

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and H&H Asia Ltd. (“H&H”), with Donaldson and H&H 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. Donaldson alleges that H&H 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 H&H manufactures and other downstream entities sell and distribute for sale in California, certain 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 H&H 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 specifically identified as, and limited to, (i) the mugs contained in the *Mimi Premium Collection 4 Piece Tea Set*; UPC: 80-2821-959778-000999-04-6, SKU: 80 28 959778 000800 27, that are manufactured, sold, or distributed for sale in California by H&H; (ii) *Frankie Grey Set of Two Ceramic Mugs*; UPC: 80-6588-984956000599-11-6, that are manufactured, sold, or distributed for sale in California by H&H; (iii) *Mug Shotz Halloween Ceramic Mug*; UPC: 8062-6228-666523-FLS3; and (iv) *The Bakeshop Mixing Bowl & Baking Utensil*

*Set*; SKU: D77 S051322 C9684 T6 FLS1120 (hereinafter collectively referred to as “Products”).

#### **1.4 Notices of Violation**

On October 9, 2020, Donaldson served the TJX Companies, Inc. (“TJX”) and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that TJX 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 Mimi Mug Products.

On March 26, 2021, Donaldson served TJX and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that TJX 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 Frankie Grey products.

On May 19, 2021, Donaldson served TJX and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that TJX 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 Mug Shotz Halloween Mug products.

H&H was subsequently identified as the manufacturer/supplier of the products identified in the October 9, 2020, March 26, 2021, and May 19, 2021, Notices and indicated their interest in resolving certain allegations contained therein.

On June 9, 2021, Donaldson served H&H and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that H&H 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 Bakeshop ceramic bowl products.

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

### **1.5 No Admission**

H&H denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it manufactured and were sold and distributed in California by downstream entities, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by H&H 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 H&H of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by H&H. This Section shall not, however, diminish or otherwise affect H&H'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 September 30, 2021.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 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; (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and, for the ceramic mug products, (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations 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 in a solid substance

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).

## **2.2 Reformulation Commitment**

As of the Effective Date, H&H 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 2.1.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases contained in Sections 4.1 and 4.2 below, H&H agrees to pay \$5,000 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. H&H will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$3,750; and (2) “Audrey Donaldson” in the amount of \$1,250.

### **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, H&H 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, on or before the Effective Date, H&H agrees to pay \$54,000 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 H&H’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 H&H, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom H&H directly or indirectly distributes or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to, the TJX Companies, Inc., and its parents, subsidiaries, and affiliates, franchisees, cooperative members, licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. 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 H&H.

### **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 in the Products manufactured, imported, distributed, or sold by H&H 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 manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to H&H. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve H&H's Products. With respect to the foregoing waivers and releases in this paragraph and section 4.1, Donaldson hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of the provisions of § 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.

#### **4.3 H&H's Release of Donaldson**

H&H, 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.

**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 H&H 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 H&H Asia Ltd.:**

Kimberly F. Rich  
Baker & McKenzie LLP  
1900 North Pearl Street, Suite 1500  
Dallas, Texas 75201

**For Donaldson:**

Audrey Donaldson  
c/o Voorhees & Bailey, LLP  
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).

10. **MODIFICATION**

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

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:**

Date: Sept 23, 2021

By:   
\_\_\_\_\_  
AUDREY DONALDSON

**AGREED TO:**

Date: Sept. 27, 2021

**H & H ASIA LTD.**  
By:   
\_\_\_\_\_  
**AUTHORIZED SIGNATURE**  
H&H ASIA, LTD.