

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and Wild Eye Designs Inc. (“Wild Eye”). Balabbo and Wild Eye are sometimes individually referred to herein as a “Party,” and collectively as the “Parties.” Balabbo alleges that she is an individual who resides in the State of California who 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 Wild Eye 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 in its 60-Day Notice of Violation dated January 25, 2023, that Wild Eye manufactured, imported, sold, offered for sale, and/or distributed in California certain brie cheese bakers that can expose California consumers to lead without first providing a warning as required by Proposition 65 (the “Notice”). Lead is a chemical listed pursuant to Proposition 65.

**1.3 Product Description.** The products covered by this Settlement Agreement are Wild Eye brie cheese bakers (the “Products”) manufactured, imported, sold, offered for sale, and/or distributed for sale in California by Wild Eye.

**1.4 Notice of Violation.** On or about January 25, 2023, Balabbo served the Notice on Wild Eye, The TJX Companies, Inc. (“TJX”), the California Attorney General and various public enforcement agencies alleging that Wild Eye and others violated Proposition 65 by failing to warn California consumers that use of the Covered Product can expose them to lead. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Wild Eye 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 Notice, and solely to avoid potential prolonged and costly litigation. Wild Eye denies the material, factual, and legal allegations contained in the Notice and maintains that it is not a person subject to Proposition 65, that

it is not subject to personal jurisdiction in California, and that all of the products it sells and/or distributes for sale in California, including the Covered Products, 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 Wild Eye 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 Wild Eye of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Wild Eye. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Wild Eye may have in this or any other future legal proceeding, including its 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 Wild Eye solely for purposes of settling, compromising, and resolving issues disputed in the Notice. Notwithstanding the allegations in the Notice, Wild Eye maintains that it has not knowingly manufactured, imported, distributed for sale, or caused the sale of Products in California in violation of Proposition 65. However, this § 1.5 shall not diminish or otherwise affect Wild Eye's obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.


## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

**2.1 Reformulation/California Proposition 65 Warning Standards.** As of the Effective Date, and continuing thereafter, Products that Wild Eye directly manufactures or imports for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.


**2.2 Reformulation Standard.** “Reformulated Products” are defined as those Products that: (a) contain no more than 90 parts per million (“ppm”) lead in any decoration, colored artwork, designs and/or markings on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; or (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol, or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance.

**2.3 Clear and Reasonable Warning.** Within 90 days of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in §§ 2.3 and 2.4 shall be provided for all Products that Wild Eye manufacturers, imports, distributes, sells, or offers for sale in California that are not Reformulated Products. There shall be no obligation for Wild Eye to provide an exposure warning for Products that entered the stream of commerce within 90 days after 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:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including lead, which are 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](http://www.P65Warnings.ca.gov).

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

 [California Prop 65] **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**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** 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 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 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 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Wild Eye shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

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 Wild Eye offers Products for sale to consumers in California and controls the content of the Product listing. The internet warning 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 is otherwise prominently displayed to the California purchaser prior to completing the purchase of the Product. To comply with this Section, Wild Eye 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 actual knowledge the third parties are selling the Products to California on their websites. To the extent required by law, Wild Eye shall also provide known third party internet sellers to whom it directly sells Products and for whom it has actual knowledge offer such Products for sale in California with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2.

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 applicable to

the Products and the chemical at issue, which are different than those set forth above, Wild Eye 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. If regulations or legislation are enacted or issued providing that a Proposition 65 warning for the Products is no longer required, a lack of warning by Wild Eye will not thereafter be a breach of this Agreement.

**2.5 Compliance with Warning Regulations.** The Parties agree that Wild Eye 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 regulations adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Products and the exposure at issue after the Effective Date.

**2.6 Grace Period.** The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce within 90 days after the Effective Date, which Products are expressly subject to the releases provided in Section 4.1. For the avoidance of doubt, Products in the stream of commerce specifically include, but are not limited to, Products in the process of manufacture.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Total Settlement Payment**

In full satisfaction of all claims for monetary relief of any kind, including but not limited to claims for potential civil penalties, attorneys' fees, and expenses, Wild Eye shall make a total settlement payment of \$11,500 (the "Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney's fees and expenses as set forth in Sections 3.2, 3.3, and 4 below.

#### **3.2 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims for monetary relief of any kind related to the Notice, alleged in the Notice, or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 3.3 below), Wild Eye 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

**3.3 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Wild Eye shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375; and (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.

**3.4 Payment Procedures.**

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

(i) All payments owed to Balabbo, pursuant to § 3.3 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 § 3.3 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.** Wild Eye agrees to provide Balabbo's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to Balabbo, to be delivered to the address provided in § 3.4(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Wild Eye agrees to provide a completed IRS Form 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) days after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky Smith" (EIN: 23-2971061) at the address provided in Section 3.4(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 Wild Eye cannot process the required 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 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, Wild Eye shall reimburse Balabbo's counsel a total of \$11,000 for any and all attorney's fees and expenses incurred, including but not limited to all investigative, expert, and testing expenses, as a result of investigating and bringing this matter to the attention of Wild Eye, and negotiating this settlement in the public interest. Within fifteen (15) business days of the Effective Date, Wild Eye shall issue a check payable to "Brodsky Smith" in the amount of \$11,000 for delivery to the address identified in § 3.4(a)(i), above.

5. **RELEASE OF ALL CLAIMS**

**5.1 Release of Wild Eye and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution of all claims between between Balabbo, acting on her own behalf, and Wild Eye, for all claims that can or could have been asserted by Balabbo or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) against Wild Eye and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity from whom Wild Eye obtains the Products, and to whom Wild Eye directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, and retailers, including but not limited to TJX, its respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensors, and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 for Products manufactured through 90 days after the Effective Date, based on actual or alleged exposure to lead 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, or participate in, directly or indirectly, any form of legal action, and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, 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 the sale of or the alleged or actual exposure to lead from use of the Products manufactured through 90 days after the Effective Date.

**5.2 Wild Eye’s Release of Balabbo.** Wild Eye, 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 lead from the Covered Products.

**5.3 California Civil Code § 1542: Mutual Release of Known and Unknown Claims.**

It is possible that other claims not known to the Parties including but not limited to those arising out of the facts alleged in the Notice or relating to products manufactured, imported, distributed, and/or sold by or for Wild Eye and its affiliates through 90 days after the Effective Date, will develop or be discovered. Balabbo on behalf of herself, and her past and current agents, representatives, attorneys, successors, and/or assignees, on one hand, and Wild Eye on behalf of itself and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims for products manufactured, imported, distributed, and/or sold by or for Wild Eye and its affiliates up through 90 days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims for products manufactured, imported, distributed, and/or sold by or for Wild Eye and its affiliates 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Balabbo and Wild Eye 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 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Wild Eye with this Settlement Agreement constitutes compliance by Wild Eye with Proposition 65 with respect to actual or alleged exposure to lead from use of the Products.

**5.5. Public Benefit.** It is Wild Eye's understanding that the commitments it has agreed to herein, and actions to be taken by Wild Eye 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 the Parties that to the extent any other private enforcer initiates an action alleging a violation of Proposition 65 with respect to Wild Eye's alleged failure to provide a warning concerning actual or alleged exposure to lead 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 Wild Eye is in material compliance with the terms of 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, Wild Eye shall provide written notice to Balabbo of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. 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. Balabbo shall not bring an enforcement action or institute

a judicial proceeding or seek any other relief of any kind if Wild Eye demonstrates that it has complied with the requirements of Section 2. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs in accordance with applicable law.

**9. NOTICES**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For Wild Eye:

Warren Horwitz  
Wild Eye Designs, Inc.  
1500 Military Road, Suite 100  
Kenmore, NY 14217

With copy to:

J. Robert Maxwell  
Rogers Joseph O'Donnell  
311 California St., 10<sup>th</sup> Fl.  
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.

10. **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.

11. **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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signatures and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

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

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

13. **MODIFICATION**

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

14. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding 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. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, by any Party.

15. **INTERPRETATION**

No inference, assumption or presumption shall be drawn, and no provision of this Settlement Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Settlement Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Settlement Agreement.

16. **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.

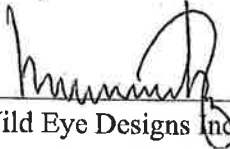
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 11/12/2024

By: \_\_\_\_\_  
Precila Balabbo

By:   
Wild Eye Designs Inc.

**15. INTERPRETATION**

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**16. AUTHORIZATION**

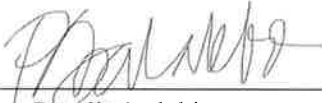
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 11 | 14 | 24

Date: \_\_\_\_\_

By:   
Precila Balabbo

By: \_\_\_\_\_  
Wild Eye Designs Inc.