

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between Anthony Ferreiro ("Ferreiro") and Southern Technologies, LLC ("STL"). Together Ferreiro and STL are collectively referred to as the "Parties."

1. INTRODUCTION

1.1 Anthony Ferreiro & Southern Technologies, LLC

Ferreiro is an individual that 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. STL is an Illinois Limited Liability Corporation doing business in California.

1.2 General Allegations

Ferreiro alleges that STL has imported, distributed and/or sold in the State of California a Dust Collection Hose (the "Product") without requisite Proposition 65 warning that the Product contains the chemical Di(2-ethylhexyl) phthalate ("DEHP"). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause developmental male reproductive toxicity.

1.3 Notice of Violation(s)

On May 21, 2015 Ferreiro served Sears Holdings Management Corporation, Sears Holdings, Inc., Sears Holdings Corporation, Sears Corporation (collectively, "Sears"), STL, Powertec (a consumer brand under which STL conducts business), and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided Sears, STL, Powertec and others, including public enforcers, with notice that Sears, STL and Powertec were allegedly in violation of California Health & Safety Code § 25249.5 ("Proposition 65"), for failing to warn consumers and customers that the Product exposed

users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 Settlement Discussions and Resolution of Claims

After service of the Notice, the Parties promptly began settlement discussions to resolve Ferreiro's claims regarding the Product and to resolve potential Proposition 65 liability arising from the manufacture, importation, distribution, and/or sales of the Product in California. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding the Product.

1.5 No Admissions

STL 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 Product, has been and is in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by STL 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 STL of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by STL. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, STL maintains that it has not knowingly manufactured, imported, distributed or offered the Product 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 October 15, 2015.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Product

Commencing on the Effective Date, and continuing thereafter, STL shall only ship, sell, or offer for sale in California, reformulated Product pursuant to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that meets the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

"Reformulated Product" shall mean Product that contains less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, STL shall, for all Product intended for sale in California that is not a Reformulated Product, or which STL has reason to believe will be shipped or sold in California, provide clear and reasonable warnings as required by Proposition 65 and as set forth in subsections 2.3(a) and (b) below. The warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning content and/or methods of transmission different than those set forth above, STL shall be entitled, but not obligated, to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

(a) **Retail Store Sales**

(i) **Product Labeling.** STL shall affix a warning to the packaging, labeling or directly on each Product in California by STL that states:

[PROPOSITION 65] WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

(ii) **Point of Sale Warnings.** Alternatively, STL may provide warning signs in the form below to its retail sales customers in California with instructions to post the warnings in close proximity to the point of display of the Product. Such instructions shall be sent by certified mail, return receipt requested.

[PROPOSITION 65] WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

(b) **Mail Order Catalog Warning.** In the event that STL sells Product via mail order catalog directly to consumers located in California after the Effective Date that is not a Reformulated Product, STL shall provide a warning in accordance with this Section 2.3 for such Product sold via mail order catalog to such California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

[PROPOSITION 65] WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used. Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, STL may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product:

[PROPOSITION 65] WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used. The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, STL must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(c) **Internet Sales Warning.** In the event that STL sells Product via the internet directly to consumers located in California after the Effective Date that is not a Reformulated Product, STL shall provide a warning in accordance with this Section 2.3 for such Product sold via the internet to such California residents. A warning that is given on the internet shall be in the same type size or larger than the Product

description text and shall be given in conjunction with the direct sale of the Product. The warning may appear either: (i) On the same web page on which the Product is displayed; (ii) On the same web page as the order form for the Product; (iii) On the same page as the price for the Product; or (iv) On one or more web pages displayed to a purchaser during the checkout process.

The following warning shall be provided:

[PROPOSITION 65] WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

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

In settlement of all the claims referred to in this Settlement Agreement, STL shall pay a total of \$1,200.00 (One Thousand Two Hundred and NO/100 Dollars) in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ferreiro. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. STL shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not received within ten business days of either the Effective Date, or the date STL receives the "Tax Documentation" required under Section 3.2(c), whichever is later.

3.1 Civil Penalty

On or before the Effective Date, STL shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$900.00 (Nine Hundred and NO/100 Dollars); and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the

amount of \$300.00 (Three Hundred and NO/100 Dollars). All penalty payments shall be delivered to the addresses listed in Section 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 Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 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.** STL 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 Section 3.2(a)(i), as proof of payment to OEHHA.

(c) Tax Documentation. Ferreiro and Brodsky & Smith shall provide a 1099 form to STL, and STL shall provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(i) "Anthony Ferreiro" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky & Smith, LLC" (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 resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Ferreiro then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties 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, STL shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to STL's attention, and negotiating a settlement in the public interest. On or before the Effective Date, STL shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$10,800.00 (Ten Thousand Eight Hundred and NO/100 Dollars) for delivery to the following address:

Evan Smith, Esquire
Brodsky & Smith, LLC

Two Bala Plaza, Ste. 510
Bala Cynwyd, PA 19004

5. RELEASE OF ALL CLAIMS

5.1 Release of STL, Sears, Powertec and Downstream Customers and
Entities

Ferreiro acting on his own behalf, releases and discharges STL, Sears, Powertec, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom STL, Sears, Powertec, directly or indirectly distributes or sells the Product, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims and alleged violations arising under Proposition 65 through the Effective Date, including without limitation all failures to warn about alleged exposures to the chemical DEHP that is contained in the Product, and which was distributed, sold and/or offered for sale by STL, Sears, Powertec, to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against STL, Sears, Powertec, and/or the Releasees for failure to provide warnings for alleged exposure to DEHP contained in the Product.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of STL, Sears, Powertec, or 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 DEHP in the Product.

Compliance with the terms of this Agreement shall constitute compliance with Proposition 65 with respect to the Products manufactured, imported, distributed, or sold by Releasees after the Effective Date.

5.2 STL's Release of Ferreiro

STL, 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 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 Section 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 STL, 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 Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Ferreiro and STL each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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.

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 by reason of law generally, or as to the Product, STL 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, the 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 STL:

Cordon T. Baesel
Dentons US LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
T: 619.699.2555

For Ferreiro:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
T: 877-534-2590

Any 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 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 section 25249.7(f).

11. MODIFICATION

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

12. CONFIDENTIALITY

The Parties expressly acknowledge that, except to the extent disclosure is required by Proposition 65 or other applicable laws, regulations or orders, the contents of this Agreement are confidential. The confidentiality provisions of this Agreement shall remain in full force and effect and shall continue to apply to the Parties after their respective performance of their duties hereunder.

13. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a

waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

14. AUTHORIZATION

The undersigned are authorized to execute this Agreement and have read, understood and agree to all of the terms and conditions contained of this Agreement.

AGREED TO:

AGREED TO:

Date: October 9, 2015

Date: October 9, 2015

By: Anthony Ferrero
Anthony Ferrero

By: Hui Chuan Liao
Southern Technologies, LLC
President, HUI CHUAN LIAO