

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Anthony Ferreiro, American Specialty Manufacturing, Inc., & Samar Co., Inc.**

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and Samar Co., Inc and American Specialty Manufacturing, Inc. (collectively "Samar"). Together, Ferreiro and Samar are collectively referred to as the "Parties." 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.

Samar is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6, *et seq.* ("Proposition 65").

1.2 **General Allegations**

Ferreiro alleges that Samar has imported, distributed and/or sold in the State of California *PVC Air Hoses, UPC No. 0 92503 002087* (the "Product" or "Products") without requisite Proposition 65 warning that the Product contains the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed DINP as a chemical known to cause cancer.

1.3 **Notice of Violation(s)**

On April 17, 2015 Ferreiro served Sears Corporation, Sears Holdings Corporation, Sears Holdings, Inc., Sears Holdings Management Corporation (collectively, "Sears"), Samar, 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 was twice amended, on May 21, 2015 and June 11, 2015, respectively, to provide Samar and such others, including public enforcers, with notice that alleged that Samar was in violation of California Health & Safety Code § 25249.5,

for failing to warn consumers and customers that the Product exposed users in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 No Admission

Samar 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Samar 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 Samar of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Samar. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Samar maintains that it has not knowingly or intentionally manufactured, or caused to be manufactured, the Products for sale in California which are in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 25, 2016.

2. INJUNCTIVE RELIEF

2.1 Commencing on the Effective Date, and continuing thereafter, Samar shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 2.2 of this Settlement Agreement, or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3. Samar and its downstream retailers shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date. For purposes of this Settlement Agreement, "Reformulated Products" are Products that are in compliance with the standard set forth below in Section 2.2.

2.2 “Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (“ppm”) of DINP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Samar shall, for all Product it sells or distributes and which is intended for sale in California that is not a Reformulated Product, or which Samar has reason to believe will be shipped or sold in California, provide clear and reasonable warnings 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 purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales

(i) Product Labeling. Samar shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by Samar or any person selling the Product that states:

PROPOSITION 65 WARNING:

This product contains a chemical known to the State of California to cause cancer.

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

PROPOSITION 65 WARNING:

This product contains a chemical known to the State of California to cause cancer.

(b) Mail Order Catalog Warning. In the event that Samar directly sells Product via mail order catalog directly to consumers located in California after the Effective Date that is not a Reformulated Product, Samar shall provide a warning 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 a chemical known to the State of California to cause cancer.

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, Samar 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:

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.

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, Samar 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 Samar directly sells Product via the internet directly to consumers located in California after the Effective Date that is not a Reformulated Product, Samar shall provide a warning 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 shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for the Product; or (d) 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 a chemical known to the State of California to cause cancer.

3. SETTLEMENT PAYMENT

3.1 In settlement of all the claims referred to in this Settlement Agreement, and without any admission of liability therefore, Samar shall make the following monetary payments:

3.1.1 Samar shall pay a total of \$1,000.00 in civil penalties in accordance with this Section. The civil 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 civil penalty remitted to Ferreiro. Each penalty payment shall be delivered to the addresses listed in Section 3.1.3 below.

3.1.2 In addition to the payment above, Samar shall pay \$15,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs, including any investigation and laboratory costs or expert fees, incurred in the course of bringing the Ferreiro action, and in enforcing

Proposition 65, including without limitation, preparation of the 60-Day Notice letter and discussions with the office of the Attorney General. 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. As such, within five (5) calendar days of the Effective Date, Samar shall issue one check to “Brodsky & Smith, LLC” for \$4,000.00 delivered to the address listed in Section 3.1.3 below. Thereafter, and for the ensuing four (4) months, Samar shall make the following payments to “Brodsky & Smith, LLC” on each one month (i.e. 30 day) anniversary of the Effective Date until all monies owed to Brodsky & Smith have been paid:

- (a) \$2,000.00 is due June 25, 2016;
- (b) \$3,000.00 is due July 25, 2016;
- (c) \$3,000.00 is due August 25, 2016; and
- (d) \$3,000.00 is due September 25, 2016.

Samar shall be liable for penalty payment equal to \$1,000.00, for all amounts due and owing that are not received within five (5) calendar days of the date they are due.

3.1.3 Within five (5) calendar days of the Effective Date, Samar shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire

Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

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

A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address set forth above as proof of payment to OEHHA.

4. RELEASE OF ALL CLAIMS

4.1 Release of Samar and Downstream Customers and Entities

Ferreiro acting on his own behalf, releases Samar and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Samar directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, marketplace hosts, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemical DINP that is contained in the Products, and was distributed, sold and/or offered for sale by Samar 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 by

Ferreiro against Samar and/or the Releasees for failure to provide warnings for alleged exposures to DINP contained in the Products.

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 Samar and/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 DINP in the Products.

Ferreiro, on his own behalf, further agrees, promises, and covenants that he has not and will not, nor will any person, organization or any other entity acting on his behalf, file, charge, claim, sue, participate in, join or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary or other) against the Released Parties with respect to any Released Claims which are the subject of this Agreement.

4.2 Samar's Release of Ferreiro

Samar, 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 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 Samar, 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 4.1 and 4.2 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 Samar each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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.

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 by reason of law generally, or as to the Product, Samar 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.

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: (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 Samar:

Richard A. Nysten, Jr.
LYNCH, DeSIMONE & NYLEN, LLP,
10 Post Office Square, Suite 970N
Boston, MA 02109

For Ferreiro:

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

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.

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 section 25249.7(f).

10. **MODIFICATION**

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

11. 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: 5/10/2016

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
Samar Co., Inc and American
Specialty Manufacturing, Inc.

11. 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: 5/10/2016

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: Walter Kelly
Samar Co., Inc and American
Specialty Manufacturing, Inc.