

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Fiskars Brands, Inc. (“Fiskars”). Donaldson and Fiskars shall each be 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. Fiskars 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 Fiskars either imports, and/or manufactures, and/or directly or indirectly sells or offers for sale, markets and/or distributes for sale in California, certain PVC pen pouches containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm. Donaldson alleges that Fiskars failed to provide a warning pursuant to Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the *Fiskars 12 Gel Pen Set With Reusable Storage Pouch; UPC: 0 20335 90170 4*, either imported, manufactured, directly or indirectly sold, offered for sale, marketed or distributed for sale in California by Fiskars (hereinafter the “Products”).

1.4 Notice of Violation

On November 3, 2020, Donaldson served Fiskars, Ross Stores, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Fiskars violated Proposition 65 by failing to warn its 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.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 21, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

"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, Fiskars shall not sell or offer for sale Products in the State of California unless they are Reformulated Products pursuant to Section 2.1. Any Products manufactured prior to the Effective Date may be sold by any person at any time

without violation of this Settlement Agreement, as they have been included in the calculation of the civil penalty payment required under Section 3.1. The Parties agree and intend that compliance by Fiskars 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 certain claims alleged in the Notice or referred to in this Settlement Agreement, Fiskars agrees to send, no later than July 8, 2021, \$1,000 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 sent to the address in Section 3.3 herein. Fiskars will send its payments, on or before July 8, 2021, in two checks as follows: (1) “OEHHA” in the amount of \$750; and (2) “Audrey Donaldson” in the amount of \$250. Counsel for Donaldson agrees to provide all taxpayer identification information to counsel for Fiskars by June 18, 2021 for all payees under this Settlement Agreement.

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, Fiskars 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, Fiskars agrees to send

\$14,000, no later than July 8, 2021, 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 Fiskars’ management, and negotiating a settlement. Other than the payments by Fiskars specified herein, the Parties agree to pay their own fees and costs.

3.3 Payment Address

All payments under this Settlement Agreement shall be sent via an overnight courier with a tracking system 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 and waives any right to claims against Fiskars, its parents, subsidiaries, affiliated entities, predecessors, successor or assigns, its directors, officers, agents, employees, attorneys, and each entity from whom Fiskars purchased, or to whom Fiskars directly or indirectly distributed or sold Products, including, but not limited, to upstream and downstream manufacturers, importers, distributors, wholesalers, customers, marketers, retailers (including specifically Ross Stores, Inc.), franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DEHP in the Products up through and on the Effective Date. After the Effective Date, compliance with this Settlement Agreement by Fiskars shall constitute compliance with Proposition 65 with respect to DEHP in the Products.

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, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or directly or indirectly sold or offered for sale or marketed by Fiskars on and prior to the Effective Date.

4.3 Fiskars' Release of Donaldson

Fiskars, 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, up through the Effective Date.

4.4 Public Benefit Effect of Agreement.

It is the Parties' understanding that the commitments Fiskars has agreed to herein, and the actions to be taken under this Settlement Agreement, including payment of a Civil Penalty, 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 the Parties that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Fiskars' alleged failure to provide a warning concerning exposure to DEHP prior to use of the Products it has imported, manufactured, marketed, distributed, directly or indirectly sold, or offered for sale in California, or will import, manufacture, market, distribute, directly or indirectly 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 Fiskars is in material compliance with this Settlement Agreement, expressly including the payment obligations herein.

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 Fiskars 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 Fiskars:

Judith Praitis, Faegre Drinker Biddle &
Reath
1800 Century Park East
Suite 1500
Los Angeles, CA 90067

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
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) and to promptly after receipt remit the OEHHA portion of the civil penalty payment to OEHHA.

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties. This Settlement Agreement is enforceable solely by the Parties hereto.

11. 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.

12. 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: June 16, 2021

Date: _____, 2021

By: 
AUDREY DONALDSON

By: _____
FISKARS BRANDS, INC.

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) and to promptly after receipt remit the OEHHA portion of the civil penalty payment to OEHHA.

10. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties. This Settlement Agreement is enforceable solely by the Parties hereto.

11. **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.

12. **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: _____, 2021

Date: June 17., 2021

By: _____
AUDREY DONALDSON

By: 
FISKARS BRANDS, INC.