

# SETTLEMENT AND RELEASE AGREEMENT

## 1. **INTRODUCTION**

### 1.1. **Green Initiative, LLC and Designworks Ink, LLC**

This Settlement Agreement is entered into by and between Green Initiative, LLC ("Initiative"), on the one hand, and Designworks Ink, LLC ("Design"), on the other hand, with Initiative and Design collectively referred to as the "Parties."

### 1.2. **General Allegations**

Initiative alleges that Design manufactured and/or distributed and/or offered for sale in the State of California: Domo Ink mugs, that allegedly contain Lead (the "Product") and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed Lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

### 1.3. **Product Description**

The Product that is covered by this Settlement Agreement is defined as: Domo Ink mugs that allegedly contain Lead that Design has sold, offered for sale or distributed in California.

### 1.4. **Notice of Violation**

On April 28, 2023, Initiative served Design, Target Corporation, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided Design and such public enforcers with notice that Design was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Product exposed users in California to Lead. To the best of the Parties' knowledge, no

public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Design's compliance with Proposition 65. Specifically, Design denies the material factual and legal allegations contained in Initiative's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Design 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 Design of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Design. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Design under this Settlement Agreement. Notwithstanding the allegations in Initiative's Notice, Design maintains that it has not knowingly manufactured, or caused to be manufactured, the Product 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 Settlement Agreement is fully executed.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

No later than sixty (60) days after the Effective Date, Design shall manufacture or import for sale in California only Reformulated Products, as defined pursuant to Section 2.1 below,

unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products that were in Design’s inventory or that were supplied to third parties by Design prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.


**2.1. Reformulation Standards**

“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 or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; (b) yield a result of non-detect (defined as no more than 25ppm by weight of lead) for any decorations or design located in the upper 20 millimeters of a Product, i.e., the “Lip-and-Rim” area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance; or (c) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol. Design may rely on its suppliers’ testing to demonstrate compliance with this standard.


**2.2. Warning Language**

Where required, Design shall provide Proposition 65 warnings as follows:

- (a) Design may use either of the following warning statements in full compliance with this Section:

- (1)  **WARNING:** This product can expose you to chemicals including lead, which [is] 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).

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

(b) Where the sign, label or shelf tag for the product 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”.

(c) For the purposes of this Settlement Agreement, the Parties deem proper the warning language set forth in subsection (a) above. The Parties recognize that the suggested warnings in subsection (a) are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for Lead should no longer be required, Design shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment (OEHHA) or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress, or voters with such requirements or permission, Design shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

(f) The Parties agree that Design shall be deemed in compliance with this Settlement Agreement by either adhering to Sections 2.1 and 2.2 of this

Settlement Agreement or by complying with warning requirements adopted by OEHHA applicable to the products and the exposures at issue after the Effective Date.

(g) Foreign Languages. Additionally, if a covered Product's labeling includes consumer information in a language other than English, the warning will be provided in that language in addition to English.

(h) Online Sales. If Design sells Products via an internet website it controls 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 a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the product description or product price are displayed, or appears prior to completion of the sale at checkout.

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.

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

In settlement of all the claims referred to in this Settlement Agreement, Design shall pay a total of \$200 in civil penalties in accordance with this Section. The penalty payment will be

allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to Initiative. Initiative's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Initiative and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Design shall reimburse Initiative's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Design's attention. Design shall pay Initiative's counsel \$9,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By April 25, 2024, Design shall make a total payment of Nine Thousand Two Hundred Dollars (\$9,200) for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325149324377

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Design, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Initiative, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, including Proposition 65 claims, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Design, (b) Target Corporation, and any other of Design's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Design' parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities. (collectively "Releasees"). This release extends to all Products currently in the stream of commerce.

Initiative also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general 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 any nature, character or kind, known or

unknown, suspected or unsuspected, against Design and the Releasees. Initiative acknowledges that it is familiar with California Civil Code section 1542, which provides 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.

Initiative, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California 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 that it may lawfully waive such rights or benefits pertaining to the released matters.

**6.2. Design's Release of Initiative**

Design waives any and all claims against Initiative, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Initiative and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Product.

**6.3. Deemed in Compliance with Proposition 65**

The Parties agree that compliance by Design with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead in the Product.

**6.4 Public Benefit**

It is the Parties' understanding that the commitments they have agreed to herein, and actions to be taken by Design under this Settlement Agreement, would 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 Design that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to Design and/or any Releasees' failure to provide a warning concerning exposure to Lead prior to use of the Products they have 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 Design is in material compliance with this Settlement Agreement.

**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 Product, then Design shall have no further obligations pursuant to this Settlement Agreement.

**8. NOTICES**

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; (ii.) email; or (iii) overnight courier on any party by the other party at the following addresses:

For Design: Will Wagner, Esq.  
Arnold & Porter  
Three Embarcadero Center | 10th Floor  
San Francisco, CA 94111-4024

For Initiative: Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa St., Suite 2520  
Los Angeles, CA 90071

Any 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.

**9. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, 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 SECTION 25249.7(f)**

Initiative agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

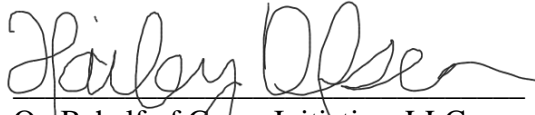
This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: April 10, 2024

By:   
On Behalf of Green Initiative, LLC

**AGREED TO:**

Date: April 10, 2024

By: *Thomas D Harris*  
On Behalf of Designworks INK, LLC