

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”), on the one hand, and C&F Enterprises, Inc, Valyria, LLC dbaTranspac (collectively, “Responding Parties”), on the other hand. Kallander and Responding Parties 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. Kallander alleges that Responding Parties are each 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 Responding Parties manufacture, sell, and/or distribute for sale in California, salt and pepper shakers with PVC components containing the phthalate chemical Di-n-Butyl Phthalate (“DBP”). DBP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander alleges that Responding Parties failed to provide the health hazard warning required by Proposition 65 for exposures to DBP.

1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the *Transpac Salt & Pepper Shakers; Dept. 31; Style 684722; type: 1; Cat.:8430; FLS: 0922* manufactured, sold, or distributed for sale in California by Responding Parties (hereinafter the “Products”).

1.4 Notice of Violation

Kallander represents that, on March 10, 2023, she served Responding Parties 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 and consumers in California of the health hazards associated with exposures to DBP from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Responding Parties, and each of them, deny the material, factual, and legal allegations contained in the Notice and maintain that all of the products that Responding Parties have 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 Responding Parties, or by any of them, 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 Responding Parties, or by any of them, of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Responding Parties and by each of them. This Section shall not, however, diminish or otherwise affect Responding 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 June 30, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DBP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any

other methodologies utilized by federal or state agencies for the purpose of determining the DBP content in a solid substance.

2.2 Reformulation/Warning Commitment


As of the Effective Date, Responding Parties, or any of them, shall not sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain a warning as set forth in Section 2.3 below. Provided, however, that if a Responding Party has existing, unsold stock of the Products as of the Effective Date, such stock may be sold off exempt from this requirement, as they have been included in the calculation of civil penalties due pursuant to Section 3.1. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DBP from the Products.

2.3 Warnings

As of the Effective Date, all Products C&F 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. Provided, however, that if a Responding Party has existing, unsold stock of the Products as of the Effective Date, such stock may be sold off exempt from this warning requirement, as they have been included in the calculation of civil penalties due pursuant to Section 3.1. Responding Parties, and each of them, further agree 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. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and containing one of the following statements:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This product can expose you to chemicals, including DBP, which are known to the State of California to cause birth defects and other reproductive harm. For more information go to 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.”

If Responding Parties, or any of them, sell Products via their own proprietary internet website(s) to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which Products are displayed and/or described; (b) on the same page as the price for the Products; (c) on one or more web pages displayed to a California purchaser prior to completion of 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 Products, 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.

The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that Responding Parties, or any of them, may utilize “safe harbor” warning language and methods of transmission promulgated by the Office of Environmental Health Hazard Assessment without being deemed in breach 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 as consideration for the releases contained in Sections 4.1 and 4.2 below, Responding Parties agree to pay \$2,000 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 Kallander. Responding Parties, or any of the Responding Parties on their behalf, shall make the payment in two checks, delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$1,500; and (2) to “Audrey Kallander” in the amount of \$500. Responding Parties shall direct the OEHHA payment to Kallander’s counsel at the address below and Kallander shall be responsible for forwarding the OEHHA payment to OEHHA.

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 her counsel, 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, Responding Parties expressed a desire to resolve Kallander’s 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, Responding Parties agree to pay, no later than the Effective Date, \$18,000, 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 Responding Parties’ 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 Responding Parties, and each of them, and each of their parents, subsidiaries, affiliated entities under common ownership, and their respective managers, directors, members, shareholders, officers, agents employees, attorneys, and each entity to whom Responding Parties, or any of them, directly or indirectly distribute, have distributed, sell or have sold the Products, or from whom Responding Parties, or any of them, have purchased the Products, including, but not limited, to The TJX Companies and/or any other upstream/downstream distributors, wholesalers, customers, retailers, including franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date or subsequent to the Effective Date for Products in stock but unsold as of that date relating to unwarned exposures to DBP in the Products.

4.2 Kallander's Covenant Not to Sue

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 DBP in the Products manufactured, imported,

purchased, distributed, or sold by Responding Parties and/or other Releasees prior to the Effective Date or unsold but in stock as of the Effective Date.

4.3 Responding Parties' Release of Kallander

Responding Parties, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive 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 Responding Parties, or against any of them 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, as long as the purpose of this Settlement Agreement is unaffected.

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 Responding Parties, or any of them, 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.

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 Responding Parties:

Stephen T. Holzer
Lewitt Hackman Shapiro Marshall Harlan
16633 Ventura Boulevard; 11th Floor
Encino, CA 91436

For Kallander:

Audrey Kallander
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
535 Ramona St.; 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.

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)

Kallander 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. 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.

12. 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: June 29, 2023

Date: June 30, 2023

By: 
Audrey Kallander

By: 
C&F Enterprises, Inc.

Date: 6/30/2023

BY: 
ID: VduPPdMswTQo35QVUuWQDT8t
Valyria, LLC dba Transpac

eSignature Details

Signer ID:	VduPPdMswTQo35QVUvWQDT8t
Signed by:	Laurie Gilner
Sent to email:	lgilner@shoptii.com
IP Address:	139.104.2.233
Signed at:	Jun 30 2023, 11:30 am EDT