

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and TSM Brands LLC (“TSM”). Together, Balabbo and TSM 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 TSM 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 TSM has exposed individuals to diethanolamine (“DEA”) from its sales of *Luxury*® men smooth glide shave gels, UPC # 868275965499, without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are *Luxury*® men smooth glide shave gels, UPC # 868275965499, (the “Products”) that TSM has either manufactured, imported, and/or distributed, and/or offered for sale and/or directly or indirectly sold in California that allegedly expose users to DEA.

1.4 Notice of Violation. On October 6, 2023, Balabbo served Dollar Tree Stores, Inc., Dollar Tree, Inc. (collectively, “Dollar Tree”), Greenbrier International, Inc., TSM, and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided TSM and such others, including public enforcers, with notice that Balabbo alleged that TSM 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 DEA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.


1.5 No Admission. TSM 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission against interest by TSM 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 TSM of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by TSM. 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, TSM 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 that both Parties have notice that this Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Clear and Reasonable Warning. Commencing within ninety (90) days after the Effective Date (“**Compliance 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 TSM manufacturers, imports, distributes, sells, or offers for sale in California. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.1(a) or (b), respectively:

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

 **WARNING:** This product can expose you to chemicals including diethanolamine (DEA), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** TSM 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:** Cancer - 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 TSM 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, TSM 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, § 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, § 25600.2 are not released in § 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 TSM shall be deemed to be in compliance with Proposition 65 and 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 Product and the exposures at issue that are in effect after the Effective Date, or at any time after the Compliance Date. If "consumer information," as that term is defined in Title 27, California Code of Regulations, § 25600.1(c), and as it may be amended from time to time, is provided in a foreign language, TSM shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

2.4 Grace Period for Existing Inventory of Covered Products. The injunctive requirements of this § 2 shall not apply to Products that are already in the stream of commerce as of the Compliance Date, which Products are expressly subject to the releases provided in § 5. For the avoidance of doubt, "Products that are already in the stream of commerce as of the Compliance Date" specifically include, but are not limited to, Products that are manufactured or are in the process of being manufactured. TSM may demonstrate that Products were in the stream of commerce as of the Compliance Date with information including, but not limited to, the Products' lot numbers.

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

In settlement of all the claims referred to in this Settlement Agreement, TSM 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. For all amounts due and owing that are not sent within the payment times set forth below, TSM 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 ten (10) business days of the Effective Date, TSM shall issue two (2) separate checks for the Civil Penalty payment: (a) one to "OEHHA" in the amount of \$1,500.00; and one 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.** TSM agrees to provide Balabbo’s counsel with a copy of the check payable to OEHHA, simultaneously with its penalty payment to Balabbo, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** TSM 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) calendar days of the Effective Date;

(ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in § 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 her. 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 Effective Date. Under these legal principles, TSM shall reimburse Balabbo’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of TSM, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, TSM shall send a check payable to “Brodsky Smith” in the amount of \$18,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of TSM and Upstream and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and TSM, 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 DEA from use of the Products, and Releasers hereby release any such claims against TSM and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom TSM directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Dollar Tree, Greenbrier International, Inc., and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all

claims for violations of Proposition 65 through the Compliance Date, based on alleged exposures to DEA 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 DEA from use of the Products.

5.2 TSM's Release of Balabbo. TSM, 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 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 DEA from use of the Products through the Effective Date, or within 60 days after the Effective Date.

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 TSM, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, or within 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 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 TSM each respectively 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 TSM with this Settlement Agreement constitutes compliance with Proposition 65 by TSM with respect to exposure to DEA from use of the Products.

5.5. Public Benefit. It is the Parties' understanding that the commitments TSM has agreed to herein, and the actions to be taken by TSM under this Settlement Agreement, including payment of a civil penalty, 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 TSM's failure to provide a warning concerning exposure to DEA 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 TSM 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, or if DEA is delisted,

TSM 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. This Settlement Agreement is enforceable solely by the Parties hereto.

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 TSM:

Jae. H. Cho
Cho Legal Group LLC
100 Plainfield Ave., Ste. 8E
Edison, NJ 08817

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:

Date: _____

By: _____
Precila Balabbo

AGREED TO:

Date: _____

By: _____
TSM Brands LLC

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13. AUTHORIZATION

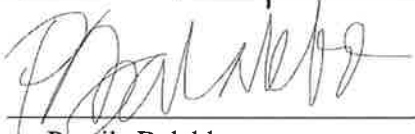
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 12 | 6 | 23

Date: _____

By: 
Precila Balabbo

By: _____
TSM Brands LLC