

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Williams-Sonoma, Inc. (“Williams-Sonoma”). Donaldson and Williams-Sonoma are referred to individually as a “Party” and collectively as the “Parties.” Donaldson is an individual who allegedly resides in the State of California who seeks to improve human health by reducing or eliminating hazardous substances used in consumer products. Donaldson alleges that Williams-Sonoma 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 Williams-Sonoma manufactures, sells, and/or distributes for sale in California, certain homework holders/folders with PVC components containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”) without first providing California consumers with a Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm. Donaldson alleges that Williams Sonoma failed to provide the warning required by Proposition 65 for exposure to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are all Homework Holders/Folders with PVC Components manufactured, imported, sold, offered for sale, and/or distributed for sale in California by Williams-Sonoma, including, but not limited to, the *Mackenzie Homework Holder Blue*; SKU: 8658367, (hereinafter the “Products”).

1.4 Notice of Violation

On July 2, 2021, Donaldson served Williams-Sonoma, Inc., Williams-Sonoma Stores, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that the Notice Recipients violated Proposition 65 by failing to warn customers in California that exposures to DEHP may occur from use of the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Williams-Sonoma enters into this Settlement Agreement as a full and final settlement of all claims that were or that could have been raised in the Notice. Williams-Sonoma denies the material factual and legal allegations contained in the Notice, and maintains that all of the products that it has manufactured, imported, sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Williams-Sonoma of any fact, finding, issue of law, or violation of law, including but not limited to any fact or conclusion of law suggesting that Williams-Sonoma has violated Proposition 65, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Williams-Sonoma of any of the above, such being specifically denied by Williams-Sonoma. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Williams-Sonoma may have in this or any other future legal proceeding. This Settlement Agreement is the product of negotiation and compromise and is accepted by Williams-Sonoma solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties’ 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 9, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

“Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (“ppm”)) each of DEHP, Diisononyl phthalate (“DINP”), dibutyl phthalate (“DBP”), diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”), and butyl benzyl phthalate (“BBP”), in any accessible components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.


2.2 Reformulation or Warning Commitment

As of the Effective Date, Williams-Sonoma shall not sell or offer the Products for sale in the State of California unless they are: (a) Reformulated Products pursuant to Section 2.1; or (b) labeled with a clear and reasonable warning pursuant to Sections 2.3 and 2.4 below.

2.3 Clear and Reasonable Warning

As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in Sections 2.3 and 2.4 shall be provided for all Products that Williams-Sonoma manufactures, imports, distributes, sells, and/or offers for sale in California that are not Reformulated Products. There shall be no obligation for Williams-Sonoma to provide a warning hereunder for Products that entered the stream of commerce prior to the Effective Date, as they have been included in the calculation of civil penalties pursuant to Section 3.1. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which are 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.

(b) **Alternative Warning.** Williams-Sonoma may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

 [California Prop 65] **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets is optional.

2.4. Transmission of Warnings

The warning pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Product itself, or on the Product’s packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Williams-Sonoma sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) “[California Prop 65] WARNING” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Compliance with Warning Regulations

The Parties agree that Williams-Sonoma shall be deemed in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for DEHP or the Products different than those set forth above, Williams-Sonoma shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement.

2.6 Public Benefit

It is Williams-Sonoma’s understanding that the commitments it has agreed to herein, and actions to be taken by Williams-Sonoma 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 Williams-Sonoma 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 Williams-Sonoma’s alleged failure

to provide a warning concerning actual or alleged exposure to DEHP or other listed phthalates prior to purchase of or 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 Williams-Sonoma is in material compliance with the terms of 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 for monetary relief of any kind related to the Notice or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees as set forth in Section 3.2 below), Williams-Sonoma agrees to pay, within 7 days of the Effective Date, \$1,500 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. Williams-Sonoma will provide its payment, within 7 days of the Effective Date, in two checks as follows: (1) "OEHHA" in the amount of \$1,125; and (2) "Audrey Donaldson" in the amount of \$375. The settlement checks above shall be delivered to the address for Plaintiff's counsel specified in Section 3.3 below. Plaintiff shall be solely responsible for transmitting the settlement check made payable to OEHHA to OEHHA.

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 attorney's fees and expenses 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, Williams-Sonoma expressed a desire to resolve Donaldson's fees and costs. The

Parties thereafter 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, Williams-Sonoma shall reimburse Donaldson's counsel the total amount of \$16,500 for any and all of Donaldson's attorney's fees and expenses, including but not limited to all investigative, expert, and testing expenses incurred as a result of investigating and bringing this matter to Williams-Sonoma's attention, and negotiating this settlement. Within 7 days of the Effective Date, Williams-Sonoma shall issue a check payable to "Voorhees & Bailey, LLP" in the amount of \$16,500 for delivery to the address specified in § 3.3, below.

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 Williams-Sonoma, its parents, subsidiaries, affiliated entities under common ownership, brands (including but not limited to Pottery Barn), shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity from whom or to whom Williams-Sonoma directly or indirectly distributes or sells Products, including, but not limited to, its suppliers, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, licensors, and licensees (collectively, "Releasees"), from all claims for actual or alleged violations of Proposition 65 for all Products manufactured through the Effective Date relating to

unwarned exposures to alleged or actual DEHP in the Products.

4.2 Donaldson's Individual Release of Claims

In further consideration of the promises and agreements contained herein, and for the payments to be made pursuant to Section 3 above, Donaldson, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including, without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, DINP, DIDP, DnHP, DBP, and/or BBP in the Products manufactured, imported, otherwise acquired, distributed, or sold by Williams-Sonoma or the Releasees prior to the Effective Date.

4.3 Williams-Sonoma's Release of Donaldson

Williams-Sonoma, 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 California Civil Code § 1542

It is possible that other claims not known to the Parties including but not limited to those arising out of the facts alleged in the Notices or relating to other products manufactured, imported, distributed and/or sold by or for Williams-Sonoma and its affiliates through the Effective Date will develop or be discovered. Donaldson on behalf

of herself, her past and current agents, representatives, attorneys, successors and/or assignees only, on the one hand, and Williams-Sonoma and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims against the Releasees for any products manufactured, imported, distributed, and/or sold by or for Williams-Sonoma and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1, 4.2 and 4.3 above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims.

California Civil Code § 1542 reads 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 and Williams-Sonoma expressly waive and relinquish any and all rights and benefits that they may have under or that may be conferred upon them by the provisions of Civil Code section 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters.

4.5 Deemed Compliance with Proposition 65

The Parties intend and agree that Williams-Sonoma's compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposures to DEHP, DBP, DINP, DIDP, DnHP, and/or BBP from use of 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 Williams-Sonoma 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 otherwise 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 Williams-Sonoma:

General Counsel
Williams Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, CA 94109

For Donaldson:

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

With Copy to:

J. Robert Maxwell
Rogers Joseph O'Donnell, PC
311 California St., 10th Floor
San Francisco, CA, 94104

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 hereto.

11. ENFORCEMENT

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice of such violation and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. Plaintiff agrees that if Williams-Sonoma produces a passing test result for listed phthalates in the Products within a year of the Product's date of manufacture for or sale by Williams-Sonoma in California without a Proposition 65 warning, Williams-Sonoma shall have no liability for violating this Settlement Agreement or Proposition 65 with respect to the Products so long as the Parties can agree on appropriate corrective action to be taken by Williams-Sonoma. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement.

12. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties hereto. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of 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 § 1654.

13. 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.

14. 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 9, 2021

Date: November 8, 2021

By: 

AUDREY DONALDSON

By: 

WILLIAMS-SONOMA, INC.