

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by and between Precila Balabbo (“Balabbo”) and Jean Pierre, Inc. (“Jean Pierre”). Together, Balabbo and Jean Pierre are collectively referred to as the “Parties,” and sometimes individually a “Party.” Balabbo is an individual who allegedly resides in the State of California and seeks to improve human health by reducing or eliminating hazardous substances contained in consumer products. Balabbo alleges that Jean Pierre is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Balabbo alleges that Jean Pierre manufactured, imported, distributed, and/or sold in California: (a) WeWell cosmetic kits; and (b) *Skip the Spa*TM decollete masks, including but not limited to UPC # 810025803872, containing the chemical diethanolamine (“DEA”) without first providing California consumers with a Proposition 65 warning. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are (a) WeWell cosmetic kits and (b) *Skip the Spa*TM decollete masks, UPC # 810025803872 (collectively, the “Products”) that Jean Pierre has either manufactured, imported, distributed, offered for sale and/or directly or indirectly sold in California that allegedly contain DEA..

1.4 Notices of Violation. On or about July 1, 2021, Balabbo served Jean Pierre, Shenzhen Trading Co., Ltd., Macy’s, Inc., and Macy’s West Stores, LLC (collectively, “Macy’s”), and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “July Notice”). The July Notice provided Jean Pierre and such others, including public enforcers, with notice that alleged that Jean Pierre failed to warn California consumers and customers that use of the Products may expose them to DEA. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the July Notice.

On or about February 1, 2023, Balabbo served Forever 21, Inc., F21 IPCO, LLC, F21 OPCP, LLC, Authentic Brands Group LLC (collectively, "Forever 21"), Jean Pierre, and various public enforcement agencies with documents entitled "Notice of Violation of California Health & Safety Code § 25249.6, et seq." (the "February Notice"). The February Notice provided Jean Pierre and such others, including public enforcers, with notice that alleged that Jean Pierre failed to warn California consumers and customers that use of the Products may expose them to DEA. To the best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the February Notice. The July Notice and the February Notice are collectively referred to herein as the "Notices."

1.5 No Admission. Jean Pierre enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notices, and solely to avoid prolonged and costly litigation. Jean Pierre denies the material factual and legal allegations contained in the Notices, maintains that it is not a person in the course of doing business that is subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by Jean Pierre of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusions of law suggesting or demonstrating that Jean Pierre has sold any products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by Jean Pierre of any of the above, such being specifically denied by Jean Pierre. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Jean Pierre may have in this or any other future legal proceedings, including Jean Pierre's position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by Jean Pierre solely for purposes of settling, compromising, and resolving issues disputed in the Notices.

However, this Section 1.5 shall not diminish or otherwise affect the Parties' 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 that this Agreement is fully executed.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Clear and Reasonable Warning. Within ninety (90) days of the Effective Date, and continuing thereafter, Products that Jean Pierre directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) "Reformulated Products" pursuant to § 2.2, below; or (b) labeled with a clear and reasonable warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the reformulation standard set forth in § 2.2, below. The warning requirements set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product or to any Product manufactured within 90 days after the Effective Date.

2.2 DEA Reformulation Standard. To qualify as a "Reformulated Product" the Product must meet the following standard: DEA content that is not detectable (i.e., zero) or below the Reporting Limit (defined herein) when analyzed pursuant to liquid chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy (ICP-MS) or any other method of analysis utilized by the International Organization for Standardization (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

2.2.1 Reporting Limit¹.

(a) With respect to the WeWell cosmetic kits, the Reporting Limit is 10 mg/kg.


(b) With respect to the *Skip the Spa*TM decollete masks, the Reporting Limit is 14mg/kg.

2.3 Clear and Reasonable Warning. As of the Effective Date, or within 90 days of the Effective Date, and continuing thereafter, except as set forth in § 2.2, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Jena Pierre

¹ The "Reporting Limit" is the lowest concentration at which DEA can be detected in a sample of a Product by an accredited testing laboratory employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including diethanolamine (DEA), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.


(b) **Alternative Warning:** Jean Pierre may, but is not required to, use the alternative short-form warning as set forth in this § 2.1(b) (“**Alternative Warning**”) as follows:

 [California Prop 65] **WARNING:** Cancer - www.P65Warnings.ca.gov.


Language in brackets is optional.²

2.4 The **Warning** or **Alternative Warning** provided pursuant to § 2.3 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:**”. The **Warning** or **Alternative 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 the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the same

² If Jean Pierre has reason to believe that other chemicals listed under Proposition 65 may be contained or emitted by the Products, Jean Pierre may use either of the following two warnings in place of those set forth in Section 2.1:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including diethanolamine and [insert chemical], which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or

 [California Prop 65] **WARNING:** Cancer [and] [birth defects or other reproductive harm] - www.P65Warnings.ca.gov.

In the first warning above Jean Pierre must insert the name of the additional listed chemical. Language in brackets optional.

section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

If Jean Pierre sells Products via an internet website to customers located in California the requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word(s) [California Prop 65] “**WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Products; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies. To comply with this Section, Jean Pierre shall post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of third-party internet sellers where it has knowledge the third party internet sellers are selling the Products in California.

2.5 Compliance with Warning Regulations. The Parties agree that Jean Pierre shall be deemed to be in compliance with Proposition 65 and this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable to the Product and the exposure at issue that are in effect after the Effective Date, or within 90 days of the Effective Date. If “consumer information” (as defined in 27 Cal Code of Regs Section 25600.1(c)) is provided in a foreign language on a Product’s packaging or labeling, Jean Pierre shall also provide the **Warning** in the foreign language on the Product’s packaging or labeling. If “consumer information” (as defined in 27 Cal Code of Regs Section 25600.1(c)) is provided in a foreign language on a warning sign prepared by Jean Pierre, Jean Pierre shall also provide the **Warning** in the foreign language on the warning sign for the Product.

2.6. Public Benefit. It is Jean Pierre's understanding that the commitments it has agreed to herein, and actions to be taken by Jean Pierre 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 Jean Pierre that to the extent any private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Jean Pierre's alleged failure to provide a warning concerning actual or alleged exposure to DEA prior to use of the Products it has manufactured, imported, distributed, sold, or offered for sale in California, or will manufacture, 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 Jean Pierre is in material compliance with this Settlement Agreement.

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

In settlement of all claims for monetary relief of any kind related to the Notices or referred to in this Settlement Agreement (except for Balabbo's attorney's fees and expenses set forth in § 4 below), Jean Pierre shall pay \$500 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Balabbo. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.1 Civil Penalty. By or before February 25, 2024, Jean Pierre shall issue two (2) separate checks for the Civil Penalty payment: (a) one to "OEHHA" in the amount of \$375; and one to (b) "Brodsky Smith in Trust for Balabbo" in the amount of \$125. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

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

(i) All payments owed to Balabbo, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004.

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 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. Jean Pierre agrees to provide Balabbo’s counsel with a copy of the check payable to OEHHA, simultaneously with its penalty payment to Balabbo, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) Tax Documentation. Jean Pierre agrees to provide a completed IRS 1099 for its payments to, and Balabbo agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Precila Balabbo” whose address and tax identification number shall be provided within five (5) calendar days of the Effective Date;

(ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 “I” Street, Sacramento, CA 95814.

Balabbo and her counsel recognize that without the W-9s set forth herein Jean Pierre cannot process the require Settlement Payments.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Balabbo and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of attorney's fees and expenses to be reimbursed to her. The Parties thereafter 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 Settlement Agreement. Under these legal principles, Jean Pierre shall reimburse Balabbo's counsel the total amount of \$14,500 for any and all of Balabbo's attorney's fees and expenses, including but not limited to all investigative, expert, and testing expenses, incurred as a result of investigating and bringing this matter to Jean Pierre's attention, and negotiating this settlement in the public interest.

Payment pursuant to this Section is as follows: Within ten (10) days of the Effective Date, Jean Pierre shall issue three (3) settlement checks payable to "Brodsky Smith" for delivery to the address identified in § 3.2(a)(i), above. Each settlement check shall be dated for deposit on the 1st of each month beginning with April 1, 2024. The April 1, 2024 settlement check shall be in the amount of \$4,500. The remaining two (2) settlement checks shall be in the amount of \$5,000 each beginning with May 1, 2024. The final settlement check of \$5,000 shall be dated for deposit on June 1, 2024. Total payment pursuant to this Section shall equal \$14,500.

5. RELEASE OF ALL CLAIMS

5.1 Release of Jean Pierre and Upstream and Downstream Customers and Entities.

This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Jean Pierre, of any violation of Proposition 65 that was or could have been asserted by Balabbo or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for any actual or alleged failure to provide warnings for alleged exposures to DEA from use of the Products manufactured, imported, distributed, or sold through 90 days after the Effective Date, and Releasers hereby release any such claims against Jean Pierre and its suppliers, parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents,

employees, attorneys, and their respective predecessors, successors and assignees, and each entity from whom Jean Pierre obtained any Products and each entity to whom Jean Pierre directly or indirectly distributed or sold the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Macy's, Forever 21, and their affiliates), and their respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensors, and licensees (collectively, the "Releasees"), from all claims for actual or alleged violations of Proposition 65 regarding DEA exposure from Products manufactured, imported, sold, or distributed for sale in California by Jean Pierre through the Effective 90 days after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, 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 obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising from actual or alleged exposure to DEA from use of Products manufactured, imported, distributed, or sold through 90 days after the Effective Date.

5.2 Jean Pierre's Release of Balabbo. Jean Pierre, 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.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties including those arising out of the facts alleged in the Notices and relating to products manufactured by or for Jean Pierre through 90 days after the Effective Date, will develop or be discovered. Balabbo,

on behalf of herself, her past and current agents, representatives, attorneys, successors, and or assignees only, on the one hand, and Jean Pierre, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims against the Releasees for products manufactured by or for Jean Pierre up through 90 days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

Balabbo and Jean Pierre on behalf of themselves, their past and current agents, representatives, attorneys and successors and/or assignees expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them 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 they may lawfully waive such rights or benefits pertaining to the released matters.

5.4 No Other Known Claims or Violations. Balabbo and Balabbo's Counsel affirm that they are not presently aware of any actual or alleged violations of Proposition 65 by Jean Pierre for which Jean Pierre bears legal responsibility other than those that are fully resolved by this Settlement Agreement.

5.5 Deemed Compliance with Proposition 65. The Parties agree that compliance by Jean Pierre with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposure to DEA from use of the Products.

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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. 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 or limited by reason of law generally, or as to the Products, or if DEA is delisted, Jean Pierre 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, a Product is so affected. This Settlement Agreement is enforceable solely by the Parties hereto.

8. 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 Jean Pierre:

Jeffrey Mamiye
Jean Pierre, Inc.
320 5th Avenue 3rd Floor
New York, NY 10001

With copy to:

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell
Robert Dollar Building 311 California St., 10th Floor
San Francisco, CA, 94104

For Balabbo:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either 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.

9. COUNTERPARTS: DIGITAL 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.

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

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

11. MODIFICATION

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

12. ENFORCEMENT

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement.

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 should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

14. 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.

15. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 03/22/2024

Date: March 22, 2024

By: 
Precila Balabbo

By: 
Jeffrey Mamiye
Jean Pierre, Inc.