

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and Penguin Random House LLC (“Penguin Random House”), with Kallander and Penguin Random House 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 Penguin Random House 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 each of Penguin Random House and Barnes & Noble Booksellers, Inc. (“B&N”) manufactures, sells, and/or distributes 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 Penguin Random House 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 defined as, and limited to, the “*Read with Pride*” Ceramic Mug UPC: 7 24751 88626 2, that are manufactured, sold, or distributed for sale in California by Penguin Random House (hereinafter referred to as “Products”).

### 1.4 Notice of Violation

On September 15, 2023, Kallander served Penguin Random House, B&N, 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**

Each of Penguin Random House and B&N 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 all laws. Nothing in this Settlement Agreement shall be construed as an admission by either Penguin Random House or B&N 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 Penguin Random House of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Penguin Random House. This Section shall not, however, diminish or otherwise affect Penguin Random House's obligations, responsibilities, and duties under this Settlement Agreement. The Parties agree that Penguin Random House is fully defending, indemnifying and holding B&N harmless with respect to any and all claims set forth in the Notice.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 24, 2024.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation/Warning Commitment**

As of the Effective Date, Penguin Random House shall not manufacture, import, 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) Penguin Random House provides a clear and reasonable warning pursuant to Section 2.3. The Parties agree and intend that Penguin Random House's compliance with the terms of this

Settlement Agreement shall constitute compliance by Penguin Random House with Proposition 65 with respect to exposures to Lead from the Products.

## **2.2 Reformulated Products.**

“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 Penguin Random House 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:** Reproductive Harm- [www.P65Warnings.ca.gov](http://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 birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://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.** Penguin Random House 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 Penguin Random House offers Products to California customers via its own proprietary internet website or any third-party website over which Penguin Random House has control, Penguin Random House 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 Penguin Random House does not have control over the content of third-party internet sellers, Penguin Random House 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 or protection afforded hereunder.

**Catalog.** In addition to the product labeling, where Penguin Random House 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 Penguin Random House does not have control over the content of third-party catalog sellers, Penguin Random House 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 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 Penguin Random House 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, Penguin Random House agrees to pay \$800 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 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Kallander. Penguin Random House will make its payment in two checks, delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$600; and (2) to “Audrey Kallander” in the amount of \$200.

#### **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, Penguin Random House 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, Penguin Random House agrees to pay, no later than the Effective Date, \$13,200, 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 Penguin Random House's management, and negotiating a settlement.

### **3.3 Payment Address and Tax Documentation**

All checks under this Settlement Agreement shall be delivered to the following address and shall, thereafter, be delivered by Kallander to the respective payees:

Voorhees & Bailey, LLP  
839 Emerson Street  
Palo Alto, CA 94301

Kallander shall provide IRS W-9 forms for: (i) "Office of Environmental Health Hazard Assessment", (ii) Audrey Kallander, and (iii) Voorhees & Bailey, LLP. Penguin Random House shall issue complete IRS 1099 forms to each payee for their respective payment amount.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Kallander's Release of Proposition 65 Claims**

This Settlement Agreement is a full, final and binding resolution between Kallander, acting on her own behalf, and not on behalf of the public, and Penguin Random House (on behalf of itself and the other Releasees, including, without limitation, B&N), of any violation of Proposition 65 that was or could have been asserted by Kallander or on behalf of her past and current agents, representatives, attorneys,

successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasers hereby release Penguin Random House, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Penguin Random House directly or indirectly distributes or sells Products, including, but not limited to, B&N and its respective subsidiaries, affiliates and parents, shareholders, directors, officers, agents, employees, attorneys, successors and assignees, and any downstream distributors, wholesalers, customers, other retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. The Parties further 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 Penguin Random House.

#### **4.2 Kallander's Individual Release of Claims**

Kallander on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, in her individual capacity only and not in her representative capacity, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action, and provides a 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, expert fees, investigation fees, damages, losses, claims, liabilities, and demands of Kallander of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by either Penguin Random House or B&N prior to the Effective Date. The Parties further 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 Penguin Random House. Nothing in this Section affects Kallander's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Penguin Random House's Products.

#### **4.3 Penguin Random House's Release of Kallander**

Penguin Random House, 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 Penguin Random House 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 Penguin Random House:**

Penguin Random House LLC  
c/o CSC Lawyers Incorporating Service  
2710 Gateway Oaks Drive; Suite 150N  
Sacramento, CA 95833

**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. ENTIRE AGREEMENT**

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.

**12. 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: Jan 22, 2024

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Audrey Kallander

By: \_\_\_\_\_  
Penguin Random House LLC

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.

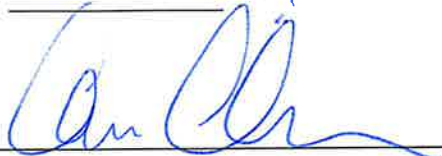
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Audrey Kallander

**AGREED TO:**

Date: 1-22-2024

By:  \_\_\_\_\_  
Penguin Random House LLC