

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) on the one hand, and Proximo Spirits, Inc. (“**Proximo**”) on the other hand, with CAPA and Proximo each individually referred to as a “**Party**” and, collectively, the “**Parties**.” CAPA is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Proximo is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

CAPA alleges that Proximo manufactures, imports, sells, and distributes for sale in California the ceramic cup with exterior decoration containing Lead, *1800 The Best Taste In Tequila with Limited Edition Ceramic Cup, UPC 8 18844 02531 4*, without providing the health hazard warning that CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). The *1800 The Best Taste In Tequila with Limited Edition Ceramic Cups, UPC 8 18844 02531 4*, are referred to hereinafter as the “**Products**.” 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.

1.3 Notice of Violation

On March 15, 2024, CAPA served Proximo, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Proximo violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

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1.4 No Admission

Proximo denies the factual and legal allegations contained in the Notice and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Proximo of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Proximo's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is fully executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, any and all Products Proximo manufactures, imports, or purchases for resale in or into California, directly or through one or more third party distributors, retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as those Products:

(b) yielding a test result of no more than 0.5 microgram of Lead on the entire exterior surface covered with decoration when sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A;

(a) containing no more than 0.009% or 90 parts per million ("ppm") Lead in any decoration on the exterior surface when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or state agencies for the purpose of determining Lead content in a solid substance; and


(c) yielding a result of non-detect (defined as no more than 25 ppm by weight of Lead) for any decoration located in the upper 20 millimeters of a Product, i.e., the “Lip-and-Rim” area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine Lead content in a solid substance.

If the decoration is tested after it is affixed to the Product, the percentage of Lead by weight must relate only to the decorating materials and must not include any quantity of Lead attributable to non-decorating material (e.g., [ceramic] substrate).

2.3 Interim Clear and Reasonable Warnings

For any Products that are not Reformulated Products remaining in Proximo’s inventory after the Effective Date, Proximo shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Proximo shall provide one of the following warning statements, pursuant to Cal. Code Regs. tit. 27 § 25603, as it exists as of the date of execution of this Agreement, or as it may be amended in the future, which are:

Option 1:

 **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

Option 2:

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

The warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies. A warning provided pursuant to Section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font. 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 labeling does not use the color yellow, then the symbol may be in black and white. If the warning

statement is displayed on the Products' packaging, it must be in a type size no smaller than the largest type size used for other "consumer information" on the product, as that term is defined in Cal. Code Regs., Tit. 27, §25600.1. Where a consumer product sign, label or tag is used to provide a warning includes "consumer information", as the term is defined in Cal. Code Regs., Tit. 27, § 25600.1(c) ("**Consumer Information**"), in languages other than English, then the accompanying warnings must also be provided in those languages, in addition to English. If the warning statement is displayed on the Products' packaging, it must be in a type size no smaller than the largest type size used for other Consumer Information on the product, as that term is defined in Cal. Code Regs. Tit. 27, §25600.1. In no case shall a warning statement displayed on the Products' packaging appear in a type size smaller than 6-point type.

2.3.1 Internet Product Warning Requirements. For all Products sold in or into California through third-party websites over which Proximo has the ability to control the application of warnings, Proximo shall additionally prominently display the warning to customers on the internet website prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word "**WARNING**" and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product. For third-party websites, over which Proximo has no control, as a condition of sale, Proximo shall notify its downstream customers the Products must be accompanied by a warning, prior to sale in or into California, and shall supply the warning requirements, pursuant to Section 2.3.

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3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to California Health and Safety Code § 25249.7(b), Proximo agrees to pay a civil penalty of \$25,000 within sixty (60) calendar days of the Effective Date. Proximo's civil penalty payment will be allocated according to California Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by CAPA. Proximo shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$18,750; and (b) "Center for Advanced Public Awareness" in the amount of \$6,250. CAPA's counsel shall deliver to OEHHA and CAPA their respective portion of the penalty.

3.2 Reimbursement of Attorneys' Fees and Costs

CAPA and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to CAPA's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within sixty (60) calendar days of the Effective Date, Proximo agrees to issue a check in the amount of \$21,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Proximo's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

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3.3 Payments

All payments payable and due under this Agreement shall be delivered to CAPA's counsel at following address:

Seven Hills LLP
Attn: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of Proximo

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Proximo, of any violation of Proposition 65 that was or could have been asserted by CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Proximo, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, members, employees, agents, representatives, attorneys, insurers, successors and assigns, and each entity to whom Proximo directly or indirectly distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, as well as the aforementioned entities' past, present, and future directors, officers, members, employees, agents, representatives, attorneys, insurers, successors and assigns (collectively "Releasees") based on their failure to warn under Proposition 65 about alleged exposures to Lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Proximo in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, CAPA as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that CAPA may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or

expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to Lead in the Products manufactured, distributed, sold and/or offered for sale by Proximo, before the Effective Date (collectively, "**Claims**"), against Proximo and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend to Releasees who have been instructed by Proximo pursuant to Section 2.3.1, to provide a warning for Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Proximo's Products.

4.2 Proximo's Release of CAPA

Proximo, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against CAPA and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.3 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. CAPA on behalf of itself only, on one hand, and Proximo, on the other hand, 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 §§ 4.1 and 4.2, above, may include unknown claims, and, except for Releasees who have been instructed by Proximo pursuant to Section 2.3.1, to provide a warning for Products that are not Reformulated Products and have failed to do so, 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.

CAPA and Proximo each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65

The Parties agree that compliance by Proximo with this Agreement constitutes compliance by Proximo with Proposition 65 with respect to exposure to lead from use of the Products.

4.5. Public Benefit

It is Proximo's understanding that the commitments it has agreed to herein, and actions to be taken by Proximo under this 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 Proximo that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Proximo's failure to provide a warning concerning 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 Agreement, provided that Proximo is in material compliance with this Agreement.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. Nothing in this Agreement shall be interpreted to relieve Proximo from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by email and either (i) first-class mail or (ii) a recognized express courier to any Party by the other at the following addresses:

For Proximo:

Sophie B. Castillo, Partner
Keller and Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111
castillo@khlaw.com

For CAPA:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillslp.com

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS AND PDF SIGNATURES

This Agreement may be executed in counterparts and by portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH REPORTING REQUIREMENTS

CAPA and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. **MODIFICATION**


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

12. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Agreement.

AGREED TO:

Date: 12/12/2024

By: 
Linda DeRose-Droubay, Executive Director
Center for Advanced Public Awareness

AGREED TO:

Date: 12/11/2024

By: 
Luis Felix, President & CEO
Proximo Spirits, Inc.