

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Anthony Ferreiro and Honeywell Safety Products USA, Inc.**

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and Honeywell Safety Products USA, Inc. ("Honeywell"). Together, Ferreiro and Honeywell 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.

Honeywell 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 Honeywell has imported, distributed and/or sold in the State of California *FirmFit Disposable Foam Earplugs*, UPC No. 033552021094, (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 December 8, 2015, Ferreiro served Applied Industrial Technologies, Inc. ("Applied"), Sperian Hearing Protection, LLC ("Sperian"), Honeywell, 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 Honeywell and such others, including public enforcers, with notice that alleged that Honeywell was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Products exposed users in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.4 No Admission**

Honeywell 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 Honeywell 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 Honeywell of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Honeywell. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Honeywell 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 August 5, 2016.

### **2. INJUNCTIVE RELIEF**

#### **2.1 Commitment to Reformulation of the Products**

Commencing on the Effective Date, and continuing thereafter, Honeywell shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" are Products that meets the standard set forth in Section 2.2 below.

#### **2.2 Reformulation Standard**

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

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

In settlement of all the claims referred to in this Settlement Agreement, Honeywell shall pay a total of \$1,000.00 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.

**3.1 Civil Penalty**

On or before the Effective Date, Honeywell 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. 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.** Honeywell 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.** Honeywell 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, Honeywell shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to Honeywell' attention, and negotiating a settlement. On or before the Effective Date, Honeywell shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$14,000.00 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 Honeywell, Applied, Sperian, and Downstream Customers and Entities**

Ferreiro acting on his own behalf, releases Honeywell, Applied, Sperian, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Honeywell, Applied and Sperian 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 chemical DINP that is contained in the Products, and was distributed, sold and/or offered for sale by Honeywell and Applied 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 Honeywell, Sperian, Applied 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 Honeywell, Applied 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.

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

Honeywell, 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 Honeywell, 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 Honeywell 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.

**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 Honeywell:

Jason Levin, Esquire  
Steptoe & Johnson LLP  
633 West Fifth Street, Suite 700  
Los Angeles, CA 90071  
T: 213-439-9455

For Ferreiro:

Evan J. Smith, Esquire.  
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: 7/22/16

Date: 7/26/16

By: Anthony Ferreiro  
Anthony Ferreiro

By: [Signature]  
Honeywell Safety Products USA, Inc.