

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson” or “Plaintiff”), and Williams-Sonoma Inc. and West Elm, LLC (collectively “Williams-Sonoma”), with Johnson and Williams-Sonoma each individually referred to as a “Party” and collectively as the “Parties.” Johnson is an individual who allegedly resides in the State of California who seeks to improve human health by reducing or eliminating hazardous substances contained in consumer products. Johnson 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

Johnson alleges that Williams-Sonoma manufactures, sells, and/or distributes for sale in California certain glass and metal terrariums containing lead without first providing California consumers with a Proposition 65 warning. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California cause cancer, birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are all terrariums manufactured, imported, sold, offered for sale, and/or distributed for sale in California by Williams-Sonoma, including, but not limited to, the *West Elm Glass and Metal Terrarium; FCTD TERR XSM GO; UPC: 2684439* (hereinafter the “Products”).

1.4 Notice of Violation

On December 2, 2021, Johnson served Williams-Sonoma, Inc., West Elm, LLC, and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that they violated Proposition 65 by failing to warn customers in

California that exposures to lead 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 Notices.

1.5 No Admission

Williams-Sonoma enters into this Settlement Agreement as a full and final settlement of all claims that were or could have been raised in the Notice, and solely to avoid prolonged and costly litigation. Williams-Sonoma denies the material, factual, and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, and that all of the products that it has sold and/or distributed 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 March 4, 2022.

2. **INJUNCTIVE RELIEF**

2.1 **Reformulation Standard**

“Reformulated Products” are defined as those Products that: (a) contain no more than 90 parts per million (“ppm”) lead in the surface coating and less than 100 ppm lead in the substrate of any accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram of lead on any accessible surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.


2.2 **Reformulation or Warning Commitment**

As of 60 days after the Effective Date, Williams-Sonoma shall not manufacture, import, distribute, 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. Reformulated Products sold in California do not require a Proposition 65 warning for alleged lead.

2.3 **Clear and Reasonable Warning**


As of the Effective Date, and continuing thereafter, a clear and reasonable 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 following statement:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause [cancer,] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

Or

(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. 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 to be in compliance with this Settlement Agreement by adhering to §§ 2.2, 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 lead 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 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 Williams-Sonoma 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 for monetary relief of any kind related to the Notice or referred to in this Settlement Agreement, Williams-Sonoma agrees to pay within ten business days of the Effective Date, \$1,600 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 Johnson. Williams-Sonoma will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$1,200; and (2) “Dennis Johnson” in the amount of \$400. 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 to OEHHA the settlement check made payable to OEHHA.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Johnson and his 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 this agreement had been settled. Shortly after the other settlement terms had been reached, Williams-Sonoma expressed a desire to resolve Johnson’s fees and costs. The Parties thereafter reached an accord on the compensation due to Johnson’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 Johnson's counsel the total amount of \$15,900 for any and all of Johnson'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 a settlement. Within ten (10) business days of the Effective Date, Williams-Sonoma shall issue a check payable to "Voorhees & Bailey, LLP" in the amount of \$15,900 for delivery to the address identified 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 Johnson's Release of Proposition 65 Claims

Johnson, acting on his own behalf, and not on behalf of the public, releases Williams-Sonoma, its parents, subsidiaries, affiliated entities under common ownership (including but not limited to West Elm, LLC), shareholders, marketplaces, directors, officers, agents employees, attorneys, successors and assignees, and each entity from whom or to whom Williams-Sonoma directly or indirectly purchases, distributes, or sells Products, including, but not limited to, 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 lead in the Products.

4.2 Johnson's Individual Release of Claims

In further consideration of the promises and agreements herein contained, and for

the payments to be made pursuant to Section 3 above, Johnson, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, or participate in, directly or indirectly, any form of legal action, and releases all claims that he 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, 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 lead in the Products manufactured, imported, otherwise acquired, distributed, or sold by Williams-Sonoma or the Releasees.

4.3 Williams-Sonoma's Release of Johnson

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 Johnson and his attorneys and other representatives, for any and all actions taken, or statements made by Johnson and his 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 those arising out of the facts alleged in the Notices and 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. Johnson on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees only, on 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 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.

Johnson 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 lead 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 Johnson of any asserted change in the law and shall have no further 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 Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
535 Ramona Street; Suite 1
Palo Alto, CA 94301

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)**

Johnson and his attorneys agree to comply with the reporting form requirements for this settlement agreement 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. 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 lead in the Products within one year of the Products date of manufacture 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. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of 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 § 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 warrant that they 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.

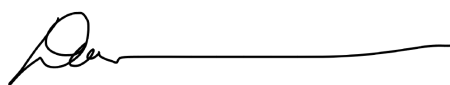
AGREED TO:

AGREED TO:

Date: 3/14/22

Date: 3/11/2022

By: 
DENNIS JOHNSON

By: 
WILLIAMS-SONOMA, INC.
Danielle M. Hohos, SVP, Deputy General Counsel