

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and Over and Back Inc. (“Over and Back”), as indemnitor to Walmart Inc. (“Walmart”). Kallander and Over and Back shall each be referred to as a “Party” and collectively as the “Parties.” Kallander 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. Over and Back 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

Kallander alleges that Over and Back manufactures, sells, and distributes for sale in California, ceramic planters with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander alleges that Over and Back 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 defined as, and limited to, the “*Pioneer Woman Sweet Rose*” 6 Inch Planter; UPC: 0 1330260151 6, manufactured, sold, or distributed for sale in California by Over and Back (hereinafter the “Products”).

### 1.4 Notice of Violation

On September 2, 2022, Kallander served Walmart, 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 their customers and

consumers in California of the health hazards associated with exposures to lead from the Products. Over and Back was subsequently identified as the manufacturer/supplier of the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Over and Back 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 Over and Back 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 Over and Back of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Over and Back. This Section shall not, however, diminish or otherwise affect Over and Back'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 December 19, 2022.

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

"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 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 surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.


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

## **2.2 Reformulation/Warning Commitment**


As of the Effective Date, Over and Back 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 or contain appropriate health hazard warnings pursuant to Section 2.3.

## **2.3 Clear and Reasonable Warnings**

As of the Effective Date, all Products Over and Back sells and/or distributes for sale in California that do not qualify as Reformulated Products shall bear a clear and reasonable warning pursuant to this Section. Over and Back further agrees that the warning shall be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. A warning affixed directly to the product or product packaging, label or tag, for Products sold in California that contains one of the following statements shall constitute a clear and reasonable warning for purposes of this Settlement Agreement:

 **WARNING:** Cancer and Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

 **WARNING:** This product can expose you to chemicals including lead, 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](http://www.P65Warnings.ca.gov).

The above warning statements shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white.

The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

#### **2.4 Compliance with Warning Regulations**

The Parties agree that Over and Back shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2.3 of this Settlement Agreement or by complying with warning requirements covering lead in the Products promulgated by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) on or after the Effective Date.

### **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, Over and Back agrees to pay, no later than January 6, 2023, \$2,100 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 Kallander, and delivered to the address in Section 3.3 herein. Over and Back will provide its payment, no later than January 6, 2023, in two checks as follows: (1) “OEHHA” in the amount of \$1,575; and (2) “Audrey Kallander” in the amount of \$525.

#### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that Kallander 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, Over and Back expressed a desire to resolve the attorneys’ fees and costs. The Parties reached an accord on the compensation due to Kallander’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, Over and Back agrees to pay, no later than January 6, 2023, \$15,100, 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 Over and Back’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 Kallander’s Release of Proposition 65 Claims**

Kallander acting on her own behalf, and *not* on behalf of the public, releases Over and Back, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Over and Back directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Walmart, franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to lead in the Products.

### **4.2 Kallander’s Individual Release of Claims**

Kallander, 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 Kallander 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, distributed, or sold by Over and Back prior to the Effective Date.

#### **4.3 Over and Back's Release of Kallander**

Over and Back, 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 Kallander and her attorneys and other representatives, for any and all actions taken or statements made by Kallander 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. 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 may develop or be discovered. Kallander on behalf of herself only, on one hand, and Over and Back, on the other hand, acknowledge that this Settlement Agreement is expressly intended to include any and all such claims up to the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1 to 4.3, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 states 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.

The Parties each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**6. 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.

**7. 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 Over and Back may provide written notice to Kallander 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.

**8. 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 Over and Back:

Ted Weiss  
Baker & Hostetler LLP  
11601 Wilshire Boulevard | Suite 1400  
Los Angeles, CA 90025-0509

For Kallander:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
535 Ramona Street; Suite 5  
Palo Alto, CA 94301

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.

**9. 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.

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

Kallander and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by 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 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: Dec 16, 2022, 2022

By:   
AUDREY KALLANDER

**AGREED TO:**

Date: December 16<sup>th</sup>, 2022

By:   
OVER AND BACK INC.