

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and Top Guy Int’l Trading, LLC (“Top Guy”). Together, Balabbo and Top Guy 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 Top Guy 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 Top Guy has exposed individuals to bisphenol A (BPA) from its sales of *Top Moda*® heels, # 400237470575, 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 birth defects or other reproductive harm.

Balabbo alleges that Top Guy has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of *Mini Moda*® children’s sandals, # 400238251807, without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are (a) *Top Moda*® heels, # 400237470575 also known as style # Alder-1, and (b) *Mini Moda*® children’s sandals, # 400238251807 also known as style # Charm-1, (collectively, the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Top Guy.

1.4 Notices of Violation. On August 2, 2022, Balabbo served Top Guy, Ross Stores, Inc. (“Ross”), and various public enforcement agencies with a document entitled “60-Day Notice of Violation of California Safe Drinking Water and Toxic Encorcement Act” (the “August Notice”)

alleging that Top Guy was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the *Mini Moda*® children's sandals, # 400238251807, will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the August Notice.

On September 15, 2022, Balabbo served Top Guy, Ross, and various public enforcement agencies with a document entitled "60-Day Notice of Violation of California Safe Drinking Water and Toxic Enorcement Act" (the "September Notice") alleging that Top Guy was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the *Top Moda*® heels, # 400237470575, will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the September Notice.

The August Notice and the September Notice are collectively referred to herein, as the "Notices."


1.5 No Admission. Top Guy denies the material factual and legal allegations contained in the Notices 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 by Top Guy 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 Top Guy of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Top Guy. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Top Guy maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale 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.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 **Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for all Products that Top Guy manufactures, imports, distributes, sells, or offers for sale in California. There shall be no obligation for Top Guy 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 §§ 2.1(a) through (d):


(a) **Warning.** For the *Top Moda*® heels, # 400237470575, 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.

(b) **Alternative Warning:** For the *Top Moda*® heels, # 400237470575, Top Guy may, but is not required to, use the alternative short-form warning as set forth in this § 2.1(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

(c) **Warning.** For the *Mini Moda*® children’s sandals, # 400238251807, the “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(d) **Alternative Warning:** For the *Mini Moda*® children’s sandals, # 400238251807, Top Guy may, but is not required to, use the alternative short-form warning as set forth in this § 2.1(d) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.2 A **Warning** or **Alternative Warning** provided pursuant to § 2.1 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 Products’ packaging or 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 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 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.

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Top Guy offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Top Guy shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.3 Compliance with Warning Regulations. The Parties agree that Top Guy shall be deemed to be in compliance with 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 exposures at issue after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Top Guy shall pay \$2,000.00 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.

3.1 Civil Penalty. Within ten (10) days of the Effective Date, Top Guy shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Brodsky Smith in Trust for Balabbo” in the amount of \$500.00. 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.** Top Guy 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.** Top Guy agrees to provide a completed IRS 1099 for its payments to, and Balabbo agrees to provide fully completed and signed IRS W-9 forms to Top Guy, simultaneously with Balabbo's signed Settlement Agreement, for each of the following payees under this Settlement Agreement:

- (i) "Precila Balabbo";
- (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, Top Guy shall reimburse Balabbo's counsel in the amount of \$31,500.00 for fees and costs incurred as a result of investigating and bringing this matter to the attention of Top Guy, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Top Guy 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 Top Guy and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Top

Guy, 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 (collectively with Balabbo, the "Releasers") for failure to provide warnings for alleged exposures to BPA and/or DEHP from use of the Products. Releasers hereby release: (a) Top Guy and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, predecessors, successors, and assignees (collectively with Top Guy, the "Top Guy Parties"); (b) each entity to whom Top Guy directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Ross, and each of their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively with the Top Guy Parties, the "Releasees"), from any and all claims, 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), penalties, damages, losses, liabilities and demands of any nature, character, or kind (collectively, "Claims") through the Effective Date, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, in any way related to or arising out of: (i) violations of Proposition 65 based on exposure to BPA and/or DEHP from use of the Products, or any of them; (ii) the August Notice; and/or (iii) the September Notice (collectively, the "Released Matters").

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 and all Releasers, 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 against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, in any way relating to or arising out of the Released Matters, or any of them.

5.2 Top Guy's Release of Balabbo. Top Guy, 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 exposure to BPA and/or DEHP from 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 Notices and relating to the Products will develop or be discovered. Balabbo on behalf of herself only, on one hand, and Top Guy, 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 §§ 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 HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Balabbo and Top Guy 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 Top Guy with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA and/or DEHP from use of the Products.

5.5. Public Benefit. It is Top Guy's understanding that the commitments it has agreed to herein, and actions to be taken by Top Guy 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 Top Guy that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Top Guy's failure to provide a warning concerning exposure to BPA and/or DEHP prior to use of the Products it has manufactured, 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 Top Guy 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. 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, Top Guy 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 Top Guy:

Top Guy Int'l Trading, LLC
Attn: Michael Tsui
333 Brea Canyon Rd.
City of Industry, CA 91789

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: 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. 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.

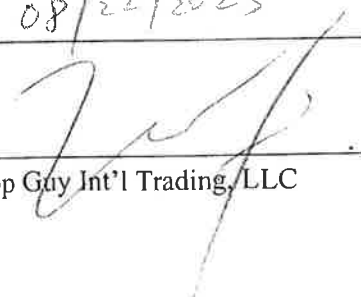
AGREED TO:

AGREED TO:

Date: 08/17/2023

Date: 08/22/2023

By: 
Precila Balabbo

By: 
Top Guy Int'l Trading, LLC