

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between: Michael DiPirro (referred to herein as “DiPirro”) represented by his attorneys, Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law, and The Delphi Glass Corporation (referred to herein as “Delphi” or the “Noticed Party”) represented by its attorneys, Rogers Joseph O'Donnell. Collectively DiPirro and Delphi are hereafter sometimes referred to as the “Parties.” DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. DiPirro alleges that Noticed Party employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

DiPirro alleges that the Noticed Party manufactures, imports, sells, or distributes for sale in the State of California certain “Products” (defined below) containing Lead without first providing the clear and reasonable exposure warning required by Proposition 65. Lead and lead compounds are listed pursuant to Proposition 65 as chemicals that are known to the State of California to cause cancer and birth defects or other reproductive harm (hereafter the “Listed Chemical”).

### **1.3 Product Description**

The products covered by this Settlement Agreement are Lead Came containing the Listed Chemical that are manufactured, sold, or distributed for ultimate sale to consumers in the State of California by the Noticed Party, including, but not limited to, the 3/16" Round H Lead Came - 6 Ft Piece (the "Products").

### **1.4 Notice of Violation**

On or about July 31, 2023, DiPirro served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the "Notice"), a document that informed the recipients of DiPirro's allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to the Listed Chemical. To the best of the Parties knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Delphi enters into this Settlement Agreement to resolve claims that are denied and disputed solely to avoid the expense and uncertainty of litigation. Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws and requirements, including but not limited to Proposition 65, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the

Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party'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 the date this Settlement Agreement is fully executed by the Parties.

## **2. INJUNCTIVE RELIEF: PRODUCT WARNINGS**

### **2.1 Product Warnings**

Commencing within thirty (30) days of the Effective Date, for any of the Noticed Party's Products that are shipped to any California resident, consumer, or any agent, distributor, or affiliated company working on behalf of Noticed Party, for potential sale to California consumers, Noticed Party shall provide a clear and reasonable warning on each Product as set forth in Section 2.3. Each warning shall be affixed to or printed on the Product itself, or on the Product's packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that is displayed with such conspicuousness as 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 purchase. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

### **2.2 Internet Warnings**

In addition to the warning specified in Section 2.1 above, for all Products that Noticed Party offers for sale directly to consumers in California via the internet, Noticed Party shall provide a warning for such Products by including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a Covered Product is displayed; (b) on the

same web page as the order form for a Covered Product; (c) on the same web page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional), which then takes the user to a display of the warning set out in Paragraph 2.3.

### 2.3 Text of the Warning

The Noticed Party shall use one of the two warnings set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Product’s packaging). The warning triangle shall be the same height or larger than the font for the word “**WARNING**”:



[California Prop 65] **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).

Or

⚠ [California Prop. 65] **WARNING**: Cancer and birth defects or other reproductive harm. [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

For all warnings listed above, the “[California Prop 65]” language is optional. In lieu of the preceding warning content and methods set forth above, Noticed Party may use any specific safe-harbor warning content and method applicable to the Covered Products set forth in Title 27, California Code of Regulations, section 25600 *et seq.*, as amended August 30, 2018, and subsequently thereafter.

## **2.4 Foreign Language Requirement.**

Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English consistent with 27 Cal. Code of Regs. 25600 et seq.

## **2.5 Public Benefit**

It is Noticing Party's understanding that the commitments it has agreed to herein, and actions to be taken by Noticing Party under this Settlement Agreement 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 Noticing Party that to the extent any private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Williams-Sonoma's alleged failure to provide a warning concerning actual or alleged exposure to the Listed Chemical from Products it has manufactured, imported, distributed, sold, or offered for sale in California, or will manufacture, import, 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 Noticing Party is in material compliance with the this Settlement Agreement.

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

### **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

In complete resolution of any claim for monetary relief of any kind related to the Notice and this Settlement Agreement (except Plaintiff's attorney's fees as set forth in § 4 below) Noticed Party shall make a civil penalty payment of \$1,000 in accordance with this section, within 10 days of the Effective Date. The penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the

California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in accordance with the procedure set out in Section 5 below.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. The Noticed Party then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. The Noticed Party shall pay a total of \$43,500 as a complete reimbursement and resolution of any claim for Plaintiff’s attorney’s fees and costs incurred as a result of all work in connection with this matter, including but not limited to, investigating, working with toxicology experts, bringing this matter to the Noticed Party’s attention, document preparation, and negotiating a settlement in the public interest pursuant to Code of Civil Procedure § 1021.5, and any other statute or common law of similar effect. Settling Defendant shall deliver payments as described in Section 4, above, in accordance with the procedure set out in Section 5 below.

#### **5. PAYMENT AND FORM 1099**

##### **5.1 Payment**

The complete settlement payment in the amount of \$44,500 shall be delivered within 10 days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or

ACH payment; number provided upon request) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of three checks for the following amounts made payable to:

- (a) “Jeremy Fietz, Attorney at Law” in the amount of \$750 for payment of 75% of the civil penalty to OEHHA. Counsel for DiPirro agrees that it shall be its sole responsibility to forward such funds to OEHHA in a timely manner once received from Settling Defendant. Alternatively, at Settling Defendant’s option, it can choose to deliver a certified or cashier’s check made payable to “Office of Environmental Health Hazard Assessment.”
- (b) “Jeremy Fietz, Attorney at Law” in the amount of \$250, as payment of 25% of the civil penalty to Michael DiPirro. Counsel for DiPirro agrees that it shall be its sole responsibility to forward such funds to DiPirro in a timely manner once received. Alternatively, at Settling Defendant’s option, it can choose to deliver a certified or cashier’s check made payable to “Michael DiPirro.”
- (c) “Jeremy Fietz, Attorney at Law” in the amount of \$43,500 as payment for DiPirro’s attorneys’ fees and costs pursuant to Section 4 below.

For any payment that is returned for any reason, including insufficient funds, a payment must be made by Noticing Party in form of a cashier’s check within five (5) business days of notification of insufficient funds, plus a 10% service fee paid to DiPirro’s attorneys.

## **5.2 Issuance of 1099 Form**

The Noticed Party shall provide DiPirro’s counsel, Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on the Form 1099 MISC with

the amount reported in box 10 (“Gross proceeds paid to an attorney”). The Noticed Party acknowledges that 1099 shall NOT be issued under form 1099 NEC. A W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully executed by the Parties to this agreement. DiPirro and his counsel recognize that without the W-9 set forth herein Noticing Party cannot process the require Settlement Payments.

## **6. CLAIMS COVERED AND RELEASED**

### **6.1 DiPirro’s Release of Noticed and Related Parties**

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Party of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against any of the Noticed Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Noticed Party directly or indirectly distributes or sells the Products, including but not limited to distributors, wholesalers, customers, retailers, licensors, and licensee (“Releasees”), including its downstream distributors and retailers, but not including its upstream suppliers and manufacturers, for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California by the Noticed Party prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his 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 for actual or alleged violations of Proposition 65 as set forth in the Notice for Products manufactured, distributed, or sold up through the Effective



Date based on actual or alleged exposures to the Listed Chemical from use of the Products that he may have against the Noticed Party and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to the Listed Chemical from Products distributed, sold, or distributed for sale in California by the Noticed Party prior to the Effective Date. With respect to the foregoing waivers and releases in this paragraph, DiPirro hereby specifically waives any and all rights and benefits he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, 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.

DiPirro, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, expressly waives and relinquishes any and all rights and benefits that he or they may have under, or that may be conferred upon them by, the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters

## **6.2 Noticed Party's Release of DiPirro**

Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives,

whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. With respect to the foregoing waivers and releases in this paragraph, Noticed Party hereby specifically waives any and all rights and benefits he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, 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.

Noticed Party, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, expressly waives and relinquishes any and all rights and benefits that she or they may have under, or that may be conferred upon them by, the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters

#### **7. INTEGRATION**

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.

#### **8. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**9. 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 the Noticed Party may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal toxics control laws.

**10. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For The Delphi Glass Corporation:

David Daniels  
The Delphi Glass Corporation  
3380 East Jolly Road  
Lansing, MI 48910

With Copy to:

James Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
311 California Street, 10th floor  
San Francisco, CA, 94104-2695

and

For Michael DiPirro:  
Jeremy Fietz, Attorney-at-Law

4241 Montgomery Drive, #123  
Santa Rosa CA 95405

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**11. 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.

**12. POST-EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**13. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**14. ENFORCEMENT**

No Party may bring a motion to enforce the terms of this Settlement Agreement without first providing notice to the other party and meeting and conferring in good faith about the alleged violation for a period of at least thirty (30) days.

**15. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the parties to this agreement.

**16. 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.

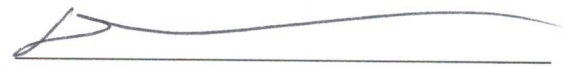
**AGREED TO:**

Date: 2/17/24

**AGREED TO:**

Date: 2/13/24

By:   
Michael DiPirro, Citizen Enforcer

By:   
The Delphi Glass Corporation  
Print Name: David Daniels  
Title: Controller