

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and SCSA Group, Inc. dba South Coast Safe Access (“SCSA”). Together, Ferreiro and SCSA 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.

SCSA is alleged to be 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 SCSA sold, or distributed for sale in the State of California, marijuana intended for smoking and paraphernalia for smoking medical marijuana, the consumption and use of which results in the generation of marijuana smoke, without first providing the clear and reasonable exposure warning required by Proposition 65. Ferreiro alleges that Marijuana smoke is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause cancer.

1.3 Product Description

The products covered by this Settlement Agreement include any products sold by SCSA that require the warning required by Proposition 65, including cannabis or marijuana intended for smoking and paraphernalia for smoking marijuana, the consumption and use of which allegedly results in exposures to marijuana smoke, that are sold, or distributed for sale in California by SCSA, including, but not limited to, unprocessed marijuana intended to be heated until combustion, then inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and paraphernalia for smoking marijuana, including, but not limited to, water bongs, smoking pipes, rolling papers, blunts and vaporizers that do not have digital heat control/cannot be definitively set at a temperature below combustion point (“Products”).

1.4 Notice of Violation

On November 6, 2017, Anthony Ferreiro served SCSA and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice¹"). The Notice provided SCSA and such others, including public enforcers, with notice that alleged that SCSA was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers in California that the Products expose users to marijuana smoke. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

SCSA denies the material, factual, and legal allegations contained in the Notice and contends that it provides medical marijuana to California residents in accordance with applicable state laws and requirements relating to medicinal use of marijuana. Nothing in this Settlement Agreement shall be construed as an admission by SCSA of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by SCSA of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by SCSA. This section shall not, however, diminish or otherwise affect SCSA's obligations, responsibilities, and duties under this Settlement Agreement.

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: WARNINGS

SCSA has provided clear and reasonable warning for all Products sold in California by posting of the warning as set forth below. The warning has been 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. The warning has been provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusions.

¹ The Notice was amended in order to name Anthony Ferreiro as citizen enforcer, and was served on SCSA on November 6, 2017.

(a) **Entry Door and Lobby Warning.** Behind the receptionist area at SCSA where patients/customers check-in, SCSA has posted a sign bearing the specified warnings shown below.

NOTICE. CALIFORNIA PROPOSITION 65 WARNING. THIS STORE SELLS PRODUCTS THAT CONTAIN CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS, OR OTHER REPRODUCTIVE HARM.

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

In settlement of all the claims referred to in this Settlement Agreement, SCSA shall pay a total of \$500.00 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 funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ferreiro. The Civil Penalty payment(s) shall be delivered to the addresses listed in Section 3.2, below.

3.1 Civil Penalty

Within ten (10) business days of the Effective Date, SCSA shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$125.00. 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.** SCSA 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.** SCSA agrees to provide a completed IRS 1099 for its payments to, and Ferreiro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Anthony Ferreiro" 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, 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 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 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, SCSA shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to SCSA's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, SCSA shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$9,500.00 for delivery to the address identified in Section 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Ferreiro's Release of Proposition 65

This Settlement Agreement is a full, final and binding resolution between Ferreiro and SCSA of any violation of Proposition 65 that was or could have been asserted by Ferreiro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against SCSA, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom SCSA directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), for unwarned exposures to marijuana smoke from the Products sold or distributed for sale in California by SCSA prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to marijuana smoke from the Products sold by or through SCSA after the Effective Date.

Ferreiro, in his individual capacity, also 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 Ferreiro of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to marijuana smoke in the Products grown, cultivated, processed or sold or distributed for sale by SCSA before the Effective Date.

5.2 SCSA's Release of Ferreiro

SCSA, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Ferreiro and 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 his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the 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 Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and SCSA, 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 SCSA each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5.4 Deemed Compliance with Proposition 65

Compliance by SCSA with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to marijuana smoke in the Products grown, cultivated, processed or sold or distributed for sale by Defendant before the Effective Date.

5.5. Public Benefit

It is SCSA's understanding that the commitments it has agreed to herein, and actions to be taken by SCSA under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of SCSA that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to SCSA's failure to provide a warning concerning exposures to marijuana smoke in the Products grown, cultivated, processed or sold or distributed for sale by Defendant before the Effective Date, 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 SCSA 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.

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 SCSA:

Mark Kearney
MK Smith, APC
9891 Irvine Center Dr., Ste 200
Irvine, CA 92618-4320

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: _____

Date: 3-19-18

By: _____

By: 

Anthony Ferreiro

SCSA Group, Inc. dba South Coast Safe Access

For Ferreiro:

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

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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: 3/16/18

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
SCSA Group, Inc. dba South Coast Safe Access