliers (including but not limited to Looft), manufacturers, distributors, marketplace hosts, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, and users, and their respective parent companies, corporate affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, employees, and sister entities (collectively "Releasees") from all claims for actual or alleged violations of Proposition 65 through the Effective Date based on exposure to listed chemicals from Covered Products.

In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or

participate in, directly or indirectly, any form of legal action and releases any other claims, actions, causes of action, demands, rights, suits, liabilities, damages, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future that she could make against Williams-Sonoma or the other Releasees relating to or arising from Covered Products. With respect to the foregoing waiver and release in this paragraph, Wimberley hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

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.

Wimberly, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, expressly waives and relinquishes any and all rights and benefits that she or they may have under, or that may be conferred upon them by, the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters.

4.2 Public Benefit

It is Williams-Sonoma's understanding that the commitments it has agreed to herein, and the actions it has agreed to take under this Settlement Agreement, confer a significant benefit on 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 Williams-Sonoma that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Williams-Sonoma's alleged failure to provide a warning concerning actual or alleged exposure to carbon monoxide, soot, or other combustion by-products and/or listed chemicals prior to use of the Covered Products it has caused to be manufactured, imported, distributed, sold, or offered for sale in California, or will cause to be manufactured, distributed, sold, or offered for sale in

California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Williams-Sonoma is in material compliance with the terms of this Settlement Agreement.

4.3 Williams-Sonoma Release of Wimberley

Aside from any potential dispute relating to this Settlement Agreement, Williams-Sonoma waives any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made by Wimberley and her attorneys and other representatives in the course of investigating the claims resolved in this Settlement Agreement, or otherwise seeking enforcement of Proposition 65 against it in this matter with respect to Covered Products.

5. SEVERABILITY AND MERGER

If subsequent to the execution of this Settlement Agreement any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

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.

6. GOVERNING LAW

6.1 This Settlement Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of California without regard to conflicts of law principles. This Settlement Agreement resolves any issue, now or in the future, with William-Sonoma/s compliance with Proposition 65 with respect to alleged exposures to listed chemicals arising from Covered Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Williams-Sonoma shall have no

further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

6.2 This Settlement Agreement shall apply to and be binding upon Wimberley and Williams-Sonoma, its divisions, subdivisions, and subsidiaries, if any, and the Parties' successors and assigns.

6.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement, and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement.

7. NOTICES

Unless otherwise specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and delivered or sent by email and: (i) first-class (registered or certified mail), return receipt requested; or (ii) overnight courier to any Party by the other Party at the following addresses:

For Williams-Sonoma:

Danielle Hohos
Vice President/Deputy General Counsel
Williams Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, CA 94109

With copy to:

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell
Robert Dollar Building
311 California Street, 10th Floor
San Francisco, CA 94104

For Wimberley:

Stephen Ure, Esq.
Law Offices of Stephen Ure, PC.
11622 El Camino Real, Suite 100
San Diego, California 92130

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

The stipulations to this Settlement Agreement may be executed in counterparts and by means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one and the same document.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Wimberley agrees to promptly comply with the requirements set forth in California Health & Safety Code §25249.7(f).

10. **MODIFICATION**

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

11. **ENFORCEMENT OF SETTLEMENT AGREEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs.

12. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

negotiations, commitments, and understandings related thereto, if any, are hereby merged herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. AUTHORIZATION


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

AGREED TO:

WIMBERLEY:

By: 
EVELYN WIMBERLEY, an individual

WILLIAMS-SONOMA:

By: 
Danielle Hohos
Its: Sr. VP/Deputy Gen. Counsel