

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Anthony Ferreiro ("Ferreiro") and Garbotex Development [Mfg.] Co. ("Garbotex"). Together, Ferreiro and Garbotex 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.

Ferreiro contends that Garbotex is 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 Garbotex has distributed for sale in the State of California certain *Rugged Wear* work gloves, including but not limited to, UPC No. 66012542 (the "Products"), without requisite Proposition 65 warnings. Ferreiro further alleges that such warnings are required because the Products contain the chemical Di(2-ethylhexyl) phthalate (DEHP) which is a listed chemical under Proposition 65.

1.3 Notice of Violation

On November 8, 2016, Ferreiro served Garbotex 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 Garbotex and the requisite public enforcers with notice that alleged that Garbotex was in violation of California Health & Safety Code § 25249.6, for failing to warn California customers that the Products exposed users in California to DEHP. To

the best of the Parties' knowledge, no public enforcer is diligently prosecuting the allegations set forth in the Notice.

1.4 No Admission

Garbotex denies the material factual and legal allegations contained in the Notice and maintains that, all products it has sold and/or distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Garbotex 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 Garbotex of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Garbotex. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Garbotex maintains that it has not knowingly or intentionally manufactured, caused to be manufactured, or distributed Products for sale in California in violation of Proposition 65.

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.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing on the Effective Date, and continuing thereafter, Garbotex shall only distribute 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 manufactured or distributed by Garbotex prior to the Effective Date are exempted from the foregoing obligation and may be offered for sale in California and

sold through by downstream distributors, dealers, and retailers, including but not limited to Menards, with or without Proposition 65 warnings as previously packaged and received.

2.2 Reformulation Standard

“Reformulated Products” shall meet the standards outlined in this section. “Reformulated Product(s)” are defined as Products that contain less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent testing methodologies utilized by government agencies for the detection of phthalate chemicals in consumer products.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Garbotex shall, for all Products it distributes for authorized sale in California that are not Reformulated Products, provide a warning on the Product, its packaging, or its labeling that states:

[California Proposition 65] **WARNING:** This product contains [a] chemical[s] known to the State of California to cause cancer, and birth defects or other reproductive harm.

Or

[California Proposition 65] **WARNING:** This product contains phthalate chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Or

[California Proposition 65] **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.

The last warning statement shown above shall be preceded by a symbol consisting of a yellow equilateral triangle outlined in bolded black and into which a bolded black exclamation point is inserted. (If yellow is not otherwise used on the Product's packaging, the triangle need not be yellow.)

The language in brackets is optional. The warning shall be 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.

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

In settlement of all claims referred to in the Notice and this Settlement Agreement, Garbotex shall pay a total of \$1,000.00 in civil penalties pursuant to California Health & Safety Code § 25249.7(b) in accordance with this Section. After a thorough investigation, Ferreiro agrees that this civil penalty payment satisfies the statutory criteria under Proposition 65. This penalty payment shall 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. Within ten (10) days of the Effective Date, Garbotex or its counsel shall issue two separate checks for the civil penalty payment to: (a) "OEHHA" in the amount of \$750 and with the memo line on the check indicating "Prop 65 Penalties—Ferreiro v. Garbotex/DEHP" (Garbotex 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 \$250 (for which Ferreiro shall provide Garbotex 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:

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

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

- (b) 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

Garbotex further agrees to provide Ferreiro's counsel with a copy of its check payable to OEHHA along with its penalty payment to Ferreiro.

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 to be paid to Ferreiro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in connection with the claims alleged in the Notice through the mutual execution

of this agreement, including but not limited to any and all investigative, expert and legal fees and expenses incurred by Ferreiro and his counsel as a result of investigating and bringing this matter to Garbotex's attention, and negotiating this settlement in the public interest. Accordingly, within ten (10) days of the Effective Date, Garbotex shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$14,000.00 for all of the work and attorney's fees described above 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 Garbotex with a completed IRS Form W-9 with its tax identification number.

5. RELEASE OF ALL CLAIMS

5.1 Release of Garbotex and Downstream Retailers and Entities

Ferreiro, acting on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby releases Garbotex and its parents, subsidiaries, affiliated entities directors, officers, agents, employees, licensors, licensees, attorneys, and each entity to whom Garbotex directly or indirectly distributes or sells the Products, including, but not limited to Menards, and any other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, the "Releasees"), from all claims for alleged or actual violations of Proposition 65 for their alleged failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and /or offered for sale by Garbotex through the Effective Date. This settlement is a full, final and binding resolution of all claims that were or could have been

asserted against Garbotex, and/or the Releasees in the Notice. Ferreiro agrees that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to DEHP in the Products.

In further consideration of the promises and agreements herein contained, Ferreiro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees, arising from Products manufactured, sold and/or distributed for sale prior to the Effective Date.

In this regard, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, further provides a general release herein which shall be effective as a full and final accord and satisfaction as a bar to any and all claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, as such claims relate to the Products manufactured, distributed and/or sold prior to the Effective Date.

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, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be conferred on him by the provisions of Civil Code section 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 herein.

5.2 Garbotex Releases Ferreiro

Garbotex, 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.

Garbotex further acknowledges that it is familiar with Civil Code section 1542, 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.

Garbotex, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters herein.

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. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

8. **MUTUAL DRAFTING**

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

9. **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, Garbotex 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.

10. 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 Garbotex:

J. Robert Maxwell
ROGERS JOSEPH O'DONNELL | a Professional Law Corporation
311 California Street, 10th Fl.
San Francisco, CA 94104

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.

11. 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.

12. 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).

13. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties. Any Party seeking to modify this Settlement Agreement or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify or enforce the Settlement Agreement.

14. **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: 15th January 2017

By: _____

By: 

Anthony Ferreiro

Garbotex Development [Mfg.] Co. *Wing Kwok*



14. 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: 1/18/17

Date: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
Garbotex Development [Mfg.] Co.