

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) on the one hand, and Richloom Fabrics Group, Inc., Richloom Home Fashions Corp., Richloom Corp. (collectively, “Richloom”), and Jo-Ann Stores, LLC (“Jo-Ann”) (collectively with Richloom, the “Settling Defendants”) on the other hand, with Donaldson and Settling Defendants each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Audrey Donaldson

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.

1.3 Settling Defendants

Donaldson alleges that each of the Settling Defendants 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”).

1.4 General Allegations

Donaldson alleges that the Settling Defendants manufacture, sell, and/or distribute for sale in California, craft upholstery vinyl 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 Settling Defendants failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.5 Product Description

The products covered by this Settlement Agreement are craft upholstery vinyl that are manufactured, sold, or distributed for sale in California by Settling Defendants,

specifically limited to and defined as, the *Hudson Pre-Cut Upholstery Vinyl; One Yard, Black, SKU 17184599*; *Hudson Pre-Cut Upholstery Vinyl; One Yard, Caramel, SKU 17184581*; *Hudson Pre-Cut Upholstery Vinyl; One Yard, Chocolate, SKU 17184581* (hereinafter collectively referred to as the “Products”).

1.6 Notice of Violation

On August 17, 2020, Donaldson served Settling Defendants and the requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Settling Defendants violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 No Admission

This Agreement resolves claims that are denied and disputed by Settling Defendants. Settling Defendants each deny the material, factual, and legal allegations contained in the Notice and expressly maintain that that they did not knowingly or intentionally expose California consumers to any Proposition 65- listed chemicals, and otherwise contend that all of the products that they have sold and/or distributed in California, including the Products, have been, and are, in compliance with all applicable laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Settling Defendants (or any one of them) 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 Settling Defendants (or any one of them) of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Settling Defendants. Notwithstanding the foregoing, this Section shall not, however, diminish or otherwise affect Settling Defendants’ obligations, responsibilities, and duties under this Settlement Agreement.

1.8 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 27, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standard

“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.

2.2 Reformulation Commitment

As of the Effective Date, Settling Defendants shall not distribute for sale, sell or offer the Products for sale in the State of California unless they qualify as Reformulated Products pursuant to Section 2.1. 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.

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, Richloom, on behalf of all Settling Defendants, agrees to pay, no later than the Effective Date, \$2,400 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. Richloom, on behalf of all Settling Defendants, will provide its

payment, on or before the Effective Date, in two checks as follows: (1) “OEHHA” in the amount of \$1,800; and (2) “Audrey Donaldson” in the amount of \$600.

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. Settling Defendants then expressed a desire to resolve the issue of 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, except fees that may be incurred on appeal. Under these legal principles, Richloom, on behalf of all Settling Defendants, agrees to pay, no later than the Effective Date, \$18,900, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all reasonable fees and costs incurred investigating, bringing this matter to the attention of Settling Defendants’ 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

This Agreement is a full, final, and binding resolution between Donaldson, acting on her own behalf and not on behalf of the public, and Settling Defendants of all violations of Proposition 65 asserted by Donaldson against Settling Defendants with regard to failure to warn about exposures to DEHP in the Products, including their parents, subsidiaries,

affiliated entities under common ownership, directors, officers, agents employees, attorneys, successors, and assignees of Settling Defendants, and/or each entity to whom Settling Defendants directly or indirectly distribute or sell Products, including, but not limited, to downstream vendors, distributors, wholesalers, customers, retailers and resellers, including, but not limited to Jo-Ann Stores, LLC, franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 based on their failure to warn about alleged exposures to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by Settling Defendants in California before the Effective Date. 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 Settling Defendants.

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 and operate 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 DEHP in the Products manufactured, imported, distributed, and/or sold by Settling Defendants or Releasees prior to the Effective Date. Donaldson acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides 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 expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

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

4.3 Settling Defendants' Release of Donaldson

Settling Defendants, on their own behalf, and on behalf of their 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. Richloom acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides 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.

Settling Defendants' expressly waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

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, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

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 Richloom 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. NOTICES

When any party is entitled to receive any notice under this Agreement, the notice shall be sent in writing to the following addresses by: (a) personal delivery; (b) first-class mail, registered mail, or certified mail, return receipt requested; or (c) a recognized overnight courier:

For Richloom:

Richard Schaeffer, CFO
Richloom Corp.
Richloom Fabrics Group, Inc.
Richloom Home Fashions Corp.
261 Fifth Avenue, Floor 12
New York, NY 10016

For Donaldson:

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

For Jo-Ann Stores, LLC

Robert Icsman, Sr. Legal Counsel
Jo-Ann Stores, LLC
5555 Darrow Road
Hudson, OH 44236

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 court order after agreement of the affected Parties.

11. ENTIRE AGREEMENT

This 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 hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto with respect to the subject matter hereof. No other agreements not specifically

referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties with respect to the subject matter hereof. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver.

12. AUTHORIZATION

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

IT IS SO AGREED

Dated: November ____, 2020

By: _____
Audrey Donaldson

Dated: November 19, 2020

By:  _____
Richard Schaeffer, CFO
Richloom Corp.
Richloom Fabrics Group, Inc.
Richloom Home Fashions Corp.

referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties with respect to the subject matter hereof. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver.

12. AUTHORIZATION

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

IT IS SO AGREED

Dated: November 18, 2020

By: 

Audrey Donaldson

Dated: November __, 2020

By: _____
Richard Schaeffer, CFO
Richloom Corp.
Richloom Fabrics Group, Inc.
Richloom Home Fashions Corp.

Dated November 24, 2020

Jo-Ann Stores, LLC:

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