

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and Portico Designs Limited (“Portico Designs”), with Kallander and Portico Designs 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 Portico Designs 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 Portico Designs and/or Barnes & Noble Booksellers, Inc. (“Barnes & Noble”) manufactured, sold, and/or distributed for sale in California ceramic mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander alleges that Portico Designs and/or Barnes & Noble 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 defined as “Ceramic Mugs with Exterior Designs,” including, but not limited to, the *Black History 365 Ceramic Mug*, UPC: 5 02021 29175 7, that are manufactured, sold, or distributed for sale in California by Portico Designs (hereinafter referred to as “Products”).

1.4 Notice of Violation

On August 24, 2023, Kallander served Portico Designs, Barnes & Noble, and the requisite public enforcement agencies with a 60-Day Notice of Violation, 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 lead from the Products.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them, and between Barnes & Noble and Kallander, as set forth herein and in the Notice. The Parties agree that Portico Designs is fully defending, indemnifying and holding Barnes & Noble harmless with respect to any and all claims set forth in the Notice and that Portico Designs is responsible to Kallander for all matters set forth therein. Portico Designs denies, for itself and on behalf of Barnes & Noble, 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 all laws. Nothing in this Settlement Agreement shall be construed as an admission by Portico Designs or Barnes & Noble 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 Portico Designs or Barnes & Noble of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Portico Designs on its behalf and on behalf of Barnes & Noble. This Section shall not, however, diminish or otherwise affect Portico Designs' 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 Agreement is last executed by the Parties.

2. **INJUNCTIVE RELIEF**

2.1 **Reformulation/Warning Commitment**

As of the Effective Date, Portico Designs shall not distribute, sell, or offer the Products for sale in the State of California unless: (i) the Products are Reformulated Products pursuant to Section 2.2; or (ii) Portico Designs provides a clear and reasonable warning pursuant to Section 2.3 below. Before providing a clear and reasonable warning, Portico Designs shall employ its best efforts to manufacture, import, or otherwise acquire Reformulated Products for sale in the State of California. The Parties agree and intend that Portico Designs' compliance with the terms of this Settlement Agreement shall constitute Portico Designs' compliance with Proposition 65 with respect to exposures to Lead from the Products.

2.2 **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 no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations 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 in a solid substance.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must relate only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).


2.3 Warnings.

To the extent that Products manufactured, imported, or otherwise acquired by Portico Designs after the Effective Date do not meet the standard for Reformulated Products, a clear and reasonable warning shall be provided, as set forth herein.

2.3.1 Warning Content. For purposes of this Settlement Agreement, the parties agree that a clear and reasonable warning shall consist of either of the following warning statements:

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

OR

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

The above warning statements must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”.

2.3.2 Method of Transmission

Product Labeling. Portico Designs shall affix one of the foregoing warning statements to the packaging, labeling or directly to a specific Product. The warning statement shall be affixed to the Product, Products’ packaging or labeling and placed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Where the short-form warning statement is provided on

the label, the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product label. In no case shall the short-form warning statement appear in a type size smaller than six-point type.

Internet. In addition to the product labeling, where Portico Designs offers Products to California customers via its own proprietary internet website or any third-party website over which Portico Designs has control, Portico Designs shall provide a clear and reasonable internet, web page warning to customers located in California. The warning statement shall appear either: (i) on the same web page on which a Product is displayed and/or described; (ii) on the same page as the price for the Product; or (iii) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, the warning statement shall be provided using a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If the product label warning is provided using the short-form warning statement, the warning provided on the website may use the same content. A warning is not prominently displayed if the purchaser must search for it in the general content of the website. Where Portico Designs does not have control over the content of third-party internet sellers who receive products from Portico Designs and are known by Portico Designs to be internet sellers of its Products, Portico Designs shall provide such sellers with written notice in accordance with Title 27, California Code of Regulation, Section 25600.2 of their warning obligations. Third-party internet sellers who receive notice pursuant to 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit, release or protection afforded hereunder.

Catalog. In addition to the product labeling, where Portico Designs offers Products for sale in California via its own proprietary catalog or a catalog over which it has control, one of the foregoing warnings statements must also be provided in the

catalog in a manner that clearly associates it with the *specific* item being purchased. The catalog warning statement shall be placed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase. If a short-form warning is being provided on the label, the warning provided in the catalog may use the same content. Where Portico Designs does not have control over the content of third-party catalog sellers who receive products from Portico Designs and are known by Portico Designs to be catalog sellers of its Products, Portico Designs shall provide such sellers with written notice in accordance with Title 27, California Code of Regulation, Section 25600.2 of their warning obligations. Third-party catalog sellers who receive notice pursuant to 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit, release or protection afforded hereunder.

Languages. Where a label or tag used to provide a warning statement 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.

2.3.3 Safe Harbor Warnings. The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that Portico Designs may utilize “safe harbor” warning language and methods promulgated by the Office of Environmental Health Hazard Assessment and contained in 27 CCR §§ 25602-25603, applicable to lead and the Product, in effect on or after the Effective Date, 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, Portico Designs agrees to pay \$1,000 in civil penalties within ten business 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. Portico Designs will make its payment in two checks, delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$750; and (2) to “Audrey Kallander” in the amount of \$250.

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, Portico Designs 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 ten business days of the Effective Date, Portico Designs agrees to pay \$14,000, 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 Portico Designs’ 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
839 Emerson Street
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Kallander's Release of Proposition 65 Claims

Kallander acting on her own behalf, her past and current agents, representatives, attorneys, successors and/or assignees, and not on behalf of the public, releases Portico Designs, its parents, subsidiaries, affiliated entities, predecessors, partners, owners, investors, shareholders, marketplaces, directors, officers, agents, employees, contractors, attorneys, successors and assignees, and each entity to whom Portico Designs directly or indirectly distributes or sells Products, including, but not limited to, Portico Designs US Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, marketplaces, and licensees, including, but not limited to Barnes & Noble, and their respective subsidiaries, affiliates and parents, franchisees, cooperative members, and licensees (collectively, the "Releasees"), from all claims relating to unwarned exposure to lead on Products manufactured, imported, distributed, or sold by the Releasees prior the Effective Date. The Parties further understand and agree that this 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 Portico Designs.

Nothing in this Section affects Kallander's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Portico Designs' Products.

Kallander also, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees and not in her 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 Portico Designs and the Releasees limited to and arising out of alleged or actual exposures to lead in the Products manufactured,

imported, distributed, or sold by Portico Designs prior to the Effective Date. Kallander acknowledges that she 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.

Kallander, in her individual capacity only, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her 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 she may lawfully waive such rights or benefits pertaining to the released matters.

4.2 Portico Designs' Release of Kallander

Portico Designs, 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 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 Portico Designs 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 Portico Designs:

Merton A. Howard
Hanson Bridgett LLP
1000 4th St #700
San Rafael, CA 94901

For Kallander:

Audrey Kallander
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
839 Emerson Street
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. 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:

Date: 12/15/2023

By: 
AUDREY KALLANDER

AGREED TO:

Date: 15-Dec-23

By: 
PORTICO DESIGNS LIMITED