

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and Briara Trading Company (“Briara”). Together, Balabbo and Briara 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 Briara 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 Briara has exposed individuals to lead from mugs sold and/or distributed by Briara in California, such as *The Sopranos*® mugs, UPC # 5055295319110, without first providing California users and consumers of the products with a clear and reasonable exposure warning pursuant to Proposition 65. Lead 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 mugs sold and/or distributed by Briara, such as *The Sopranos*® mugs, UPC # 5055295319110 (the “Products”), that have been distributed, offered for sale and/or sold in California by Briara.

**1.4 Notice of Violation.** On October 2, 2023, Balabbo served Briara and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”), which modified AG # 2022-00661 to identify Briara Trading Company, alleging that Briara was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products can expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Briara denies the material factual and legal allegations contained in the Notice and maintains that all Products that were sold and distributed in California were in full compliance with Proposition 65 and all applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Briara of any fact, finding, issue of law, or violation of law, or a

waiver of any of its defenses, including but not limited to the statute of limitations; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Briara of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Briara. 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, Briara maintains that it has not knowingly or intentionally distributed, offered for sale and/or sold the Products 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: COMMITMENT NOT TO SELL**

**Commitment Not to Sell.** Prior to the Effective Date, Briara ceased selling all Products and agrees that it shall not manufacture, distribute, sell, or offer the Products for sale in California. Products that were manufactured, packaged, or put into commerce prior to the Effective Date, or within 90 days after the Effective Date, shall be subject to the release of liability pursuant to this Settlement Agreement without regard to when such Products were distributed or sold to customers.

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

In settlement of all the claims referred to in this Settlement Agreement, Briara shall pay \$1,000.00 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, Briara 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 thirty (30) days of the Effective Date, Briara shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b)

“Brodsky Smith in Trust for Balabbo” in the amount of \$250.00. 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.** Briara 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.** Briara 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, Briara shall reimburse Balabbo’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Briara, and negotiating a settlement in the public interest. Within thirty (30) days of the Effective Date, Briara shall issue a check payable to “Brodsky Smith” in the amount of \$17,000.00 for delivery to the address identified in § 3.2(a)(i), above.

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

**5.1 Release of Briara and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Briara, 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 Briara and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to or with which Briara directly or indirectly distributed or sold the Products,

including but not limited to its downstream distributors, wholesalers, customers, retailers, including but not limited to their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for alleged violations of Proposition 65 based on possible 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 Briara’s Release of Balabbo.** Briara, 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 alleged exposure to lead 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 Notice and relating to the Products will develop or be discovered. Balabbo on behalf of herself only, on the one hand, and Briara, on the other hand. The Parties acknowledge that this Agreement is expressly intended to cover and include all such claims 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 Briara 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 Briara with this Settlement Agreement constitutes compliance with Proposition 65 by Briara.

**5.5. Public Benefit.** It is Briara's understanding that Balabbo contends that the commitments Briara has agreed to herein, and actions to be taken by Briara 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 Briara that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Briara's failure to provide a warning concerning possible exposure to lead prior to use of the Products it has distributed, sold, or offered 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 Briara 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 laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Briara 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 Briara:

Margaret K. Cerrato-Blue  
Cerrato-Blue Law  
1936 Edgemont Pl. W.  
Seattle, WA 98199

Larry Silverstein  
Briara Trading Company  
70 Portland Road  
West Conshohocken, PA 19428

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: \_\_\_\_\_

Date: 3/11/2024

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

By:   
Bryara Trading Company



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**AGREED TO:**

**AGREED TO:**

Date: 3 | 12 | 24

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

By:   
Precila Balabbo

By: \_\_\_\_\_  
Briara Trading Company