

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and Laut Design USA, LLC ("Laut Design"). Together, Ferreiro and Laut Design are collectively referred to as the "Parties" and individually as a "Party." 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 Laut Design 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 Laut Design has exposed individuals to the chemical Bisphenol A (BPA) from its import, distribution and/or sales of Laut AirPods cases without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are Laut AirPods cases (the "Products") that have been imported, distributed, offered for sale and/or sold in the State of California by Laut Design.

1.4 Notice of Violation. On or about October 19, 2020, Ferreiro served Laut Design, Best Buy Co., Inc., BestBuy.com, LLC, PICOM Handelsgesellschaft mbH GmbH, 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 Laut Design and such others, including public enforcers, with notice that alleged that Laut Design was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Laut Design 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 imported, sold and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Laut Design 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 Laut Design of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Laut Design. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Laut Design maintains that it has not knowingly distributed, imported and/or manufactured, or caused to be distributed, imported and/or 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 this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter, Laut Design shall not manufacture or order from any supplier any Products intended for retail sale in California that contains BPA to which consumers are exposed in excess of 3 ppm (hereinafter "Reformulated Products") unless the Product is accompanied by a clear and reasonable warning that complies with Article 6 of Title 27 of the California Code of Regulations, as it may be amended, or by providing a clear and reasonable warning as set forth in this Section 2.1(a) and (b). Products sold by Laut Design up to and through ninety (90) days after the Effective Date of this Settlement Agreement may sell through without a warning even if not Reformulated Products. The warning shall consist of either:

- (a) **⚠ WARNING:** This product can expose you to chemicals including Bisphenol A (BPA), which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov
- (b) **⚠ WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov.

If Laut Design has reason to believe that another Proposition 65 chemical is present which may require a cancer warning, Laut Design may: (1) revise the warning text set forth in Section 2.1(a) accordingly, per the safe harbor regulations at Title 27, California Code of Regulations, Section 25603, as it may be amended from time to time, or (2) add the phrase "Cancer and" in the warning set forth in Section 2.1(b). The Parties agree that Laut Design shall be deemed to be in compliance with this Settlement Agreement by either adhering to Section 2.1 of this Settlement Agreement or by complying with the warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") as of or after the Effective Date.

2.2 The warning provided pursuant to Paragraph 2.1 shall be affixed to or printed on the Product's 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. A 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.

The injunctive relief in this Section 2 does not apply to any Product that has left the possession and is no longer under the control of Laut Design prior to and through ninety (90) days after the Effective Date, and all claims as to such Product are released by this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Laut Design 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. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Laut Design shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. Within thirty (30) days of the Effective Date, Laut Design shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Brodsky Smith in Trust for Ferreiro" in the amount of \$125.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 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 § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 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. Laut Design 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 § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Laut Design 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” (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, Laut Design shall reimburse Ferreiro’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Laut Design’s attention, and negotiating a settlement in the public interest. Within thirty (30) days of the Effective Date, Laut Design shall issue a check payable to “Brodsky Smith” in the amount of \$7,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Laut Design and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Laut Design, 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 (“Releasers”) for failure to provide warnings for alleged exposures to BPA contained in the Products,

and Releasors hereby release any such claims against Laut Design and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Laut Design directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, marketplace hosts, wholesalers, customers, retailers, including but not limited to Best Buy Co., Inc., and their respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensees, and successors and assigns of any of them (collectively, the "Releasees"), from all claims for alleged violations of Proposition 65 through ninety (90) days after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Ferreiro, on behalf of himself and Releasors, 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 they 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, limited to and arising out of the alleged or actual exposure to the chemical BPA in the Products.

5.2 Laut Design's Release of Ferreiro. Laut Design, 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.

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 Laut Design, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through ninety (90)

days after 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 Laut Design 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 Laut Design with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

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. 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, Laut Design 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, a 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 Laut Design:

LAUT Design USA, LLC
5882 State Hwy 276
Royse City, TX 75189

With copy to:

Ann G. Grimaldi
Jennifer K. Singh
Grimaldi Law Offices
75 Broadway Street, Suite 202
San Francisco, CA 94111

For Ferreiro:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
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 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 § 25249.7(f).

11. **MODIFICATION**

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

12. ENTIRE AGREEMENT

This Settlement 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 agree to all of the terms and conditions contained in this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 6/14/2021

Date: 6/24/2021

By: Anthony Ferreiro
Anthony Ferreiro

By: Chad Margul
Laut Design USA, LLC