

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Mous Products Ltd. (“Mous”). Together, Ferreiro and Mous 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 Mous 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 Mous has exposed individuals to the chemical Bisphenol A (BPA) from its sales of Mous Limitless 3.0 phone 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 Mous cases for cell phones and products similar to and including UPC 5060624484360 (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Mous.

1.4 Notice of Violation. On October 22, 2020, Ferreiro served Mous, Best Buy Co., Inc., BestBuy.com, LLC, 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 Mous and such others, including public enforcers, with notice that alleged that Mous 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. Mous 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 Settlement Agreement shall be construed as an admission by Mous 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 Mous of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Mous. 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, Mous 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 this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Reformulation of Products and Warnings. Commencing as of the Effective Date, and continuing thereafter, Products that Mous sells or distributes for sale in California shall either: (a) be Reformulated Products pursuant to Section 2.2 below or (b) be labeled with a clear and reasonable warning pursuant to Sections 2.3 and 2.4 below. Products sold or distributed for sale by Mous before the date this Settlement Agreement is signed by both Parties may sell through without a warning even if not Reformulated Products.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products for which the daily average exposure to BPA would not exceed the chemical’s current safe harbor levels, including any Maximum Allowable Dose Level (MADL), as published by OEHHA and as may be amended from time to time.

2.3 Clearing and Reasonable Warnings. As set forth in Section 2.1, Mous agrees to manufacture, import, or purchase for sale in California only (a) Reformulated Products pursuant to Section 2.2 or (b) Products that are accompanied by either of the following warnings:

- (a)  **WARNING:** This product can expose you to [chemicals including] Bisphenol A (BPA), which is 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.
- (c) Other Proposition 65 warning methods for BPA that comply with current Proposition 65 regulations adopted by OEHHA.

The bracketed text in the above warnings is optional.

2.4 Compliance With Warning Regulations. 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.

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

In settlement of all the claims referred to in this Settlement Agreement, Mous shall pay \$4,000.00 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 according to the procedures identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Mous 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 ten (10) days of the Effective Date, Mous shall pay \$4,000 to be allocated as follows: to (a) OEHHA in the amount of \$3,000.00; and to (b) Ferreiro in the amount of \$1,000.00. The Civil Penalty payment(s) shall be paid according to § 3.2, below.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows: All payments owed pursuant to Sections 3.1 and 3.2 shall be wired to Brodsky & Smith within ten (10) days of the Effective Date. Brodsky & Smith shall allocate the payments in Section 3.1 by issuing and delivering separate checks to OEHHA and Ferreiro. Ferreiro agrees to provide wiring information for Brodsky & Smith no later than the Effective Date.

(b) Tax Documentation. 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, Mous shall reimburse Ferreiro’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Mous’ attention, and negotiating a settlement in the public interest. Mous shall pay Brodsky & Smith \$52,000.00 according to the payment procedures identified in § 3.2, above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Mous and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Mous, 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 Releasers hereby release any such claims against Mous and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and

assignees, and each entity to whom Mous directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Best Buy Co., Inc., and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 through 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, 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, limited to and arising out of the alleged or actual exposure to the chemical BPA in the Products.

5.2 Mous’ Release of Ferreiro. Mous, 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 Mous, 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 Mous 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 Mous with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

5.5. Public Benefit. It is Mous' understanding that the commitments it has agreed to herein, and actions to be taken by Mous under this Settlement 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 Mous that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Mous failure to provide a warning concerning exposure to BPA 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 Settlement Agreement, provided that Mous 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. 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, Mous 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 Mous:

Simon Sellars
The Mount, 2 Woodstock Link
Belfast BT6 8DD

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. **"MOST FAVORED NATION" CLAUSE**

If Ferreiro has reached or in the future reaches settlements or judgments with other companies that include a reformulation standard with a permissible concentration level of BPA, then Mous may, at its option, comply with this Settlement Agreement by using that reformulation standard.

12. **MODIFICATION**

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

13. **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.

14. **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: 12-20-2021

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
Mous Products Ltd.

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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: _____

Date: 6th Jan 2022 _____

By: _____
Anthony Ferreiro

By:  _____
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Mous Products Ltd.