

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Precila Balabbo and Primeware, Inc.**

This Settlement Agreement is entered into by and between Precila Balabbo ("Balabbo" or "Plaintiff") and Primeware, Inc. ("Primeware" or "Defendant"). Together, Balabbo and the Defendant are collectively referred to as the "Parties." Balabbo is an individual that resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Plaintiff contends that Defendant employs ten or more persons and is considered a person in the course of doing business for purposes of the Safe Drinking water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

#### **1.2 General Allegations**

Balabbo alleges that Defendant has manufactured, imported, distributed and/or sold in the State of California certain products described below containing Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed by the State of California under Proposition 65 as a chemical known to cause cancer, birth defects or other reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are Wine Clutches, including, but not limited to, UPC# 8 59441 13022 3, SKU# 3022 (referred to hereafter as the "Product(s)"). Balabbo alleges that the Product(s) contain DEHP, and are manufactured, imported, distributed, sold and/or offered for sale by Defendant in the State of California.

#### **1.4 Notice of Violation**

On January 27, 2015, Balabbo served Defendant and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Defendant, and such others, including public enforcers, with notice that alleged

that Defendant was in violation of Proposition 65 for failing to warn California consumers that the Products exposed users to DEHP. To the best of the Parties knowledge, no public enforcer is diligently prosecuting the allegations set forth in the Notices.

### **1.5 No Admission**

The Parties enter into this settlement agreement to avoid prolonged and costly litigation. Defendant denies the material factual and legal allegations contained in the Notice, and maintains that all products that it has sold and continues to sell and distribute in California, including the Products, are in compliance with all laws. Notwithstanding the allegations in the Notice, Defendant maintains that it has not knowingly manufactured or caused to be manufactured for sale in California, Products which are in violation of Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect Defendant'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 June 26, 2015.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulated Products**

Commencing on the Effective Date, and continuing thereafter, Defendant shall only ship, sell, or offer for sale in California, Reformulated Product(s) pursuant to Section 2.2, or Products that are labeled with a clear and reasonable warning pursuant to Section 2.3.

## **2.2 Reformulation Standard**

“Reformulated Product(s)” shall meet the standards outlined in this section.

“Reformulated Product(s)” are defined as products whose accessible components contain less than or equal to 1,000 parts per million (“ppm”) of DEHP, when analyzed pursuant to test method CPSC-CH-C1001-09.3, or equivalent methodologies utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance.

## **2.3 Clear and Reasonable Warnings**

Defendant shall provide a clear and reasonable warning for any Product that it ships, sells, or offers to ship or sell in California after the Effective Date that is not a Reformulated Product. Defendant shall provide the warning affixed to the packaging or labeling, or directly to the Product(s), with the following statement:

**[California Proposition 65] WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

Language in brackets is optional. The warning shall be placed 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 or use.

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

### **3.1 Civil Penalty**

In settlement of all the claims referred to in the Notice and this Settlement Agreement, Defendant shall pay a total of \$2,000 in civil penalties in accordance with this Section. Each penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (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 Balabbo. On or before the Effective Date, Defendant shall issue two separate checks for the civil penalty payment to: (a)

"OEHHA" in the amount of \$1500; and (b) "Brodsky & Smith, LLC in Trust for Balabbo" in the amount of \$500. Each penalty payment shall be delivered by Defendant to the addresses listed in Section 3.2.1 below. Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not received within five business days of the date they are due. After investigation, Plaintiff agrees that the civil penalty set forth herein fully complies with the factors set forth under Proposition 65.

### **3.2 Payment Procedures**

**3.2.1 Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Balabbo pursuant to Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**3.2.2 Copy of Payments to OEHHA.** Defendant agrees to provide Balabbo's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Balabbo, to be delivered to the address provided in Section 3.2.1(a), as proof of payment to OEHHA.

**3.2.3 Tax Documentation.** Defendant agrees to provide to Plaintiff's counsel a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(a) "Precila Balabbo" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(b) "Brotsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2.1(a); and

(c) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

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

The Parties acknowledge that Balabbo and her 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. Balabbo then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation to be paid to Balabbo and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in connection with the claims asserted in the Notice through the mutual execution of this agreement, including, but not limited to, any and all investigative, expert and legal fees and expenses incurred as a result of investigating and bringing this matter to Defendant's attention, and negotiating a settlement in the public interest. Based on this agreement, in complete settlement of all claims for such fees, costs and expenses, Defendant shall issue a check payable to

“Brodsky & Smith, LLC” in the amount of \$18,000, on or before the Effective Date, for delivery to the following address:

Evan Smith, Esq.  
Brodsky & Smith, LLC  
2 Bala Plaza, Ste. 510  
Bala Cynwyd, PA 19004

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Defendant, and Downstream Customers and Entities**

Balabbo acting on her own behalf, and in the public interest, releases Defendant and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Defendant directly or indirectly distributes or sells the Product(s) including, but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Bed Bath & Beyond), franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations or alleged violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Defendant even if sold by Releasees after the Effective Date. The penalties, reformulation commitment, warnings and attorney’s fees required under this settlement agreement are intended to resolve all issues concerning any alleged violation of Proposition 65 related to alleged DEHP in the Products, and Plaintiff agrees that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to DEHP in the Products.

In further consideration of the promises and agreements herein contained, Balabbo on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that she may

have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to the failure to warn about alleged exposures to DEHP from Products manufactured, sold and/or distributed for sale by Defendant through the Effective Date even if sold by Releasees after the Effective Date.

Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, further provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to any and all claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, as such claims relate to Products manufactured, distributed and/or sold by Defendant prior to the Effective Date even if sold by Releasees after the Effective Date. Balabbo further acknowledges that she is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Balabbo, 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 that she may have under, or which may be conferred on her by the provisions of 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 herein.

## **5.2 Defendant's Release of Balabbo**

Defendant, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Balabbo, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Balabbo and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

Defendant further acknowledges that it is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Defendant, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of 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 it may lawfully waive such rights or benefits pertaining to the released matters herein.

## **6. SEVERABILITY**

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

## **7. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein



have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**8. 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 Defendant shall provide written notice to Balabbo of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**9. NOTICES**

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

For Defendant Primeware, Inc.:

Tony Thai  
Primeware, Inc.  
P.O. Box 1549  
Huntington Beach, CA 92647

7481 Anaconda Ave.  
Garden Grove, CA 92841

With Copy To:

J. Robert Maxwell  
ROGERS JOSEPH O'DONNELL  
311 California Street, 10th fl  
San Francisco, CA 94104

For Balabbo:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

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

**10. COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Balabbo agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of the Parties and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

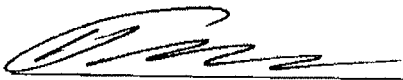
**AGREED TO:**

**AGREED TO:**

Date: 6-22-15

Date: 6-22-15

By:   
Precila Balabbo

By:   
Tony Thai