

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Deflecto, LLC (“Deflecto”). Together, Ferreiro and Deflecto 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 Deflecto 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 Deflecto has exposed individuals to the chemical Bisphenol A (BPA) from its manufacture, distribution, and/or sales of Deflect-o document holders 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 Deflect-o document holders (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Deflecto.



1.4 Notice of Violation. On December 21, 2020, Ferreiro served Deflecto, Wayfair, Inc., Wayfair, LLC (collectively, “Wayfair”), 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 Deflecto and such others, including public enforcers, with notice that alleged that Deflecto 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. Deflecto 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 constitute or be construed, considered, offered, or admitted as evidence of an admission by Deflecto of any fact, finding, issue of law, or violation of law, or as evidence of fault, wrongdoing, or liability by Deflecto, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum; nor shall compliance with this Settlement Agreement constitute or be construed, considered, offered, or admitted as evidence of as an admission by Deflecto of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Deflecto. 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, Deflecto 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 Clear and Reasonable Warning. As of the Effective Date, Deflecto agrees to manufacture, import, or purchase for sale in California only Products that are accompanied by either of the following warnings:

- (a)  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.
- (b)  **WARNING:** This product can expose you to chemicals including Bisphenol A (BPA), which is 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.

The bracketed text may, but is not required to be used. Deflecto and its downstream retailers shall have no obligation to label Products that entered the stream of commerce prior to the Effective Date.

2.2 Compliance with Warning Regulations. The warning provided pursuant to § 2.1 above shall be affixed to or printed on the Products’ packaging or labeling. The warning shall be prominently affixed to or printed on the packaging or labeling and 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 Products and shall be at least the same size as those other safety warnings.

The Parties agree that Deflecto shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date. If Proposition 65 warnings for BPA or the Products should no longer be required, Deflecto shall have no further obligations pursuant to this Settlement Agreement.

With respect to existing Products, meaning those that are currently in the channels of distribution, with distributors, and retailers, Deflecto and its downstream distributors (including, but not limited to Wayfair) may continue to sell-through those items. However, as of the Effective Date, no new Products may be distributed or sold in California that do not contain the warnings set forth in Paragraph 2.1.

3. PAYMENT OF PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b) AND 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 monetary amount of the Settlement. The Parties thereafter reached an accord on (a) the civil penalty payment (the "Civil Penalty"), and (b) 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, and in settlement of all claims referred to in this Agreement, Deflecto shall make a total settlement payment of \$20,000.00 (the "Settlement Payment") in accordance with this Section. The Settlement Payment shall be allotted as follows: Deflecto shall pay \$2,000.00 as the Civil Penalty, and Deflecto shall reimburse Ferreiro's counsel \$18,000.00 for fees and costs incurred as a result of investigating

and bringing this matter to Deflecto's attention, and negotiating a settlement in the public interest. Deflecto shall pay \$2,000.00 as a Civil Penalty in accordance with this Section.

3.1 Civil Penalty. 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, Deflecto 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). Within ten (10) days of the Effective Date, Deflecto shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b) "Brodsky Smith in Trust for Ferreiro" in the amount of \$500.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Reimbursement of Fees and Costs: Within ten (10) days of the Effective Date, Deflecto shall issue a check payable to "Brodsky Smith" in the amount of \$18,000.00 for delivery to the address identified in § 3.2(a)(i), above.

3.3 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.** Deflecto 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 § 3.3(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Deflecto 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 3.3(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. **RELEASE OF ALL CLAIMS**

4.1 **Release of Deflecto and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and on behalf of himself, and his past and current agents, representatives, attorneys, successors, and/or assignees, but *not* in his representative capacity, and Deflecto, 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 (a) Deflecto and its parents, subsidiaries, affiliated entities, and their respective shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and (b) each entity to whom Deflecto directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, specifically including but not limited to Wayfair, and its respective subsidiaries, affiliates, parents, franchisees, cooperative members, and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date for the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to § 3 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, costs, fines, penalties, 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 from use of the Products.

4.2 Deflecto's Release of Ferreiro. Deflecto, 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.

4.3 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, and his past and current agents, representatives, attorneys, successors,

and/or assignees, but *not* in his representative capacity, on one hand, and Deflecto, 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 §§ 4.1 and 4.2, 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 Deflecto each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Deflecto with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

4.5. Public Benefit. It is Deflecto's understanding that the commitments it has agreed to herein, and actions to be taken by Deflecto 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 Deflecto that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Deflecto's alleged 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 Deflecto is in material compliance with this Settlement Agreement.

5. 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.

6. 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, Deflecto 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.

7. 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 e-mail and either: (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 Deflecto:

Kendra Lounsberry
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067

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.

8. 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.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Ferreiro agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

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

11. **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.

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: 09/07/2021

Date: 8/22/21

By: *Anthony Ferreiro*
Anthony Ferreiro

By: *Paul Dickey*
Deflecto, LLC