

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement (“Agreement”) is entered into by and between Anthony Ferreiro (“Ferreiro”) and True Fabrications, Inc. (“True Fabrications”) (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. True Fabrications is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Ferreiro alleges that True Fabrications has imported, distributed and/or sold in the State of California polycarbonate dishware, including but not limited to True Polycarbonate Wine Glasses, UPC No. 8 76718 04444 1 (the “Products”) without a requisite Proposition 65 warning that Products contain the chemical Bisphenol A (BPA). On May 11, 2015, the State of California listed BPA as a chemical known to cause developmental reproductive toxicity.

#### 1.3 Notice of Violation(s)

On November 3, 2016 Ferreiro served True Fabrications 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 True Fabrications and such others, including public enforcers, with notice that alleged that True Fabrications was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Products exposed users in California to BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.4 No Admission**

True Fabrications 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. Nothing in this Agreement shall be construed as an admission by True Fabrications of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by True Fabrications of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by True Fabrications. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Agreement. Notwithstanding the allegations in the Notice, True Fabrications maintains that it has not knowingly distributed, or caused to be distributed, Products for sale in California in violation of Proposition 65. Nothing in this settlement agreement, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by True Fabrications, or its owners, officers, directors, employees, parents, subsidiaries, employees, shareholders, directors, insurers, attorneys, successors and assigns, past and present, affiliated entities or corporations, or entities absorbed by merger or acquisition, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, the term “Effective Date” shall mean the date that this Settlement Agreement is signed by the Parties.

2. **INJUNCTIVE RELIEF**

**2.1 True Fabrications' Commitment to Reformulate or Provide a Warning**

Commencing ninety (90) days after the Effective Date, and continuing thereafter, True Fabrications shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 3.2 or Products that are labeled with a clear and reasonable warning pursuant to Section 3.3. True Fabrications and its downstream retailers shall have no obligation to label Products that entered the stream of commerce prior to the Effective Date or within ninety (90) days after the Effective Date. For purposes of this Settlement Agreement, "Reformulated Products" are Products that are in compliance with the standard set forth below in section 3.2.

**2.2** "Reformulated Products" shall mean Products that contains less than or equal to 1,000 parts per million ("ppm") of BPA when analyzed pursuant to test method ATS 367 Rev. 0 by LC/MS/MS.

**2.3 Clear and Reasonable Warnings**

Commencing ninety (90) days after the Effective Date, True Fabrications shall, for all Products it sells or distributes and that are intended for sale in California and that are not Reformulated Products, provide clear and reasonable warnings as set forth in subsections 3.3(a) 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 understands to which specific Products 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, True Fabrications 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) **Products Labeling.** True Fabrications shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by True Fabrications or any person selling the Products that states:

**[PROPOSITION 65] WARNING:**

This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

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

(b) **Mail Order Catalog Warning.** In the event that True Fabrications sells Products via mail order catalog directly to consumers located in California within ninety (90) days after the Effective Date that are not Reformulated Products, True Fabrications shall provide a warning for such 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 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 Product:

**[PROPOSITION 65] WARNING:**

This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

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 Products, True Fabrications 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 Products:

**[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 birth defects or other reproductive harm.

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 Products. On each page where the designated symbol appears, True Fabrications 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 True Fabrications sells Product via the internet direct to California consumers, and not through third Parties, after the Effective Date that are not Reformulated Products, True Fabrications shall provide a warning for such Products 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 Product description text and shall be given in conjunction with the direct sale of the Product. The warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for the Product; (d) on a page the consumer may click on for Proposition 65 warning information or (e) 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 a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

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

**3. PAYMENT OF PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b) AND REIMBURSEMENT OF FEES AND COSTS**

**3.1 Civil Penalty Payment, Fees & Costs.** The Parties acknowledge that Ferreiro and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of the civil penalty payment (the “Civil

Penalty”), and the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the total compensation due 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 including, but not limited to, investigating and bringing this matter to True Fabrications attention, and negotiating a settlement in the public interest. Under these legal principles, and in settlement of all the claims referred to in this Settlement Agreement, within ten (10) days of the Effective Date, True Fabrications shall make a wire transfer settlement payment of \$10,000.00 in accordance with this Section.

**3.2 Brodsky & Smith, LLC wire transfer instructions are:**

Bank of America, N.A.  
100 West 33<sup>rd</sup> Street  
New York, NY 10001  
ABA Routing No. 026009593  
[International Banks can use SWIFT- BIC: BOFAUS3N]  
Account Name: Merrill Lynch  
Account No. 6550113516  
Ref: For Final Credit 870-07119 Brodsky & Smith, LLC

**3.3 Civil Penalty**

Within fourteen (14) days of the Effective Date, Brodsky & Smith, LLC shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00. Payment owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of 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.

**4. RELEASE OF ALL CLAIMS**

**4.1** This Agreement is a full and final resolution between Ferreiro on behalf of himself and his past and current agents, representatives, attorneys, successors and/or assignees and in the public interest, on the one hand, and (a) True Fabrications and its respective owners, officers, directors, insurers, attorneys, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, entities absorbed by merger or acquisition, their predecessor or successor entities, and their heirs, assigns and successors in interest, past or present and (b) any other person or entity who may directly or indirectly use, provide, maintain, distribute or sell Products in the course of doing business, including but not limited to each of Amazon.com, Inc., customers, distributors, wholesalers, retailers, on the other hand, for all violations or claimed violations of Proposition 65 up through the Effective Date based on exposure to BPA or the failure to warn about exposure to BPA arising in connection with the Products shipped and/or otherwise distributed for California sale on or before the Effective Date. ("Released Claims"). True Fabrications and its downstream releasees' compliance with this Agreement shall constitute compliance with Proposition 65 with respect to BPA contained in Products.

**4.2 Ferreiro's Release**

Ferreiro acting on his own behalf, waives, releases and forever discharges True Fabrications and its parents, subsidiaries, affiliated entities under common ownership, successors and/or assignees, directors, officers, agents, employees, attorneys and each entity to whom True Fabrications directly or indirectly distributes or sells the Products, including, but not limited to, Amazon.com, Inc., downstream distributors, wholesalers,

customers, retailers, (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 BPA that is contained in the Products, and was distributed, sold and/or offered for sale by True Fabrications 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 True Fabrications and/or the Releasees for failure to provide warnings for alleged exposures to BPA contained in the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 4 and 5 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 True Fabrications 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 BPA in the Products.

#### **4.3 True Fabrications’ Release**

True Fabrications, 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 Products.

#### **4.4 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 Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and True Fabrications, 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 6.2 and 6.3 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 True Fabrications each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

**5. SEVERABILITY**

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

**6. GOVERNING LAW**

The terms of this 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or if the provisions of this Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered by reason of law generally as to the Products, then True Fabrications shall provide written notice to Ferreiro of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products is so affected.

**7. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 True Fabrications:

Vicky Bajwa  
IP & General Counsel  
True Fabrications, Inc.  
154 N 35<sup>th</sup> Street  
Seattle, WA 98103

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.

**8. COUNTERPARTS: SIGNATURES**

This 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.

**9. 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).

**10. MODIFICATION**

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

11. **AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: 2/9/17

Date: 02/08/2017

By: *Anthony Ferrero*  
Anthony Ferrero

By: *John April*  
True Fabrications Inc.