

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Brown-Forman Corporation (“Brown-Forman”), with Donaldson and Brown-Forman 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. Brown-Forman 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 Brown-Forman manufactures, sells, and distributes for sale in California, glass cocktail shakers with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects and other reproductive harm. Donaldson alleges that Brown-Forman failed to provide the warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are glass cocktail shakers with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by Brown-Forman, specifically the “*Jack Daniels ‘Gentleman Jack’ with Cocktail Recipe Shaker*” (hereinafter referred to as “Products”).

1.4 Notice of Violation

On March 26, 2021, Donaldson served Brown-Forman, Walmart Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Brown-Forman 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 Notice.

1.5 No Admission

Brown-Forman 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 Brown-Forman 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 Brown-Forman of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Brown-Forman. Nothing in this Settlement Agreement shall preclude Brown-Forman from asserting any and all applicable defenses available to it in any future proceeding under Proposition 65 or otherwise. This Section shall not, however, diminish or otherwise affect Brown-Forman’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 12, 2021.

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2. INJUNCTIVE RELIEF: REFORMULATION

2.1 As of the Effective Date, Brown-Forman 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 2.2 or contain a warning pursuant to Section 2.3.

2.2 Reformulation Standards

“Reformulated Products” are defined as those Products which comply with the requirements for “Glassware Food/Beverage Products” as set forth in Section 2.3.1 of the Proposition 65 consent judgment entered in *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”), to which Brown-Forman previously opted-in.

2.3 Warnings

As of the Effective Date, Products which fail to meet the requirements for “Glassware Food/Beverage Products” as set forth in Section 2.3.1 of the Boelter CJ, shall be labeled in compliance with the Proposition 65 warning requirements set forth in the Boelter CJ.

2.4 The Parties agree and intend for compliance with the terms of Sections 2.2 or 2.3 to constitute compliance with Proposition 65 with respect to exposures to lead from the Products.

2.5. Products in the Stream of Commerce

Based on the civil penalties to be paid pursuant to Section 3.1 below, Products previously distributed for sale in California shall be exempt from the requirements of Sections 2.1, 2.2 and 2.3, and are covered by the releases in Section 4.

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, Brown-Forman

agrees to pay \$1,000 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. Brown-Forman will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$750; and (2) “Audrey Donaldson” in the amount of \$250.

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, Brown-Forman expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson and her 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, on or before the Effective Date, Brown-Forman agrees to pay \$13,000 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 Brown-Forman’ 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
Attn. Donaldson v. Brown-Forman
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Donaldson's Release of Proposition 65 Claims

This Settlement Agreement is a full, final, and binding resolution between Donaldson, in her individual capacity and *not* on behalf of the public, and Brown-Forman, of any violation of Proposition 65 that was or could have been asserted by Donaldson, on her own behalf, or on behalf of her past and current agents, principals, employees, insurers, accountants, entities under her ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Brown-Forman, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Brown-Forman directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including, but not limited to, Walmart Inc.) and their affiliates, franchisees, cooperative members, licensors, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to lead contained in the Products manufactured, sold, or distributed for sale by Brown-Forman 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.

4.2 Donaldson's Extended 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 or cadmium in the Products manufactured, imported, otherwise acquired, distributed, or sold by Brown-Forman or its predecessors (including corporations it previously acquired) 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, as an individual and *not* on behalf of the public, expressly waives and relinquishes any and all rights and benefits which 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 lead and cadmium in Products manufactured, imported, distributed or sold by Brown-Forman before the Effective Date.

The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

4.3 Brown-Forman' Release of Donaldson

Brown-Forman, 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 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Brown-Forman under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Brown-Forman's intent by entering into this Agreement that to the extent any other private party initiates an action against Brown-Forman alleging a violation of Proposition 65 with respect to failure to provide a clear and reasonable warning concerning exposure to lead from the Products manufactured, distributed, sold or offered for sale by Brown-Forman in California, and subject to Brown-Forman's material compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those Products and Proposition 65-listed chemicals addressed under this 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 Brown-Forman 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.

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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 Brown-Forman:

Brown-Forman Corporation
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

With a copy to:

Rohit Sabnis, Esq.
Keller & Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

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.

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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:

AGREED TO:

Dated:

Dated: *November 5, 2021*

By: _____
AUDREY DONALDSON

By: *[Signature]*
BROWN-FORMAN CORPORATION

11. AUTHORIZATION

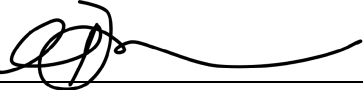
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Dated: Nov 11, 2021

Dated:

By: 

AUDREY DONALDSON

By: _____
BROWN-FORMAN CORPORATION