

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”), Ema Bell (“Bell”), Gabriel Espinoza (“Espinoza”) (collectively, “Enforcers”) and Prima Donna Designs, Inc. (“Prima Donna”). Together, Enforcers and Prima Donna are collectively referred to as the “Parties.” Enforcers are individuals who reside in the State of California, and seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Enforcers allege that Prima Donna is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Enforcers allege that Prima Donna has exposed individuals to lead from its sales of (a) The Mistletoe Co. Fleece Navidad mugs, (b) Fig & Fern mugs, VSH 400241889769, and (c) Fig & Fern mugs, VSH 400241889844, without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are defined as (a) The Mistletoe Co. Fleece Navidad mugs, (b) Fig & Fern mugs, VSH 400241889769, and (c) Fig & Fern mugs, VSH 400241889844 (collectively, the “Products”) that have been imported, distributed, licensed, offered for sale and/or sold in California by Prima Donna.

1.4 Notices of Violation. On December 7, 2022, Balabbo served Prima Donna, Burlington Stores, Inc., Burlington Coat Factory of Texas, Inc. (collectively, “Burlington”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Balabbo Notice”). The Balabbo Notice provided Prima Donna and such others, including public enforcers, with notice that alleged that Prima Donna was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers

that use of the The Mistletoe Co. Fleece Navidad mugs will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Balabbo Notice.

On February 7, 2023, Bell served Prima Donna, Ross Stores, Inc. (“Ross”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Bell Notice”). The Bell Notice provided Prima Donna and such others, including public enforcers, with notice that alleged that Prima Donna was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Fig & Fern mugs, VSH 400241889844 will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Bell Notice.

On February 7, 2022, Espinoza served Prima Donna, Ross, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Espinoza Notice”). The Notice provided Prima Donna and such others, including public enforcers, with notice that alleged that Prima Donna was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Fig & Fern mugs, VSH 400241889769 will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Espinoza Notice.

The Balabbo Notice, the Bell Notice, and the Espinoza Notice are collectively referred to herein as, the “Notices.”

1.5 No Admission. Prima Donna denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all products that are or have been 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 Prima Donna of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Prima Donna of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Prima Donna. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Prima Donna maintains that it

has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Prima Donna directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that produce a wipe test result no higher than 1 microgram (μg) of lead when analyzed pursuant to NIOSH method no. 9100.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Prima Donna manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Prima Donna to provide an exposure warning for Reformulated Products, or Products that entered the stream of commerce prior to the Effective Date. 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:

⚠ WARNING: This product can expose you to chemicals including lead, which is 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:** Prima Donna may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in 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** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative 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.

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Prima Donna offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Prima Donna shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.5 Compliance with Warning Regulations. The Parties agree that Prima Donna shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Product and the exposure at issue after the Effective Date.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Prima Donna shall pay \$2,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Enforcers. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

3.1 Civil Penalty. Within fifteen (15) business days of the Effective Date, Prima Donna shall issue four (4) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; to (b) "Precila Balabbo" in the amount of \$150.00; to (c) to "Gabriel Espinoza" in the amount of \$150.00; and to (d) "Ema Bell" in the amount of \$200.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Enforcers, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(c) **Tax Documentation.** Prima Donna agrees to provide a completed IRS 1099 for its payments to, and Plaintiffs agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Precila Balabbo” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Ema Bell” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(iii) “Gabriel Espinoza” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(iv) “Brodsky & Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Enforcers and their counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Enforcers and their counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Prima Donna shall reimburse Enforcers's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Prima Donna, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Prima Donna shall issue a check payable to "Brodsky & Smith" in the amount of \$20,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Prima Donna and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Enforcers, each acting on their own behalf, and Prima Donna, of any violation of Proposition 65 that was or could have been asserted by Enforcers or on behalf of their past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasers hereby release any such claims against Prima Donna and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, members, managers, agents, employees, attorneys, successors and assignees, licensors for the Products and each entity, and/or person, to whom Prima Donna directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited Burlington, Ross and each of their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on exposure to lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Enforcers, each on behalf of themselves, their 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 they 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, limited to and arising out of the alleged or actual exposure to lead from use of the Products.

5.2 Prima Donna's Release of Enforcers. Prima Donna, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Enforcers, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Enforcers and/or their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to lead from the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Enforcers on behalf of themselves only, on one hand, and Prima Donna, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Enforcers and Prima Donna each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Prima Donna with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

5.5. Public Benefit. It is Enforcers' position that the commitments they have agreed to herein, and actions taken and to be taken by the Prima Donna under this Agreement, confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code Title 11, section 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Prima Donna's or any Releasee's failure to provide a warning concerning exposures to the Products they have respectively manufactured, distributed, sold, licensed, 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 the Products addressed in this Agreement, provided that Prima Donna is in compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Prima Donna shall provide written notice to Enforcers 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, a Product is so affected.

8. NOTICES

8.1 General Notice Requirements. Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Prima Donna:

Evan Hakimi
Prima Design
41 Madison Avenue, 8th Floor
New York, NY 10010

For Enforcers:

Evan J. Smith
Brodsky & Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8.2 60-Day Notice Requirement. In the event that any Enforcer alleges that Prima Donna has failed to comply with this Settlement Agreement and/or has violated Proposition 65 in the manufacturing, distribution, licensing, or sale of Products covered by this Settlement Agreement, prior to initiating legal proceedings or filing a lawsuit, the Enforcer(s) shall provide a written notice of the alleged violation(s) to Prima Donna at least sixty (60) days in advance. Enforcer(s) shall provide testing results, lot numbers, photographs of the product, and purchase receipts for the product at issue in the alleged violation, as applicable. Enforcer(s) and Prima Donna shall meet and confer during such sixty (60) day period in an effort to reach agreement on an appropriate cure for the alleged violation without the need for litigation. This section shall also apply to any allegations made by Enforcer(s) against Prima Donna's Releasees as defined in § 5.1 above.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Enforcers agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. 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.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: 6/30/2023

By: _____

Precila Balabbo

By:  _____

Prima Donna Designs, Inc.

Date: _____

Date: _____

By: _____

Ema Bell

By: _____

Gabriel Espinoza

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Enforcers agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. 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.

13. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 05/17/2023

Date: _____

By: 
Precila Balabbo

By: _____
Prima Donna Designs, Inc.

Date: _____

Date: _____

By: _____
Ema Bell

By: _____
Gabriel Espinoza

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Enforcers agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. 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.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Precila Balabbo

By: _____
Prima Donna Designs, Inc.

Date: _____

Date: 7 | 7 | 23

By: _____
Erna Bell

By: _____

Gabriel Espinoza

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Enforcers agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. 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.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____

Precila Balabbo

By: _____

Prima Donna Designs, Inc.

Date: 7-7-2023

Date: _____

By:  _____
Ema Bell

By: _____
Gabriel Espinoza