

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and True Fabrications, Inc. (“True Fabrications”). Together, Balabbo and True Fabrications are collectively referred to as the “Parties.” Balabbo 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. Balabbo alleges that True Fabrications 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. Balabbo alleged that True Fabrications has exposed individuals to lead from its sales of *Pinky Up® Chloe™* ceramic leopard mugs, UPC # 842094194728, without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are *Pinky Up® Chloe™* ceramic leopard mugs, UPC # 842094194728 (the “Products”), which have been imported, distributed, offered for sale, and/or sold in California by True Fabrications.

1.4 Notice of Violation. On June 30, 2023, Balabbo served True Fabrications, Walmart, Inc., 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 True Fabrications and such others, including public enforcers, with notice that True Fabrications was allegedly in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products allegedly exposed them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. True Fabrications denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that True

Fabrications has sold and/or distributed in California, including the Products, have been in compliance with Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine.. Nothing in this Settlement Agreement shall be construed as an admission by True Fabrications 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 True Fabrications of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by True Fabrications. However, this § 1.5 shall not diminish or otherwise affect the 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 was last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS


2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, the Products that True Fabrications directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a modified Product in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that produce a wipe test result no higher than 1 microgram (μg) of lead when analyzed pursuant to NIOSH method no. 9100.


2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that True Fabrications manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for True Fabrications to provide an exposure warning for Products that entered the stream of commerce prior to 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 lead, 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.

(b) **Alternative Warning:** True Fabrications 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.

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** or **Alternative 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, provided that the **Warning** or **Alternative 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** or **Alternative 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.

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where True Fabrications offers Products for sale to consumers in California. The requirements of this § 2.4 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this § 2.4 , True Fabrications shall (a)

post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in § 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.5 Compliance with Warning Regulations. The Parties agree that True Fabrications shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement, or by complying with warning regulations adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Product and the exposure at issue after the Effective Date. If "consumer information," as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, True Fabrications shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

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

In settlement of all the claims referred to in this Settlement Agreement, True Fabrications 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 Balabbo. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

3.1 Civil Penalty. Within thirty (30) business days of the Effective Date, True Fabrications shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Brodsky Smith in Trust for Balabbo" 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 Balabbo, 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. True Fabrications agrees to provide Balabbo's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Balabbo, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) Tax Documentation. True Fabrications agrees to provide a completed IRS 1099 for its payments to, and Balabbo agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Precila Balabbo" 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 Balabbo and her counsel offered to reach preliminary agreement in 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 Balabbo and her 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, True Fabrications shall reimburse Balabbo’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of True Fabrications, and negotiating a settlement in the public interest. Within thirty (30) business days of the Effective Date, True Fabrications shall issue a check payable to “Brodsky Smith” in the amount of \$8,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of True Fabrications and Downstream Customers and Entities. This Settlement Agreement is a full, final, and binding resolution between Balabbo, acting on her own behalf, and True Fabrications, of any violation of Proposition 65 that was or could have been asserted by Balabbo or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasers hereby release any such claims against True Fabrications and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom True Fabrications directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Walmart, Inc., 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 based on exposure to lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Balabbo, on behalf of herself, her 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 she 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 Proposition 65 listed constituents from use of the Products.

5.2 True Fabrications' Release of Balabbo. True Fabrications, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Balabbo, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Balabbo and/or her 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 exposure to lead from 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. Balabbo on behalf of herself only, on one hand, and True Fabrications, 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Balabbo and True Fabrications 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 True Fabrications with this Settlement Agreement constitutes compliance by True Fabrications with Proposition 65, including with respect to exposure to lead from use of the Products.

5.5. Public Benefit. It is True Fabrications' understanding that the commitments it has agreed to herein, and actions to be taken by True Fabrications 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 True Fabrications that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to True Fabrications' failure to provide a warning concerning exposure to Proposition 65 constituents 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 the Products addressed in this Settlement Agreement, provided that True Fabrications 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, True Fabrications shall provide written notice to Balabbo 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; (ii) overnight or two-day courier; or by electronic mail (where no indication is received that the email was not successfully transmitted) on any party by the other party to the following addresses:

For True Fabrications:

Monica Browner
Downey Brand LLP
621 Capitol Mall, 18th Fl.
Sacramento, CA 95814
mbrowner@downeybrand.com

For Balabbo:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004
esmith@brodskysmith.com

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)

Balabbo 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.**

CONSTRUCTION

The language in all parts of this Settlement Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 et seq., or specifically herein. The captions and paragraph headings used in this Settlement Agreement are for reference only and shall not affect the construction of this Settlement Agreement.

13. COMPUTING TIME

In computing any period of time under this Settlement Agreement, where the last day of such period falls on a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.

14. FULL SETTLEMENT

This Settlement Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Settlement Agreement has been freely and voluntarily entered into by the parties with and upon advice of counsel.

15. 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.

16. **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: 12/04/2023

Date: _____

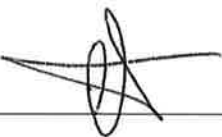
By: 
Precila Balabbo

By: _____
True Fabrications, Inc.

Signed as to Form:

BRODSKY SMITH

DOWNEY BRAND LLP

By: 
Evan J. Smith

By: _____
Monica Browner

16. 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: 12 / 04 / 2023

By: _____

Precila Balabbo

By: *Shruv Agarwal*

True Fabrications, Inc.

Signed as to Form:

BRODSKY SMITH

DOWNEY BRAND LLP

By: _____

Evan J. Smith

By: *Monica Browner*

Monica Browner