

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“Agreement”) is entered into by and between Anthony Ferreiro (“Ferreiro”) and Cascade Designs, Inc. (“Cascade Designs”). (Collectively referred to as “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.

1.2 General Allegations

Cascade Designs 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”) and it causes to be distributed or sold to California customers bags and packs such as the Seal Line Boundary Pack, UPC No. 10097050 (referred to as “Product”). Ferreiro alleges that Cascade Designs has imported, distributed and/or sold in the State of California the Product without a requisite Proposition 65 warning that 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

On June 9, 2016 Ferreiro served Cascade Designs, Inc. t/a Seal Line, Adventure 16, Inc. (“Adventure 16”) 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 Cascade Designs and such others, including public enforcers, with

notice that alleged that Cascade Designs 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.

1.4 No Admission

Cascade Designs 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, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Cascade Designs of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Cascade Designs of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Cascade Designs. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Agreement.

Notwithstanding the allegations in the Notice, Cascade Designs maintains that it has not knowingly distributed, or caused to be distributed, Products for sale in California in violation of Proposition 65. Nothing in this settlement agreement, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Cascade Designs, or its owners, officers, directors, employees, parents, subsidiaries, employees, shareholders, directors, insurers, attorneys, successors and assigns, past and present, affiliated entities or corporations, or entities absorbed by merger or acquisition, or be offered or admitted as evidence in any administrative or judicial proceeding or

litigation in any court, agency, or forum. Furthermore, nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Agreement.

1.5 Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean the date that this Settlement Agreement is signed by the Parties.

3. INJUNCTIVE RELIEF

3.1 Cascade Designs' Commitment to Reformulate or Provide a Warning

Commencing ninety (90) days after the Effective Date, and continuing thereafter, Cascade Designs shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to Section 3.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 3.3. Cascade Designs and its downstream retailers shall have no obligation to label Products that were produced or entered the stream of commerce prior to the Effective Date or within ninety (90) days after 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 3.2.

3.2 "Reformulated Product" shall mean Product that contains less than or equal to 1,000 parts per million ("ppm") of DEHP in an accessible component when an appropriate sample is analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method or any other testing methodology selected by Cascade Designs that is acceptable to federal or state agencies for the purpose of determining DEHP content in a solid substance, and suitable for the material being tested. "Accessible component" as used in this Agreement means a component of

an intact Product that can be touched by a person during typical and reasonably foreseeable use.

3.3 Clear and Reasonable Warnings

Commencing ninety (90) days after the Effective Date, Cascade Designs shall, for all Products it sells or distributes and that is intended for sale in California and that is not a Reformulated Product, provide clear and reasonable warnings as set forth in subsection 3.3 below. In the event that the State of California or any federal agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth in this Agreement, Cascade Designs 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.

(a) **On-Product Warning.** Cascade Designs shall affix a warning to the packaging, labeling or directly on each Product that is not a Reformulated Product, that is intended by Cascade Designs to be sold in retail outlets in California conforming substantially to the requirements of the California Proposition 65 warning regulations as published in Title 27, Cal. Code of Regs., Article 6. A third party reseller or distributor selling Products in California may satisfy any warning obligations of that third party in a similar fashion.

(b) **Mail Order Catalog Warning.** In the event Cascade Designs sells Product from via mail order catalog directly to consumers located in California within ninety (90) days after the Effective Date that is not a Reformulated Product, Cascade Designs shall provide a warning for such Product sold via mail order catalog to such California residents with a warning conforming substantially to the requirements of

the California Proposition 65 warning regulations as published in Title 27, Cal. Code of Regs., Article 6. In the absence of any other requirements as published in the California Proposition 65 warning regulations as published in Title 27, Cal. Code of Regs., Article 6, the designated symbol must appear on the same page and in close proximity to the display and/or description of the Products. On each page where the designated symbol appears, Cascade Designs must provide a header or footer directing the consumer to the warning language and definition of the designated symbol. A third party reseller or distributor selling Products by mail-order catalog to consumers located in California may satisfy any warning obligations of that third party in a similar fashion.

(c) **Internet Sales Warning.** In the event that Cascade Designs sells Product after the Effective Date that is not a Reformulated Product via the Internet directly, and not through third Parties, Cascade Designs shall provide a warning to consumers who provide a California shipping address during the checkout process conforming substantially to the requirements of the California Proposition 65 warning regulations as published in Title 27, Cal. Code of Regs., Article 6. A third party reseller or distributor selling Products via the internet to consumers located in California may satisfy any warning obligations of that third party in a similar fashion.

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

In settlement of all the claims referred to in this Agreement, Cascade Designs 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 4.2 below. Cascade Designs shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not mailed within two business days of the date they are due.

4.1 Civil Penalty

On or before the Effective Date, Cascade Designs shall issue two separate checks for the 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.

4.2 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 4.1 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. Cascade Designs 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 4.2(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Cascade Designs 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 4.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

5. 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, Cascade Designs shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to Cascade Designs' attention, and negotiating a settlement in the public interest. On or before the Effective Date, Cascade Designs shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$13,000.00 for delivery to the following address:

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

6. RELEASE OF ALL CLAIMS

6.1 Release of Cascade Designs, A16 and all Downstream Releasees

This Agreement is a full and final resolution between Ferreiro on behalf of himself and his past and current agents, representatives, attorneys, successors and/or assignees, and in the public interest, on the one hand, and (a) Cascade Designs, A16 and their respective owners, officers, directors, insurers, attorneys, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, entities absorbed by merger or acquisition, their predecessor or successor entities and interests, and their heirs, assigns and successors in interest, past or present and (b) any other person or entity who may directly or indirectly use, provide, maintain, distribute or sell Product in the course of doing business, including but not limited to each of Cascade Designs' and A16's suppliers, customers, distributors, wholesalers, retailers, on the other hand, for all violations or claimed violations of Proposition 65 up through the Effective Date based on exposure to DEHP or the failure to warn about exposure to DEHP arising in connection with the Products produced, shipped and/or otherwise distributed on or before the Effective Date. ("Released Claims" and "Releasees"). Ferreiro warrants and represents that he is aware of no other Proposition 65 violations that could be asserted

against Cascade Designs or A16 as of the date he executes this Agreement. Cascade Designs' and its downstream releasees' compliance with this Agreement shall constitute compliance with Proposition 65 with respect to DEHP contained in Product.

6.2 Ferreiro's Personal Release

Ferreiro acting on his own behalf, waives, releases and forever discharges the same 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 in the Product. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Cascade Designs, A16 and/or other Releasees for failure to provide warnings for alleged exposures 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) 4 and 5 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 Cascade Designs, A16 and/or other 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 DEHP in the Product.

6.3 Cascade Designs' Release

Cascade Designs, 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 Product.

6.4 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 Cascade Designs, 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 6.1, 6.2 and 6.3 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 Cascade Designs each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

7. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the law of the State of California and apply within the State of California. In the event Proposition 65 or any of its implementing regulations, rules or policies are repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Products or the chemical named in the Notice specifically, then Cascade Designs shall provide written notice to Ferreiro of any asserted change in the law, and shall have no further obligations pursuant to this Agreement

with respect to, and to the extent that, any Product or any obligation under this Agreement is so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 Cascade Designs:

Paul S. Rosenlund
Duane Morris LLP
One Market Plaza, Spear Tower
Suite 2200
San Francisco, CA 94105-1127

For Ferreiro:

Evan J. Smith
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.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Ferreiro shall comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f) and all other provisions of law applicable to this Agreement.

12. MODIFICATION

This Agreement may be modified only by a written agreement of the Parties or by a court of competent jurisdiction upon a showing of good cause. Notwithstanding any other term or provision of this Agreement, if Ferreiro or any party represented by Ferreiro's counsel, or the California Attorney General, and another defendant in this or any other Proposition 65 proceeding ("Future Settling Party") agree to or otherwise become bound by injunctive relief terms in a court-approved Proposition 65 settlement or consent judgment relating to reformulation warnings for products of like characteristics and use to those of the Product, that are more favorable to the Future Settling Party than this Agreement otherwise provides to Cascade Designs or A16, then Cascade Designs or A16 may provide written notice to Ferreiro of any such more favorable term, and this Agreement shall be deemed amended with respect to that more favorable term.

13. 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: 5/3/17

Date: 5/24/17

By: Anthony Ferrero
Anthony Ferrero

By: E. J. Lo
Cascade Designs, Inc.