

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and RC Willey Home Furnishings (“RC Willey”), with Kallander and RC Willey each individually referred to as a “Party” and collectively as the “Parties.”

Kallander represents that she 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 RC Willey 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 RC Willey manufactures, sells, and/or distributes for sale in California, metal and glass lamps containing lead as described in Section 1.3 below; and that lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander alleges that RC Willey failed to provide the health hazard warning required by Proposition 65 for exposures to lead for the product described in Section 1.3 below.

1.3 Product Description

The product covered by this Settlement Agreement is specifically defined as, and limited to, the “*RC Willey Handcrafted Tiffany-Style-Stained Glass Luminaria Lamp*” *SKU: 111713102*, sold by RC Willey in California and/or manufactured, imported or distributed by RC Willey for sale in California (hereinafter the “Product”).

1.4 Notice of Violation

Kallander alleges service on RC Willey, and the requisite public enforcement agencies, of a 60-Day Notice of Violation, dated May 17, 2023, alleging that the notice recipient violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Product.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in either of the Notice.

1.5 No Admission

RC Willey, the other Releasees (as defined in Section 4.1 below), and each of them, denies the material, factual, and legal allegations as well as alleged liabilities contained in the Notice and maintains that all of the products that it has sold and distributed for sale in California, including the Product, has been, and is, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by RC Willey or any of the other Releasees of any fact, finding, conclusion, issue of law, violation of law, or liability nor shall compliance with this Settlement Agreement constitute or be construed as an admission by RC Willey or any of the other Releasees of any fact, finding, conclusion, issue of law, violation of law, or liability, such being specifically denied by RC Willey, the other Releasees, and each of them. This Section shall not, however, diminish or otherwise affect RC Willey'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 October 6, 2023.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

“Reformulated Product” is defined as a Product that contains no more than 90 parts per million (“ppm”) lead in any accessible component of the Product 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


A Product that that is manufactured on or after the Effective Date that RC Willey thereafter directly imports for sale in California or distributes for sale in California or directly sells in California shall either be (a) a Reformulated Product pursuant to Section 2.1 above, or (b) contain appropriate health hazard warnings pursuant to Section 2.3 below. 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 Product.

2.3 Product Warnings

After the Effective Date, a Product (other than those covered by Section 2.4) that is manufactured, imported, or distributed by RC Willey for sale in California, that does not qualify as a Reformulated Product under Section 2.1 above shall bear a clear and reasonable warning pursuant to this Section. RC Willey 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 Product shall consist of a warning affixed directly to the product or product packaging, label, or tag, for a Product sold in California, and contain one of the following statements:

 **WARNING:** 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 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.”

Where a sign or label used to provide a warning includes consumer information about a Product in a language other than English, the warning must also be provided in that language in addition to English.

If RC Willey sells the Product via its own proprietary internet website directly to consumers 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 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 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.

The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that RC Willey may utilize “safe harbor” warning language and methods of transmission promulgated by the

Office of Environmental Health Hazard Assessment applicable to lead and the Product, without being deemed in breach of this Settlement Agreement.

2.4 Product Previously Sold By RC Willey In California And/or Previously Manufactured, Imported Or Distributed By RC Willey For Sale In California

Based on the civil penalties to be paid pursuant to Section 3.1 below, a Product previously sold by RC Willey in California and/or Product previously manufactured, imported, or distributed by RC Willey for sale in California shall be exempt from the requirements of Sections 2.1, 2.2 and 2.3, and are covered by the releases in Section 4.

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, RC Willey agrees to pay \$2,500.00 in civil penalties within seven days of 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. RC Willey shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$1,875.00; and (2) “Audrey Kallander” in the amount of \$ 625.00.

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, RC Willey 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, within seven days of the Effective Date, RC Willey agrees to pay \$16,000.00, 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 RC Willey’s management, and negotiating a settlement.

3.3 Payment Address

Kallander directs that all payments under this Settlement Agreement shall be delivered to her counsel at the following address and Kallander hereby directs her counsel to forward the applicable payment to OEHHA:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Kallander’s Release of Proposition 65 Claims

Except for the obligations expressly set forth in this Settlement Agreement, Kallander, acting on her own behalf, and not on behalf of the public, releases on behalf of herself, her past and current agents, representatives, contractors, attorneys, successors and/or assignees, RC Willey, its parents, subsidiaries, affiliated entities, directors, officers, shareholders, marketplaces, representatives, agents, contractors, employees, attorneys, franchisees, licensees, successor, assigns and each entity or person to whom any of them directly or indirectly distributes or sells or provides or obtains the Product, including, but not limited, to manufacturers, material suppliers, other suppliers, vendors, contractors, importers, jobbers, upstream distributors, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers (collectively, “Releasees”), from any and all claims for violations of Proposition 65 for the Product.

4.2 Kallander's Individual Release of Claims

Except for the obligations expressly set forth in this Settlement Agreement, Kallander, in her individual capacity only and not in her representative capacity, on behalf of herself, her past and current agents, representatives, contractors, attorneys, successors and/or assignees, provides a release herein to RC Willey and each of the other Releasees which shall be and is 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 alleged or actual exposures to lead in or from the Product.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, Kallander, on behalf of herself, her past and current agents, representatives, contractors, 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 she may have against RC Willey or any of the other Releasees, 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 RC Willey or any of the other Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead required under Proposition 65 in the Product, whether known or unknown, suspected or unsuspected.

As part of the releases given in this Agreement, Kallander acknowledges that the claims released in §§ 4.1 and 4.2 above, may include unknown claims, and nevertheless waives 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 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.

4.3 RC Willey's Release of Kallander

RC Willey, 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 Product.

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 Product, then RC Willey 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 Product is 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 RC Willey:

Michael W. Allred, Registered Agent for RC
Willey Home Furnishings
8340 Delta Shores Circle
Sacramento, CA 95832

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 that is signed by both 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.

AGREED TO:

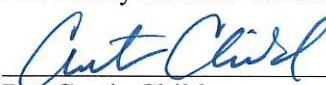
AGREED TO:

Date: 10/11/2023

Date: 10/4/2023

By: 

Audrey Kallander

RC Willey Home Furnishings


By: Curtis Child
Its: Chief Financial Officer