

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Ferreiro and BrassCraft Manufacturing Company

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and BrassCraft Manufacturing Company, a Masco Corporation-affiliated company ("BrassCraft"). Together, Ferreiro and BrassCraft are collectively referred to as the "Parties." Ferreiro is an individual who 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. BrassCraft 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 BrassCraft has imported, distributed, and/or sold in the State of California poly vinyl chloride ("PVC") sink stoppers (the "Products"), including but not limited to a PVC sink stopper marketed under the Peerless brand as UPC No. 071862124005, without requisite Proposition 65 warnings. Ferreiro further alleges that such warnings are required because the Products contain the chemical Di(2-ethylhexyl) phthalate ("DEHP"). On January 1, 1988, the State of California listed DEHP under Proposition 65 as a chemical known to the State to cause cancer. On October 24, 2003, the State of California further listed DEHP under Proposition 65 as a chemical known to cause reproductive harm.

1.3 Notice of Violation

On August 5, 2016, Ferreiro served Masco Corporation and several of its affiliated companies, as well as Wal-Mart Stores, Inc. and Walmart.com USA, LLC (collectively, "Wal-

Mart”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (“Notice”). The Notice provided Masco Corporation and its affiliated companies, including BrassCraft, and others, including public enforcers, with notice that alleged that sale of the Products was in violation of California Health & Safety Code § 25249.6 for failing to provide Proposition 65 warnings that they exposed consumers in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.¹

1.4 No Admission

BrassCraft denies the material factual and legal allegations contained in the Notice and avers that all of its 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 BrassCraft 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 BrassCraft of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of BrassCraft under this Settlement Agreement.

1.5 Effective Date

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

¹ Ferreiro did not serve BrassCraft with a Notice directly because he was unable to ascertain its name from the Products’ packaging, but Masco Corporation subsequently determined that the Products were distributed by BrassCraft and advised Ferreiro of this in the course of negotiating this Settlement Agreement.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing on the Effective Date, and continuing thereafter, BrassCraft shall only manufacture, import, or otherwise source for authorized sale in California, Reformulated Products as defined pursuant to Section 2.2 below or Products that are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. Products acquired by BrassCraft prior to the Effective Date are exempted from the foregoing obligation and may be offered for sale in California and sold through downstream distributors, dealers, and retailers, including Wal-Mart, as previously packaged and received by BrassCraft.

2.2 Reformulation Standard

“Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (“ppm”) each of DEHP, Di-n-butyl Phthalate (“DBP”), Butyl benzyl phthalate (“BBP”), Di-n-hexyl Phthalate (“DnHP”), di-isodecyl phthalate (“DIDP”), and Diisononyl Phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent testing methodologies authorized by government agencies for the detection of phthalate chemicals in consumer products.²

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, BrassCraft shall, for all Products it distributes and that are authorized by it for sale in California that are not Reformulated Products, affix a warning to the consumer-facing packaging or directly on each Product that states:

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

or

² Collectively, DEHP, BBP, DBP, DIDP, DINP, and DnHP are referred to herein as “Listed Phthalates.”

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

or

WARNING: This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Regardless of which warning statement is utilized, it 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 prior to purchase or use.

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

3.1 In settlement of all the claims referred to in this Settlement Agreement, BrassCraft shall pay a total of \$1,500.00 in civil penalties pursuant to California Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(l) 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. More specifically, within fourteen (14) business days of the Effective Date, BrassCraft shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$1,125.00 and with the memo line on the check indicating “Prop 65 Penalties-Ferreiro v. BrassCraft/DEHP” (BrassCraft may reference OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$375.00 (for which Ferreiro shall provide BrassCraft a completed IRS Form W-9 with a tax identification number within two days following the Effective Date, if not beforehand). These checks shall be delivered as follows:

- (i) The check to Ferreiro shall be delivered to the following address:

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

- (ii) The check for OEHHA shall be delivered to one of 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

OR

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

BrassCraft agrees to provide Ferreiro's counsel with a copy of its check payable to OEHHA upon request.

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 this Settlement Agreement had been mutually agreed upon. 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 Settlement Agreement. Under these legal principles, BrassCraft shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to BrassCraft's attention, and negotiating a settlement thereof. Within fourteen (14) business days of the Effective Date, BrassCraft shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$18,000.00 for delivery to the following address:

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

To facilitate timely payment, within two days following the Effective Date, if not beforehand, Brodsky & Smith LLC shall provide BrassCraft with a completed IRS Form W-9 with its tax identification number.

5. RELEASE OF ALL CLAIMS

5.1 Release of BrassCraft and Downstream Retailers and Entities

Ferreiro, acting on his own behalf, releases BrassCraft, its parent and affiliates (Masco Corporation and its affiliated companies including Masco Corporation of Indiana and Delta Faucet Company), and their respective directors, officers, agents, employees, and attorneys, and each entity to whom BrassCraft directly or indirectly distributes or sells, or for which it otherwise fulfills orders for, the Products, including, but not limited to, downstream distributors, wholesalers, customers, marketplace hosts and retailers (including, but not limited to, Wal-Mart) and their respective parents, affiliates, and subsidiaries, franchisees, cooperative members, and licensees (collectively, all of the preceding shall be referred to as the "Releasees"), from all claims for violations of Proposition 65 based on the failure to warn about alleged exposures to Listed

Phthalates in the Products as acquired by BrassCraft prior to the Effective Date. As between Ferreiro and BrassCraft and the Releasees, compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 relative to Listed Phthalates 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 BrassCraft or Masco Corporation and its affiliated companies of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising up to the Effective Date, whether based on Proposition 65 or otherwise. In this regard, Ferreiro acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides 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 is, in this regard, therefore expressly waiving and relinquishing any and all rights and benefits that he may have under, or that may be conferred on him by the provisions of, California Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

5.2 BrassCraft's Release of Ferreiro

BrassCraft, 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.

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 DEHP or the Products, BrassCraft 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 Products are 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 BrassCraft:

Scott Halpert
Senior Corporate Counsel
Masco Corporation
21001 Van Born Rd.
Taylor, MI 48180

With a copy to:

Robert Falk
RFalk@mofo.com
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

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.

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 in this Settlement Agreement.


AGREED TO:

Date: _____

By: _____
Anthony Ferreiro

AGREED TO:

Date: January 4, 2017

By: 
BrassCraft Manufacturing Company

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 in this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 12/22/2016

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
BrassCraft Manufacturing Company