

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and The Crème Shop, Inc. ("The Crème Shop"). Together, Ferreiro and The Crème Shop are collectively referred to as the "Parties." Ferreiro is an individual that 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.

1.2 General Allegations

Ferreiro alleges that The Crème Shop has imported, distributed and/or sold in the State of California cosmetic travel cases including, but not limited to, *UPC No. 054111385* ("Covered Products") without requisite Proposition 65 warning that the Covered Products contain the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed DINP as a chemical known to cause cancer.

1.3 Notice of Violation(s)

On March 9, 2016, Ferreiro served Marshalls of MA, Inc. ("Marshalls"), Lawrence Kim, The Crème Shop, and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided The Crème Shop and such others, including public enforcers, with notice that alleged that The Crème Shop was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Covered Products exposed users in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 No Admission

The Crème Shop 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 Covered Products, has been and are in compliance with all laws. Nothing in this Settlement Agreement is or shall be construed as an admission by The Crème Shop of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by The Crème Shop of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by The Crème Shop. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, The Crème Shop maintains that it has not knowingly manufactured, or caused to be manufactured, the Covered Products for sale in California in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 21, 2016.

2. INJUNCTIVE RELIEF

2.1 Reformulation of Covered Products

Commencing on the Effective Date, and continuing thereafter, The Crème Shop shall only ship, sell, or offer for sale in California, reformulated Covered Products pursuant to Section 2.2 or Covered Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, a "Reformulated Covered Product" is Covered Product that meets the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

"Reformulated Covered Products" shall mean Covered Products that contain less than or equal to 1,000 parts per million ("ppm") of DINP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, The Crème Shop shall, for all Covered Products it sells or distributes and which is intended for sale in California that are not Reformulated Covered Products, or which The Crème Shop has reason to believe will be shipped or sold in California, provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) below. 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. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Covered Product the warning applies, so as to minimize the risk of consumer confusion.

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 different than those set forth above, The Crème Shop 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.

(a) Retail Store Sales

(i) Covered Product Labeling. The Crème Shop shall affix a warning to the packaging, labeling or directly on each Covered Product sold in California by The Crème Shop that states:

[PROPOSITION 65] WARNING:

This product contains chemicals known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used.

(ii) Point of Sale Warnings. Alternatively, The Crème Shop may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the

point of display of the Product. Such instruction sent to The Crème Shop customers shall be sent by certified mail, return receipt requested.

[PROPOSITION 65] WARNING:

This product contains chemicals known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used.

(b) Mail Order Catalog Warning. In the event that The Crème Shop sells Covered Products via mail order catalog directly to consumers located in California after the Effective Date that are not Reformulated Covered Products, The Crème Shop shall provide a warning for such Covered Products sold via mail order catalog to such California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Covered Product:

[PROPOSITION 65] WARNING:

This product contains chemicals known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used. Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, The Crème Shop may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Covered Product:

[PROPOSITION 65] WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used. The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, The Crème Shop must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(c) **Internet Sales Warning.** In the event that The Crème Shop sells Covered Products via the internet directly to consumers located in California after the Effective Date that is not a Reformulated Covered Product, The Crème Shop shall provide a warning for such Covered Product sold via the internet to such California residents. A warning that is given on the internet shall be in the same type size or larger than the Covered Product description text and shall be given in conjunction with the direct sale of the Covered Product. The warning shall appear either: (a) on the same web page on which the Covered Product is displayed; (b) on the same web page as the order form for the Covered Product; (c) on the same page as the price for the Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning shall be provided:

[PROPOSITION 65] WARNING:

This product contains chemicals known to the State of California to cause cancer.

2.4 Sell-Through Period

Notwithstanding anything else in this Settlement Agreement, Covered Products that were manufactured prior to the Effective Date shall be subject to the release of liability pursuant to Section 5 of this Settlement Agreement, without regard to when such Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations of The Crème Shop as set forth in this Settlement Agreement, including but not limited to Section 2, do not apply to these products manufactured prior to the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, The Crème Shop shall pay a total of \$2,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ferreiro. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below.

3.1 Civil Penalty

On or before the November 21, 2016, The Crème Shop shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

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

(i) All payments owed to Ferreiro, pursuant to Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 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.** The Crème Shop agrees to provide Ferreiro's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Ferreiro, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) **Tax Documentation.** The Crème Shop agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(i) "Anthony Ferreiro" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky & Smith, LLC" (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 Ferreiro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Ferreiro then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation due to Ferreiro and his 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, The Crème Shop shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to The Crème Shop's attention, and negotiating a settlement in the public interest. On or before November 21, 2016, The Crème Shop shall issue a check payable to "Brotsky & Smith, LLC" in the amount of \$25,000.00 for delivery to the address identified in Section 3.2(a)(i) above. Time is of essence. Failure by The Crème Shop to timely make payment of the Fees and Costs due in this Section will result in The Crème Shop being liable for an additional penalty payment equal to \$3,000.00 (the "Penalty Fee").

5. RELEASE OF ALL CLAIMS

5.1 Release of The Crème Shop, Marshalls, and Downstream Customers and Entities

Ferreiro acting on his own behalf, releases The Crème Shop, Marshalls, and each of their respective affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom The Crème Shop, and/or Marshalls directly or indirectly distributes or sells the Covered Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemical DINP that is contained in the Covered Products, and was distributed, sold and/or offered for sale by The Crème Shop, and/or Marshalls to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against The Crème Shop, Marshalls and/or the Releasees for failure to provide warnings for alleged exposures to DINP contained in the Covered Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of The Crème Shop, Marshalls and/or 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 the chemical DINP in the Covered Products.

5.2 The Crème Shop's Release of Ferreiro

The Crème Shop, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ferreiro and/or his 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 the Covered Products.

5.3 California Civil Code Section 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 Covered Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and The Crème Shop, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Ferreiro and The Crème Shop each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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.

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 by reason of law generally, or as to the Covered Product, The Crème Shop shall provide written notice to Ferreiro 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 Covered 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 The Crème Shop:

S. Calvin Myung, Esq.
LAW OFFICES OF S. CALVIN MYUNG
3700 Wilshire Boulevard, Suite 500
Los Angeles, California 90010

For Ferreiro:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

Any 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)

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

11. MODIFICATION

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

12. 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: 10/19/16

Date: 11/7/16

By: Anthony Ferreiro
Anthony Ferreiro

By: [Signature]
The Creme Shop, Inc.