

**SETTLEMENT AND RELEASE AGREEMENT BETWEEN ANTHONY FERREIRO AND  
HOME ENVIRONMENT, LLC**

**1. INTRODUCTION**

**1.1 The Parties.** This Settlement and Release Agreement (“Agreement”) is entered into by and between Anthony Ferreiro (“Ferreiro”) and Home Environment, LLC (“Home Environment”). Together, Ferreiro and Home Environment are collectively referred to as the “Parties.” Ferreiro 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. Ferreiro alleges that Home Environment 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.** Ferreiro alleges that Home Environment has exposed individuals to the chemical di(2-ethylhexyl) phthalate (DEHP) from its sales of Home Environment Bedding (i.e. sheets sets, pillowcases, shams, etc.) storage cases/bags (the “Products”) without first providing users and consumers of the Products with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

**1.3 Product Description.** The Products covered by this Agreement are those that have been imported, distributed, offered for sale, and/or sold in California by Home Environment.

**1.4 Notice of Violation.** On August 27, 2019, Ferreiro served Home Environment, Tuesday Morning Corporation, Tuesday Morning Inc., Tuesday Morning, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided Home Environment and such others, including public enforcers, with notice that Home Environment was allegedly in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers that use of the Products will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** The Parties enter into this Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Home Environment’s compliance with Proposition 65. Home Environment denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that it has distributed for sale in California, including the Products, have been and are in compliance with Proposition 65 and all other applicable laws. Nothing in this Agreement shall be construed as an admission by Home Environment 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 by Home Environment of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Home Environment. However, nothing in this section shall not diminish or otherwise affect the Parties’ obligations, responsibilities, and duties under this Agreement. Notwithstanding the allegations in the Notice, Home Environment 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 on which a complete and fully executed copy of this Agreement is delivered to each Parties’ counsel.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**


**2.1 Reformulation of Products.** Commencing within 90 days of the Effective Date, and continuing thereafter, Home Environment agrees to manufacture, import, distribute, sell, or offer for sale Products to California consumers that either: (a) contain less than or equal to 1,000 parts per million (ppm) by weight of DEHP (“Reformulated Products”); or (b) bear a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, or as provided by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600), as those regulations may be amended from time to time. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean Products that contain concentrations less than or equal to 1,000 ppm of DEHP. To determine whether a Product is a Reformulated Product, it must be analyzed by a laboratory accredited by the State of California, a


federal agency, or a nationally recognized accrediting organization, and the testing sample shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.

**2.3 Clear and Reasonable Warning.** For all Products that are not Reformulated Products, which are manufactured later than 90 days after the Effective Date, and continuing thereafter, Home Environment shall provide a clear and reasonable exposure warning as set forth herein or as defined by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600). There shall be no obligation for Home Environment to provide an exposure warning for Products that entered the stream of commerce within 90 days of the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

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

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Home Environment may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**2.4** A **Warning** or **Alternative Warning** provided pursuant to § 2.3 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 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, providing that the

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 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.

If Home Environment sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

**2.5 Compliance with Warning Regulations.** The Parties agree that Home Environment shall be deemed to be in compliance with this Agreement by either adhering to §§ 2.3 and 2.4 of this Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) within 90 days after the Effective Date.

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

In settlement of all the claims referred to in this Agreement, Home Environment shall pay \$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 penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Ferreiro. Ferreiro’s counsel shall be responsible for delivering OEHHA’s and Ferreiro’s portions of any penalty payment made under this Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties have 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, Home Environment shall reimburse Ferreiro's counsel \$12,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Home Environment's attention, and negotiating a settlement in the public interest.

On or before May 1, 2020, Home Environment shall wire Twelve Thousand Five Hundred Dollars (\$12,500.00) for all civil penalties, fees, and costs payable to "Brodsky & Smith, LLC" as follows:

ABA 026009593  
[International Banks can use SWIFT-BIC: BOFAUS3N]  
Bank of America, N.A.  
100 West 33<sup>rd</sup> Street  
New York, NY 10001  
a/c 6550113516  
Name: Merrill Lynch  
Ref: For Final Credit 870-07119 Brodsky & Smith, LLC

Other than this payment, the Parties agree to bear their own fees and costs.

## **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Home Environment and Downstream Customers and Entities.** This Agreement is a full, final, and binding resolution between Ferreiro, acting on his own behalf, and Home Environment, of any violation of Proposition 65 that was or could have been asserted by Ferreiro or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasors") relating to the Products, and Releasors hereby release all claims 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 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Home Environment and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors, and assignees, and each entity to whom Home Environment directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors,

wholesalers, customers, retailers , including but not limited to Tuesday Morning Corporation, Tuesday Morning Inc., Tuesday Morning, and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 prior to the 90th day after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to §§ 3 and 4 above, Ferreiro, on behalf of himself, his 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 he 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, related to the Products.

**5.2 Home Environment’s Release of Ferreiro.** Home Environment, 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.

**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. Ferreiro, on behalf of himself only, on one hand, and Home Environment, 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 §§ 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.

Ferreiro and Home Environment each 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 Home Environment with this Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

**5.5. Public Benefit.** The Parties understand that the commitments Home Environment has agreed to herein, and actions to be taken by Home Environment 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 the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Home Environment's failure to provide a warning concerning exposure to DEHP 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 Home Environment is in material compliance with this Agreement.

**6. 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, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to the intent of the Parties in entering into this Agreement.

**7. 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 or is otherwise rendered

inapplicable or limited by reason of law generally, or as to the Products, Home Environment shall have no further obligations pursuant to this Agreement.

**8. 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 Home Environment:

Will Wagner  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

For Ferreiro:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
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 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 § 25249.7(f).

**11. MODIFICATION**

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

**12. ENTIRE AGREEMENT**



This 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 agreed to all of the terms and conditions contained of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligations that will or might prevent or interfere with the execution of performance of this Agreement by said Party.

**AGREED TO:**

**AGREED TO:**

Date: April 22, 2020

Date: 4/21/2020

By: Anthony Ferreiro  
Anthony Ferreiro

By: Tamara Marano  
Home Environment, LLC