

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”), on the one hand, and, on the other hand, Grupo Ruz, S.A. de C.V. (“Grupo”), for itself and for the express benefit of Walmart Inc. (“Walmart”), Black Paper Party, LLC (“BPP”), Access Asia-Pacific Ltd. (“Access Asia”), and, with respect to all of the afore-mentioned, their parent, subsidiary, and affiliated companies. Together, Ferreiro and Grupo are collectively referred to as the “Parties” (Walmart Inc., Black Paper Party, LLC, Access Asia-Pacific Ltd. are not parties to this Settlement Agreement and assume no liability or obligation from it or from any statements or representations made herein, but are intended to receive all benefits afforded to “Releasees” (as that term is defined below) as third party beneficiaries hereof). 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 Grupo 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 Grupo has exposed individuals to lead from its sales of Black Party Party plush in mugs, UPC # 193849044134, 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 Black Party Party plush in mugs, UPC # 193849044134, (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Grupo.

**1.4 Notice of Violation.** On October 13, 2023, Ferreiro served Black Paper Party, LLC, Access Asia-Pacific Ltd., Walmart Inc., Grupo, 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, and amended version of a notice previously served on or about May 25, 2023, on Walmart, BPP, and Access Asia (but not Grupo), provided Grupo and such others, including public enforcers, with notice that alleged that Grupo 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 lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Grupo 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 Grupo 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 Grupo of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Grupo. 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, Grupo 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: REFORMULATION AND/OR WARNINGS**

**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, Products that Grupo 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 Product that is 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 Grupo manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Grupo 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Grupo 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** 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, Grupo shall post the **Warning** or **Alternative Warning** on any Internet sales website owned, operated or controlled by Grupo on which it offers Products for sale to consumers in California, as well as websites where Grupo has the ability to control the application of warnings, by including either the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word "**WARNING**," on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase in accordance with Title 27, California Code of Regulations, Section 25602(b). For products that Grupo manufactures, imports, distributes, or sells on or after the Effective Date to a third-party authorized retailer ("Third-Party Sellers") that may sell the Product over the Internet, Grupo shall provide such Third Party Seller with written notice, in accordance with Title 27, California Code of Regulations, Section 25600.2, that includes the **Warning** or **Alternative Warning Language** for Products sold on the Internet. The release and discharge in Section 5 shall not extend to any Third-Party Seller of the Products if such Third-Party Seller has been duly notified, in writing, by Grupo that a warning is required for Internet sales of the Products, and such Third-Party seller fails to provide the required warning for Internet sales occurring more than 90 days after the Effective Date.

**2.5 Compliance with Warning Regulations.** The Parties agree that Grupo 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, Grupo 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, Grupo 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

**3.1 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Grupo shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$375.00; and to (b) “Anthony 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.** Grupo 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.** Grupo 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, Grupo shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Grupo, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Grupo shall issue a check payable to "Brodsky Smith" in the amount of \$15,500.00 for delivery to the address identified in § 3.2(a)(i), above.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Grupo and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Grupo, 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 lead from use of the Products, and Releasers hereby release any such claims against Grupo and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Grupo directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Walmart, Wal-Mart Stores Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., Wal-Mart.com USA, LLC, and each of their respective direct or indirect corporate parents, subsidiaries, as well as their past, present and future owners, shareholders, directors, officers, employees, attorneys, insurers, representatives, affiliates, franchisees, cooperative members, successors, assigns and licensees; BPP, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees; and Access Asia, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims, liabilities, alleged liabilities, and potential liabilities 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, 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 lead from use of the Products.

**5.2 Grupo's Release of Ferreiro.** Grupo, 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 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. Ferreiro on behalf of himself only, on one hand, and Grupo, 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.

Ferreiro and Grupo 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 Grupo with this Settlement Agreement constitutes compliance by Grupo with Proposition 65 with respect to exposure to lead from use of the Products.

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

Michael J. Aiken  
Gladstone Weisberg ALC  
300 Corporate Pointe, Ste. 400  
Culver City, CA 90230

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 of this Settlement Agreement.

**AGREED TO:**


**AGREED TO:**

Date: \_\_\_\_\_

Date: 12/5/23 \_\_\_\_\_

By: \_\_\_\_\_

Anthony Ferreiro

By:  \_\_\_\_\_

Grupo Ruz, S.A. de C.V.

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 of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 12 | 13 | 23

Date: \_\_\_\_\_

By: *Anthony Ferreiro*  
Anthony Ferreiro

By: \_\_\_\_\_  
Grupo Ruz, S.A. de C.V.