

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and Allstate Floral, Inc. (“Allstate Floral”), with Kallander and Allstate Floral each individually 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 Allstate Floral 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 Allstate Floral manufactures, sells, and/or distributes for sale in California, metal and glass candleholders, picture frame trays, and lanterns containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects and other reproductive harm. Kallander alleges that Allstate Floral 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 identified and defined as: (i) “Allstate Floral 10 Inch Clear Glass Gold Metal Candleholder,” UPC: 0 33849 94515 7; (ii) “Allstate Floral 8 x 11 Inch Clear Glass Gold Metal Picture Frame Tray,” UPC: 0 33849 94516 4; (iii) “Allstate Floral 5 x 8 Inch Clear Glass Gold Metal Picture Frame Tray,” Product No. 285845; and (iv) “Allstate Floral 24 Inch Clear Glass Bronze Metal Lantern,” UPC: 0 33849 94531 7, manufactured, distributed or sold in California by Allstate Floral (hereinafter referred to as the “Products”).

1.4 Notice of Violation

On May 8, 2023, Kallander served Allstate Floral, Inc., Living Spaces Furniture, LLC, and the requisite public enforcement agencies with a 60-Day Notice of Violation, (the “Notice”) alleging that the notice recipients violated Proposition 65 by failing to warn its customers and consumers in California of the alleged health hazards associated with exposures to lead from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Allstate Floral 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 Proposition 65 and all other laws. Nothing in this Settlement Agreement shall be construed as an admission by Allstate Floral 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 Allstate Floral of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Allstate Floral. This Section shall not, however, diminish or otherwise affect Allstate Floral’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 August 31, 2023.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products that contain no more than 90 parts per million (“ppm”) lead in any accessible component 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.

2.2 Reformulation/Warning Commitment

As of the Effective Date, Allstate Floral 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 below. Allstate Floral shall have no obligation to provide warnings on Products already placed in the stream of commerce and no longer in its possession, 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 Lead from the Products.

2.3 Product Warnings

As of the Effective Date, all Products Allstate Floral 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. Allstate Floral 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. 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 contain one of the following statements:

⚠ WARNING: Cancer and Reproductive Harm-

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.

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 Allstate Floral sells Products via its own proprietary internet website to customers located in California, a warning shall also be prominently displayed on the website with either the warning language above or a clearly marked hyperlink using the word "WARNING" (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 completion of the checkout process.

The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that Allstate Floral 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, Allstate Floral agrees 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 (\$1,500) remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount (\$500) paid to Kallander. Allstate Floral shall make its payment via wire

transfer with said wire transfer information to be provided by Voorhees & Bailey, LLP to Allstate Floral prior to the

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. The Parties thereafter 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, on or before the Effective Date, Allstate Floral agrees to pay \$16,000 via wire transfer, with said wire transfer information to be provided by Voorhees & Bailey, LLP to Allstate Floral prior to the Effective Date, for all fees and costs incurred investigating, bringing this matter to the attention of Allstate Floral's management, and negotiating a settlement.

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 Allstate Floral, its parents, subsidiaries, affiliated entities under common ownership, shareholders, directors, officers, agents, employees, attorneys, and each entity to whom Allstate Floral directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including Living Spaces Furniture, LLC), franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims, causes of action, penalties, fees or costs related to alleged violations of Proposition 65 involving lead in Products placed in the stream of commerce and no longer in Allstate Floral's possession prior to the Effective Date. The Parties understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof,

or any distributors or suppliers who sold the Products or any component parts thereof to Allstate Floral.

4.2 Kallander's Individual Release of Claims

Kallander, in her individual capacity only and not in her representative capacity, hereby provides a release to Releases 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, including but not limited to all failure to warn claims, arising out of or related to the Products placed in the stream of commerce and no longer in Allstate Floral's possession prior to the Effective Date. Kallander acknowledges that the claims released by her in this Settlement Agreement may include unknown claims, and nevertheless waives such unknown claims. Kallander acknowledges that she is familiar with Civil Code section 1542 and nevertheless waives the protection provided by this statute, which provides:

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 understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Allstate Floral. Nothing in this Section affects Kallander's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Allstate Floral's Products.

4.3 Allstate Floral's Release of Kallander

Allstate Floral, 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 in the course of investigating and seeking to enforce Proposition 65 against it in this matter, and 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.

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 Allstate Floral 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 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 Allstate Floral:

Ping Ho
Allstate Floral, Inc.
14101 Park Place
Cerritos, CA 90703

With a copy to:

Matthew I. Kaplan
Tucker Ellis LLP

For Kallander:

Audrey Kallander
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
535 Ramona St.; Suite 5
Palo Alto, CA 94301

515 S. Flower St.
42nd Floor
Los Angeles, CA 90071

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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

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. 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.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties, and any and all prior negotiations and understandings

related hereto shall be deemed to have been merged within it. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

13. INTERPRETATION

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

AGREED TO:

AGREED TO:

Date: Aug 17, 2023

Date: 8/16/2023

By: 

AUDREY KALLANDER

By: 

ALLSTATE FLORAL, INC.