

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Anthony Ferreiro & Impacto Protective Products, Inc.**

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and Impacto Protective Products, Inc. ("Impacto"). Together, Ferreiro and Impacto 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.

Impacto employs ten or more persons and is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

#### 1.2 **General Allegations**

Ferreiro alleges that Impacto has imported, distributed and/or sold in the State of California Steel Toed Overshoes containing Di(2-ethylhexyl) phthalate (DEHP) without the requisite Proposition 65 warning.

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 **Product Description**

The products covered by this Settlement Agreement are Steel Toed Overshoes, which Impacto sells individually as *Impacto Turbo Toe Steel Toe Cap Overshoe*; Size: Large; UPC#628167353403; Lot#310149; ASTM F2412-11/ASTM F2413-11; 6PPN7 TTL (referred to hereafter as "Product" or "Products"), containing DEHP.

#### 1.4 **Notice of Violation**

On July 29, 2015 Ferreiro served Impacto, W.W. Grainger, Inc. ("Grainger"), 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 Impacto and such others, including public enforcers, with notice that alleged that Impacto 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 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

Impacto 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 Impacto 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 Impacto of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Impacto. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Impacto 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 October 21, 2016.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation of the Products**

Commencing on the Effective Date, and continuing thereafter, Impacto shall only ship, sell, or offer for sale in California, reformulated Products pursuant to Section 2.2 or Products that are 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, Impacto shall provide a clear and reasonable warning for any Product that it ships, sells, or offers to ship or sell in California that is not a Reformulated Product. Impacto shall provide the warning affixed to the packaging or labeling with the following statement:

### **CALIFORNIA PROPOSITION 65 WARNING:**

This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

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 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 text and/or methods of transmission different than those set forth above, Impacto shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Impacto shall pay a total of \$4,000.00 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. Impacto 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 two business days of the Effective Date.

### **3.1 Civil Penalty**

Within ten (10) days of the Effective Date, Impacto shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$3,000.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$1,000.00. 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.** Impacto 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.** Impacto agrees to 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, Impacto shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to Impacto's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Impacto shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$35,000.00 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 Impacto, Grainger and Downstream Customers and Entities**

Ferreiro acting on his own behalf, releases Impacto, Grainger, and their respective parents, subsidiaries, affiliated entities, marketplaces directors, officers, agents, employees, attorneys and each entity to whom Impacto directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, 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 chemicals DEHP that are contained in the Products, and were distributed, sold and/or offered for sale by Impacto 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 Impacto, Grainger and/or the Releasees for failure to provide warnings for alleged exposures to DEHP 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 against Impacto, Grainger and/or 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 chemicals DEHP in the Products.

### **5.2 Impacto's Release of Ferreiro**

Impacto, 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.

### **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 Impacto, 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 Impacto 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 Products, Impacto 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 Impacto:

Gary L. Eastman  
Eastman & McCartney LLP  
401 West "A" Street, Suite 1785  
San Diego, CA 92101  
T: (619) 230-1144  
F: (619) 230-1194



For Ferreiro:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
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 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 section 25249.7(f).

**11. MODIFICATION**

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

**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: 10-13-16

Date: 11/9/2016

By:   
Anthony Ferreiro

By:   
Impacto Protective Products, Inc.  
ERIC LEHTINEN