

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and Delaviuda USA Inc. (“Delaviuda”). Together, Balabbo and Delaviuda 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, and Delaviuda denies, that Delaviuda 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 Delaviuda has exposed individuals to lead from its sales of El Almendro almond pumpkin seed and dark chocolate protein bars, UPC # 8410223909592 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. Delaviuda denies all of Balabbo’s allegations and maintains that all products it sells and/or distributes for sale in California are safe and comply with all applicable state and federal laws including but not limited to Proposition 65.

1.3 Product Description. The products covered by this Settlement Agreement are El Almendro almond pumpkin seed and dark chocolate protein bars, UPC # 8410223909592 (the “Products”) that have been manufactured, imported, distributed, offered for sale and/or sold in California by Delaviuda.

1.4 Notice of Violation. On August 16, 2023, Balabbo served The TJX Companies, Inc. (“TJX”), Delaviuda, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Delaviuda and such others, including public enforcers, with notice that alleged that Delaviuda 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 lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Delaviuda 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 and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Delaviuda 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 Delaviuda of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Delaviuda. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Delaviuda maintains that it has not knowingly or intentionally 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 and exchanged by the Parties’ counsel.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation Standard. Commencing within 60 days after the Effective Date, Delaviuda agrees not to distribute for sale or directly sell in the State of California any Product that exposes a person to an exposure level of more than 0.5 micrograms of lead per serving, with daily exposure measured by the the serving size specified on the label of the Product. For the purpose of this Agreement, the amount of lead a person is exposed to from a Product shall be calculated using the following formula: micrograms of lead per gram of Product, multiplied by grams of Product per serving size of the Product (using the largest serving size appearing on the Product label), multiplied by servings of the Product per day (using the largest number of servings in a recommended dosage appearing on the label), which equates to micrograms of lead exposure per day. If the Product label

contains no recommended daily servings, then the number of recommended daily servings shall be one (1).

2.2 Clear and Reasonable Warning. Commencing within 60 days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.2 and 2.3 must be provided for all Products that Delaviuda manufactures, imports, distributes, sells, or offers for sale in California that are not reformulated pursuant to Section 2.1. There shall be no obligation for Delaviuda to provide an exposure warning for Products that are reformulated pursuant to Section 2.1 or that entered the stream of commerce within 60 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.2(a) or (b), respectively:

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

[CALIFORNIA/CA] **WARNING:** Consuming this product can expose you to chemicals including lead, 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/food.

(b) **Alternative Warning:** Delaviuda 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/CA] **WARNING:** Risk of [cancer and] reproductive harm from exposure to lead. See www.P65Warnings.ca.gov/food. Delaviuda shall use the phrase “cancer and” in the warning statement if the Daily Lead Exposure Level is greater than 15 micrograms of lead or if another Proposition 65 chemical is present which may require a cancer warning.

2.3 A Warning or Alternative Warning provided pursuant to § 2.2 must print the word “**WARNING**”, “**CALIFORNIA WARNING**” or “**CA WARNING**” in all capital letters and in bold font, followed by a colon. 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 only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, 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. Where the **Warning** or **Alternative Warning** is provided on the food product label, it must be set off from other surrounding information, and Delaviuda shall enclose the **Warning** or **Alternative Warning** in a black box and comply with the content requirements specified in Section 25607.2. 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, Delaviuda shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“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 e-commerce websites under the exclusive control of Delaviuda where Products are offered 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**,” “**CALIFORNIA WARNING**” or “**CA 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, Delaviuda shall (a) post the **Warning** or **Alternative Warning** for Products on its own website; and (b) for Products that Delaviuda directly provides to a downstream entity and Delaviuda has actual knowledge that the downstream entity directly sells the Products on the Internet to California consumers, Delaviuda shall include an instruction that the entity comply with the website warning requirements of this section. However, Delaviuda does not assume any duty to monitor any websites for compliance and shall have no liability for any website’s non-compliance. Delaviuda also will comply with Title 27, California Code of Regulations, Section 25600.2(b) & (c) as applicable.

2.4 Compliance with Warning Regulations. The Parties agree that Delaviuda 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 OEHHA applicable to the Product and the exposure at issue.

2.5 Changes in Warning Regulations or Statutes. In the event that OEHHA promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Delaviuda shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Settlement Agreement. If regulations or legislation are enacted or issued providing that a Proposition 65 warning for the Product is no longer required, a lack of warning will not thereafter be a breach of this Settlement Agreement.

In the event OEHHA adopts a safe harbor level for lead that is higher than the Reformulation Standard, or a court of competent jurisdiction approves of a reformulation standard for lead that is higher than the Reformulation Standard, Delaviuda is permitted to use such safe harbor level or reformulation standard at any time without being deemed in breach of this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Delaviuda shall pay \$500.00 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 fifteen (15) business days of the Effective Date, Delaviuda shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Precila Balabbo" in the amount of \$125.00. 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

(iii) Delavuida may also elect to pay all payments owed under this Settlement Agreement via wire transfer. Counsel for Balabbo will provide wire instructions upon request and shall be responsible for allocating the payments as appropriate.

(b) Copy of Payments to OEHHA. Delaviuda 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. Delaviuda 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) days after this Settlement Agreement is fully executed by the Parties;

(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, Delaviuda shall reimburse Balabbo’s counsel for all fees and costs incurred, including but not limited to as a result of investigating and bringing this matter to the attention of Delaviuda, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Delaviuda shall issue a check payable to “Brodsky Smith” in the amount of \$12,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Delaviuda and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Delaviuda, 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 lead from use of the Products, and Releasers hereby release any such claims against Delaviuda and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, shareholders, agents, employees, attorneys, successors and assignees, and each entity to whom Delaviuda directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to TJX, and each of its respective subsidiaries, affiliates and parents,

franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 before the Effective Date or within 60 days after the Effective Date based on 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, 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 out of the alleged or actual exposure to lead from use of the Products.

5.2 Delaviuda's Release of Balabbo. Delaviuda, 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 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 Delaviuda, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 60 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 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 Delaviuda 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 Delaviuda with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

6. PUBLIC BENEFIT

It is the Parties' understanding that the commitments Delaviuda has agreed to herein, and actions to be taken by Delaviuda 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 Delaviuda that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Delaviuda alleged 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 Delaviuda is in material compliance with this Settlement Agreement.

7. 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.

8. 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.

9. 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, with a courtesy copy by electronic mail:

For Delaviuda:

Kim Sim Sandell
Thompson Hine LLP
3130 Wilshire Blvd., Ste. 500
Santa Monica, CA 90403
kim.sandell@thompsonhine.com

For Balabbo:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004
esmith@brodskysmith.com

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. 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.

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

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

12. ENFORCEMENT OF SETTLEMENT AGREEMENT

12.1 A Party may enforce any of the terms and conditions of this Settlement Agreement only after that Party first provides sixty (60) days written notice to the Party allegedly failing to comply with the terms and conditions of this Settlement Agreement and attempts to resolve such Party's

failure to comply in an open and good faith manner without the alleged non-complying Party having to pay any settlement amount.

12.2 Notice of Violation. Prior to bringing any proceeding to enforce the terms of this Settlement Agreement, Balabbo shall provide a written notice of violation (“NOV”) to Delaviuda that includes information sufficient for them to be able to understand and correct the violation without payment of any settlement amount or monetary payment, including but not limited to: (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store, website, or other place at which the product was available for sale to California consumers, and (d) any other evidence or other support for the allegations in the NOV, including all test data obtained by Balabbo regarding the Product.

12.3 Notice of Election Response. Within thirty (30) days of receiving an NOV, Delaviuda shall serve a Notice of Election (“NOE”) either contesting or not contesting the NOV.

12.3.1 Non-Contested NOV. Balabbo shall take no further action regarding the alleged violation against Delaviuda including, without limitation, requiring a monetary payment or reimbursement of attorneys’ fees or costs, if Delaviuda serves a NOE then elects not to contest the NOV and meets one of the following conditions: (a) the Product was shipped by Delaviuda for sale in California before the Effective Date, or (b) since receiving the NOV, Delaviuda has taken corrective action by either taking all steps necessary to bringing the sale of the Product into compliance under the terms of this Settlement Agreement, or requesting that its authorized customers in California remove the Products identified in the NOV from sale in California and destroy or return the Products to Delaviuda. Delaviuda shall not be responsible for any failure by a customer to comply with the request.

12.3.2 Contested NOV. If Delaviuda serves a NOE electing to contest the NOV, the provisions of this Section 12.3.2 shall apply.

(a) Delaviuda may request that the sample(s) of the Product tested by Balabbo be subject to confirmatory testing at an independent EPA or California accredited laboratory of Delaviuda’s choosing.

(b) If the confirmatory testing establishes that the Product does not contain lead in excess of the levels allowed by this Settlement Agreement, Balabbo shall take no further action regarding the alleged violation. If the testing does not establish compliance as Reformulated Products, Delaviuda may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 12.3.1.

(c) If Delaviuda does not withdraw an NOE to contest the NOV to take action under 12.3.1 above, the Parties shall meet and confer for a period of no less than thirty (30) days before Balabbo may take action seeking to enforce the terms of this Settlement Agreement.

12.4 In any proceeding brought by either Party to enforce this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

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 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:

Date:

3 / 31 / 25

By:



Precila Balabbo

AGREED TO:

Date:

4 / 8 / 25

By:



Delaviuda USA Inc.