

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Ferreiro and Popular Bath Products, Inc.

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

Popular Bath 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 Popular Bath has imported, distributed and/or sold in the State of California *Millennium Collection Soft Toilet Seats, UPC No. 738980783308*, (the "Product" or "Products") 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 March 14, 2016, Ferreiro served Ross Stores, Inc. t/a dd's Discounts ("Ross Stores"), Popular Bath, 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 Popular Bath and such others, including public enforcers, with notice that alleged that Popular Bath 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 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 No Admission


Popular Bath 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 Popular Bath 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 Popular Bath of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Popular Bath. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Popular Bath 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 June 1, 2016.

2. INJUNCTIVE RELIEF

2.1 Commencing on the Effective Date, and continuing thereafter, Popular Bath 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. Popular Bath and its downstream retailers shall have no obligation to label Product that entered the stream of commerce prior to the Effective Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in compliance with the standard set forth below in section 2.2.



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

2.3 Commencing on the Effective Date, Popular Bath shall, for all Product it sells or distributes and which is intended for sale in California and which is not a Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.3(a) 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. Popular Bath shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by Popular Bath 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, birth defects and reproductive harm.

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

(ii) Point of Sale Warnings. Alternatively, Popular Bath 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 Popular Bath 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, birth defects and reproductive harm.

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

3. **SETTLEMENT PAYMENT**

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

3.1.1 Popular Bath 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, Popular Bath shall pay \$12,000.00 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, Popular Bath shall issue one check to "Brodsky & Smith, LLC" for \$3,000.00 delivered to the address listed in Section 3.1.3 below. Thereafter, and for the ensuing three (3) months, Popular Bath 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) \$3,000.00 is due July 1, 2016;
- (b) \$3,000.00 is due August 1, 2016;
- (c) \$3,000.00 is due September 1, 2016.

Popular Bath shall be liable for penalty payment equal to \$500.00, 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, Popular Bath 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 Popular Bath, Ross Stores, and Downstream Customers and Entities**

Ferreiro acting on his own behalf, releases Popular Bath, Ross Stores, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Popular Bath and Ross Stores 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 DEHP that is contained in the Products, and was distributed, sold and/or offered for sale by Popular Bath and Ross Stores 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 Popular Bath, Ross Stores 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 of Popular Bath, Ross

Stores 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 Products.

4.2 Popular Bath's Release of Ferreiro

Popular Bath, 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 Popular Bath, 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 Popular Bath 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, Popular Bath 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 Popular Bath:

William A. Hall
Chief Operating Officer & Chief Financial Officer
Popular Bath Products, Inc.
808 Georgia Avenue
Brooklyn, NY 11207-7704

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.

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.

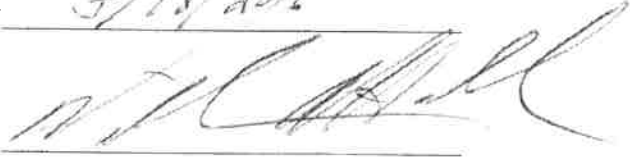
AGREED TO:

AGREED TO:

Date: _____

Date: 5/18/2016

By: _____
Anthony Ferreiro

By: 
William A. Hall, COO & CFO
Popular Bath Products, Inc.



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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: May, 18, 16

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____

William A. Hall, COO & CFO
Popular Bath Products, Inc.