

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and C.R. Gibson, LLC (“Gibson”), with Donaldson and Gibson each individually referred to as a “Party” and collectively as the “Parties.” Donaldson alleges that she 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 further alleges that Gibson 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 Gibson manufactures, sells, and distributes for sale in California, mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that Gibson 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 mugs with exterior designs containing lead that are manufactured, sold, or distributed for sale in California by Gibson, including, but not limited to, the “*Modern Expression Monogram “K” Ceramic Mug With Floral Design*”; UPC: 0 49022 48507 5 and the *Monogram “G” Mug*; UPC: 06016 636225 58028 1 (hereinafter collectively referred to as the “Products”).

1.4 Notice of Violation

On July 23, 2020, Donaldson served Walgreen Co. and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Walgreen violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from the products. Thereafter, Donaldson was informed that Gibson was the manufacturer/supplier of the Products.

On August 27, 2020, Donaldson served Gibson, CSS Industries, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Gibson violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Products.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

Gibson 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 Gibson 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 Gibson of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gibson. This Section shall not, however, diminish or otherwise affect Gibson'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 the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNING

2.1 Reformulation Commitment

As of the Effective Date, Gibson shall not manufacture, or order from any supplier, Products intended for retail sale in the State of California unless they are: (a) Reformulated Products pursuant to Section 2.2; or (b) accompanied by a clear and reasonable warning as described below in Section 2.3. Products in Gibson's inventory or otherwise in the stream of commerce prior to the Effective Date are exempt from the requirements of Section 2, as they have been included in the calculation of civil penalties required pursuant to Section 3.1 below.

2.2 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; *or* (b) yield no more than 1.0 microgram of lead on decorated portions of the surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; *and* (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead or a concentration level of 0.5 µg/ml or less of lead using ASTM method C 927-99) for any decorations or design located in the upper 20 millimeters of a Product, i.e., the "Lip-and-Rim" area, when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance.

If the decoration/design 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).

2.3 Proposition 65 Warnings

2.3.1 For any Products that are not Reformulated Products (“Non-Reformulated Products”), such Non-Reformulated Products shall be accompanied by a clear and reasonable warning, as follows:

WARNING: This product can expose you to Lead which is 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.

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the Non-Reformulated Product 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”. If Gibson has reason to believe the Non-Reformulated Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement.

The Non-Reformulated Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

2.4 Public Benefit

It is Gibson’s understanding that the commitments it has agreed to herein, and actions to be taken by Gibson under this Settlement Agreement 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 Gibson 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 Gibson’s alleged failure to provide a warning concerning actual or alleged exposure to lead prior to 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 Gibson is in material compliance with 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, Gibson agrees to pay \$2,500 in civil penalties no later than ten (10) business days after 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. Gibson will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,875; and (2) “Audrey Donaldson” in the amount of \$625.

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, Gibson 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, no later than ten (10) business days after the Effective Date, Gibson agrees to pay \$16,000 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 Gibson'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 Gibson, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Gibson directly or indirectly distributes or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to Walgreen Co. and Tuesday Morning, Inc. and their respective subsidiaries, affiliates, and parents, shareholders franchisees, cooperative members, licensors and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead from the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that may have manufactured the Products or any component parts thereof for Gibson, or any distributors or suppliers who may have sold the Products or any component parts thereof to Gibson.

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, limited to and arising out of alleged or actual exposures to lead from the Products manufactured, imported, distributed, or sold by Gibson 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 may have manufactured the Products or any component parts thereof for Gibson, or any distributors or suppliers who may have sold the Products or any component parts thereof to Gibson. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Gibson's Products.

4.3 Gibson's Release of Donaldson

Gibson, 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, 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

Each of the Parties acknowledges that it is familiar with Section 1542 of 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.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently

discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

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 Gibson 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 C.R. Gibson, LLC:

Aaron Belzer. Esq.
Seyfarth Shaw LLP
2029 Century Park East; Suite 3500
Los Angeles, CA 90067-3021

For Donaldson:

Audrey Donaldson
c/o Voorhees & Bailey, LLP
535 Ramona Street; Suite 5990 Amarillo
Palo Alto, CA 94301

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. NEUTRAL CONSTRUCTION

Both Parties and 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 both Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party by virtue of its participation in the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

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.

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: November 17 , 2021

Date: November 16, 2021

By: 

AUDREY DONALDSON

By: 

C.R. GIBSON, LLC