

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and Fiskars Brands, Inc. (“Fiskars”). Together, Balabbo and Fiskars are collectively referred to as the “Parties.” Balabbo is an individual who 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. Balabbo alleges that Fiskars 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 Fiskars has exposed individuals to the chemical Bisphenol A (“BPA”) from its sales of Fiskars Circle Cutters, UPC# 078484093801, without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

**1.3 Product Description.** The products covered by this Settlement Agreement are Fiskars Circle Cutters, UPC# 078484093801, (the “Products”) that have been either manufactured, or imported, or distributed, offered for sale and/or directly or indirectly sold in California by Fiskars.

**1.4 Notice of Violation.** On January 27, 2022, Balabbo served Fiskars, Fiskars Corporation (aka Fiskars Oyj Abp.), Jo-Ann Stores, LLC, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”) alleging that Fiskars was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Fiskars 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 Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission against interest by Fiskars

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 against interest by Fiskars of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Fiskars. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties of the Parties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Fiskars maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale or use in California in violation of Proposition 65.

**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 and each Party has notice thereof.

## **2. INJUNCTIVE RELIEF: WARNINGS**


**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, Products that Fiskars directly either manufactures, or imports, or distributes, directly or indirectly sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, “Reformulated Products” are Products that are in compliance with the standard set forth in § 2.2, below. The warning requirements set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Products or to any Products manufactured prior to the Effective Date.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean any Products subject to this Settlement Agreement that are demonstrated via an exposure assessment conducted in accordance with applicable Proposition 65 laws and regulations to result in a dermal exposure to BPA from solid materials that does not exceed the Maximum Allowable Dose Level for BPA of 3 micrograms per day. Any such exposure assessment shall, as part of the assessment, consider data obtained from Product wipe testing by a California State Certified Laboratory.

**2.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Fiskars either manufactures, or imports, or distributes, directly or indirectly sells, or

offers for sale in California that is not a Reformulated Product. There shall be no obligation for Fiskars to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. 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:

 **WARNING:** This product can expose you to chemicals including Bisphenol A (BPA), 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).

(b) **Alternative Warning:** Fiskars may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) or (c) (“**Alternative Warning**”) as follows:

 **WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(c) Fiskars may use any form of “safe harbor” warning set forth in Proposition 65 regulations that are adopted at the time it places a Product in the stream of commerce.

**2.4** A **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 shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed 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. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Fiskars sells Products via its proprietary internet website and ships a Product to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning 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 Product; or (c) on one or more web pages displayed to a purchaser prior to completion of 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

**2.5 Compliance with Warning Regulations.** When required, the warning provided pursuant to § 2.3 above shall be affixed to or printed on the Products' packaging or labeling for Products subject to this Settlement Agreement. The warning shall be prominently affixed to or printed on the packaging or labeling and displayed 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. A warning may be contained in the same 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.

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

In settlement of all the claims referred to in this Settlement Agreement, Fiskars shall pay \$3,000.00 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. For all amounts due and owing that are not received within the payment times set forth below, after a grace period of two (2) business days, Fiskars shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

**3.1 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Fiskars shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b) "Brodsky & Smith in Trust for Balabbo" in the amount of \$750.00. 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.** Fiskars 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 § 3.2(a)(i), as proof of payment to OEHHA.

**(c) Tax Documentation.** Fiskars 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 two business (2) days after 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.

#### **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 fees and costs to be reimbursed to them. 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 agreement. Under these legal principles, Fiskars shall reimburse Balabbo’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Fiskars’ attention, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Fiskars shall issue a check payable to “Brodsky & Smith” in the amount of \$31,500.00 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Fiskars and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Fiskars, 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 failure to provide warnings for alleged exposures to BPA from use of the Products, and Releasers hereby release any such claims against Fiskars and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, manufacturers, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Fiskars directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Jo-Ann Stores, LLC, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for

violations of Proposition 65 through and including the Effective Date based on exposure to BPA from use of the Products.

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 up through and including the Effective Date 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 out of the alleged or actual exposure to BPA from use of the Products.

**5.2 Fiskars' Release of Balabbo.** Fiskars, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims up through and including the Effective Date against Balabbo, her attorneys and other representatives, for any and all actions taken or statements 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 use of the Products.

**5.3 California Civil Code § 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 Fiskars, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including 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 Fiskars each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Fiskars with this Settlement Agreement after the Effective Date constitutes compliance with Proposition 65 by all Releasees with respect to exposure to BPA from use of the Products.

**5.5. Public Benefit.** It is the Parties' understanding that the commitments they have agreed to herein, and actions to be taken by Fiskars under this Settlement Agreement, would 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 the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Fiskars' alleged failure to provide a warning concerning exposure to BPA prior to use of the Products it has either manufactured, or imported, or distributed, or directly or indirectly sold, or offered for sale in California, or will manufacture, import, distribute, directly or indirectly 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 Fiskars is in material compliance with this Settlement Agreement.

**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 law of the State of California and apply within the State of California. This Settlement Agreement shall have no application to



Products that are not sold in the first instance to California consumers. 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, Fiskars 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.

**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 Fiskars:

Judith M. Praitis, Esq.  
Faegre Drinker Biddle & Reath LLP  
1800 Century Park East, Suite 1500  
Los Angeles, California 90067.

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. Courtesy communications may be sent via email.

**9. 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.

**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 AND ENFORCEMENT**

This Settlement Agreement may be modified only by a written agreement of the Parties. This Settlement Agreement shall be enforceable solely by the Parties hereto. This Settlement Agreement inures to the benefit of the Parties' respective successors and assigns.

**12. 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.

**13. AUTHORIZATION**

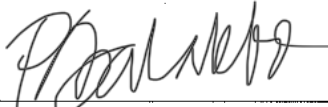
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 06/15/2022

Date: June 6, 2022

By:   
Precila Balabbo

By: , Legal Dir.  
Fiskars Brands, Inc.