

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement ("Agreement") is entered into by and between Precila Balabbo ("Balabbo") and Medical Depot, Inc. ("Medical Depot"). (Collectively referred to as "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.

#### 1.2 General Allegations

Medical Depot 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") and it causes to be manufactured, distributed or sold to California customers an inflatable vinyl cushion, UPC No. 050428753866 (referred to as "Product"). Balabbo alleges that Medical Depot has imported, distributed and or sold the Product without a requisite Proposition 65 warning and that the Product contains the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause developmental male reproductive toxicity.

#### 1.3 Notice of Violation(s)

On May 13, 2016 Balabbo served CVS Pharmacy, Inc. ("CVS"), Medical Depot, and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided Medical Depot and such others, including public enforcers, with notice that alleged that Medical Depot was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Product exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.4 No Admission**

Medical Depot denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Product, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Medical Depot of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Medical Depot of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Medical Depot. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Agreement. Notwithstanding the allegations in the Notice, Medical Depot maintains that it has not knowingly manufactured or distributed, or caused to be manufactured or distributed, Products for sale in California in violation of Proposition 65. Nothing in this settlement agreement, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Medical Depot, or its owners, officers, directors, employees, parents, subsidiaries, employees, shareholders, directors, insurers, attorneys, successors and assigns, past and present, affiliated entities or corporations, or entities absorbed by merger or acquisition, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, the term "Effective Date" shall mean the date that the parties execute this Agreement.

### **3. INJUNCTIVE RELIEF**

#### **3.1 Reformulation of the Product**

Commencing on the Effective Date, and continuing thereafter, Medical Depot shall not manufacture, purchase or import for distribution or sale to California customers, or cause to be manufactured, purchased or imported for California sale Product that contains more than .1% DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. (“Reformulated Product.”)

3.2 Medical Depot agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells Product for sale to California customers from its Existing Inventory that do not comply with Section 3.1, it will provide warnings as set forth in Sections 3.3 on such Product and that such warning will comply with Proposition 65. “Existing Inventory” excludes products shipped, sold and/or otherwise distributed on or prior to the Effective Date, even if sold or distributed by Downstream Releasees after the Effective Date. The warnings in Sections 3.3 shall constitute compliance with Proposition 65 with respect to the DEHP in the Product for any Product in Existing Inventory that do not comply with Section 3.1 and were distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

#### **3.3 Clear and Reasonable Warnings**

For Product in Medical Depot’s Existing Inventory as of the Effective Date, the required warning under this Agreement shall be prominently 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods

of transmission different than those set forth above. Medical Depot shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

**(a) Retail Store Sales**

**(i) Product Labeling.** Medical Depot shall affix a warning to the packaging, labeling or directly on each Product shipped for California retail sale from its Existing Inventory after the Effective Date that is not Reformulated Product using language similar to the warning described below:

**[PROPOSITION 65] WARNING:**

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to be used.

**(ii) Point of Sale Warnings.** Alternatively, Medical Depot may provide warning signs using language similar to the warning described below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Product. Such instruction sent to Medical Depot customers shall be sent by certified mail, return receipt requested.

**[PROPOSITION 65] WARNING:**

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to be used.

**(b) Mail Order Catalog Warning.** In the event that Medical Depot sells Product from its Existing Inventory via mail order catalog directly to consumers located in California after the Effective Date that is not a Reformulated Product, Medical Depot shall provide a warning for such Product sold via mail order catalog to such

California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The warning using language similar to the warning described below shall be provided on the same page and in the same location as the display and or description of the Product:

**[PROPOSITION 65] WARNING:**

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to be used. Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Medical Depot may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" using language similar to the warning described below on the inside of the front cover of the catalog or on the same page as any order form for the Product:

**[PROPOSITION 65] WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause birth defects or other reproductive harm.

The bracketed text may, but is not required to be used. The designated symbol must appear on the same page and in close proximity to the display and/or description of the Products. On each page where the designated symbol appears, Medical Depot must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

**(c) Internet Sales Warning.** In the event that Medical Depot sells Product from its Existing Inventory via the Internet directly, and not through third Parties, to consumers located in California after the Effective Date that is not a Reformulated Product, Medical Depot shall provide a warning for such Product sold via the Internet to such California residents. A warning that is given on the Internet shall be in the same type size or larger than the Product description text and shall be given in conjunction with the

direct sale of the Product. The warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for the Product; (d) on a page the consumer may click on for Proposition 65 warning information or (e) on one or more web pages displayed to a purchaser during the checkout process. A warning using language similar to the warning described below shall be provided:

**[PROPOSITION 65] WARNING:**

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to be used.

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

In settlement of all the claims referred to in this Agreement, Medical Depot shall pay a total of \$2,500.00 in civil penalties in accordance with this Section. Each penalty payment will 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. Each penalty payment shall be delivered to the addresses listed in Section 4.2 below. Medical Depot 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 ten business days of the date they are due.

**4.1 Civil Penalty**

On or before the Effective Date, Medical Depot shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,875.00; and (b) "Brodsky & Smith, LLC in Trust for Balabbo" in the amount of \$625.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

## 4.2 Payment Procedures

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Balabbo, pursuant to Section 4.1 shall be delivered to the following payment address:

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

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at 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

(b) **Copy of Payments to OEHHA.** Medical Depot 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 4.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Medical Depot agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

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

(ii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

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

**5. 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 due to Balabbo and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Medical Depot shall reimburse Balabbo's counsel for fees and costs incurred as a result of investigating and bringing this matter to Medical Depot's attention, and negotiating a settlement in the public interest. On or before the Effective Date, Medical Depot shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$26,500.00 for delivery to the following address:

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

## **6. RELEASE OF ALL CLAIMS**

6.1 This Agreement is a full and final resolution between Balabbo on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assignees, on the one hand, and (a) Medical Depot and its respective owners, officers, directors, insurers, attorneys, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, entities absorbed by merger or acquisition, their predecessor or successor entities, and their heirs, assigns and successors in interest, past or present and (b) any other person or entity who may directly or indirectly use, provide, maintain, distribute or sell Product in the course of doing business, including but not limited to each of Medical Depot's suppliers, customers, distributors, wholesalers, retailers, on the other hand, for all violations or claimed violations of Proposition 65 up through the Effective Date based on exposure to DEHP or the failure to warn about exposure to DEHP arising in connection with the Products manufactured, shipped and/or otherwise distributed for California sale on or before the Effective Date. ("Released Claims"). Medical Depot and its downstream releasees' compliance with this Agreement shall constitute compliance with Proposition 65 with respect to DEHP contained in Product.

### **6.2 Balabbo's Release**

Balabbo, acting on her own behalf, waives, releases and forever discharges Medical Depot and its parents, subsidiaries, affiliated entities under common ownership, successors and/or assignees, directors, officers, agents, employees, attorneys and each entity to whom Medical Depot directly or indirectly distributes or sells the Product, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to CVS and its affiliates and subsidiaries, franchisees, cooperative members and licensees, (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemical DEHP that is contained in the Product, and was distributed, sold

and/or offered for sale by Medical Depot to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Medical Depot and/or the Releasees for failure to provide warnings for alleged exposures to DEHP contained in the Product.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 4 and 5 above, Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, 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, damages, losses, claims, liabilities and demands of Medical Depot or the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Product.

### **6.3 Medical Depot's Release**

Medical Depot, 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 Product.

### **6.4 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Balabbo on behalf of herself only, on one hand, and Medical Depot, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 6.2 and 6.3 above may include unknown claims, and

nevertheless waive California Civil Code section 1542 as to any such unknown claims.

California Civil Code section 1542 reads 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 and Medical Depot each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

**7. SEVERABILITY**

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

**8. GOVERNING LAW**

The terms of this Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if the provisions of this Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered by reason of law generally as to the Product, then Medical Depot shall provide written notice to Balabbo of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Product is so affected.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 Medical Depot:

Stephanic Sheridan  
Sedgwick LLP  
333 Bush Street, 30<sup>th</sup> Floor  
San Francisco, California 94104  
415-781-7900

For Balabbo:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
877-534-2590

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

**13. AUTHORIZATION**

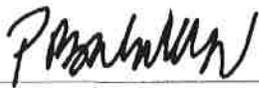
The undersigned are authorized to execute this Agreement and have read, understood and agree to all of the terms and conditions contained of this Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 10/28/16

Date: OCTOBER 28, 2016

By:   
Precila Balabbo

By:   
Medical Depot, Inc.