

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Trademark Global, LLC (“Trademark”). Together, Ferreiro and Trademark are collectively referred to as the “Parties.” Ferreiro is an individual that resides in the State of California, and seeks to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ferreiro alleges that Trademark 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 § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Ferreiro alleges that Trademark sold and/or distributed in California certain greenhouses allegedly containing di(2-ethylhexyl) phthalate (“DEHP”) without first providing California consumers with a clear and reasonable warning pursuant to Proposition 65. DEHP is a chemical listed by the State of California under Proposition 65.

1.3 Product Description. The products covered by this Settlement Agreement are all Trademark greenhouses, including but not limited to the Trademark Pure Garden Mini Greenhouse Product Code HC-4201 X000ZH3FLP, that have been imported, distributed, offered for sale and/or sold in California by Trademark Global or any of its retail customers (the “Products”).

1.4 Notice of Violation. On January 8, 2019, Ferreiro served Trademark, Bed Bath & Beyond Corporation, Inc. (“Bed Bath & Beyond”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Trademark and such others, including public enforcers, with notice that alleged that Trademark violated Proposition 65 by failing to warn California consumers that use of the Products may expose them to DEHP. The Parties are not aware of any public enforcer diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission. Trademark enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, and to avoid prolonged and costly litigation. Trademark denies the material factual and legal allegations contained

in the Notice, maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and 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 Trademark of any fact, finding, issue of law, or violation of law, including but not limited to any fact or conclusion of law suggesting or demonstrating that Trademark has sold any products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Trademark Global of any of the above, such being specifically denied by Trademark. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Trademark may have in this or any other future legal proceeding, including Trademark's position that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by Trademark solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Trademark directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) Reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Products.

2.2 Reformulation Standard. "Reformulated Products" shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million ("ppm")) of DEHP in their accessible

components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by federal or state government agencies or internationally accredited laboratories for the purpose of determining the phthalate content in a solid substance.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable warning as set forth in this §2.3 and § 2.4 below must be provided for all Products that Trademark manufacturers, imports, distributes, sells, or offers for sale in California that are not Reformulated Products. There shall be no obligation for Trademark or its downstream customers to provide a warning for Products that were manufactured and/or which entered the stream of commerce prior to the Effective Date. The warning provided shall conform to one of the two warning alternatives set forth below:

⚠ [California Proposition 65] **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (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.

Or:

⚠ [California Proposition 65] **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets is optional.

2.4 The warning provided pursuant to § 2.3 must contain the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the packaging or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging, container, or label, or on a placard, shelf tag, sign or electronic device or automatic process. The warning must be displayed with such conspicuousness, as compared with other words, statements, or designs, as to render it likely to be read and understood by an ordinary individual under customary conditions of

purchase or use. A warning may be contained in the same section of the packaging, container, label, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Trademark sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) "[California Proposition 65] **WARNING**" (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the web same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Compliance with Warning Regulations. The parties agree that Trademark Global shall be deemed to be in compliance with this Settlement Agreement by either selling reformulated Products in California, or by adhering to §§ 2.3 and 2.4 of this Settlement Agreement, or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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

In settlement of all claims for monetary relief of any kind related to the Notice or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 4 below), Trademark Global shall pay \$1,500 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Ferreiro. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.1 Civil Penalty. Within ten (10) days of the Effective Date, Trademark shall send two separate checks for the Civil Penalty payment to: (a) "OEHHA" in the amount of \$1,125; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$375. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 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 § 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 § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at 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

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.** Trademark agrees to provide Ferreiro's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to Ferreiro, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Trademark or its agents agree to provide a completed IRS 1099 for its payments to, and Ferreiro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Anthony Ferreiro" whose address and tax identification number shall be provided within five (5) days 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 reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of attorney's fees and expenses to be reimbursed to them. The Parties thereafter 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, Trademark shall reimburse Ferreiro's counsel the total amount of \$16,000 for any and all of Ferreiro's attorney's fees and expenses, including but not limited to all investigative, expert, and testing expenses, incurred as a result of investigating and bringing this matter to Trademark's attention, and negotiating this settlement in the public interest. Within ten (10) days of the Effective Date, Trademark shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$16,000 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Trademark Global and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Trademark, of any actual or alleged violation of Proposition 65 that was or could have been asserted by Ferreiro or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasors") against Trademark for failure to provide warnings for alleged DEHP contained in the Products. Releasors hereby expressly release any such claims against Trademark and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Trademark Global directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, and licensees, including but not limited to Bed Bath & Beyond, and its respective subsidiaries, affiliates, parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), and releases them from all claims for actual or alleged violations of Proposition 65 through the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, 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 obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged DEHP contained in the Products.

5.2 Trademark Global's Release of Ferreiro. Trademark, 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 § 1542. It is possible that other claims not known to the Parties including those related to the Notice and/or the Products manufactured through the Effective Date will develop or be discovered. Ferreiro on behalf of himself and the Releasors only, on one hand, and Trademark, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims the Releasors may have against the Releasees, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Ferreiro and the Releasors expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them 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 they may lawfully waive such rights or benefits pertaining to the released matters.

5.4 Deemed Compliance with Proposition 65. Trademark's compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to alleged or actual exposure to DEHP from use of the Products.

5.5. Public Benefit. It is Trademark's understanding that the commitments it has agreed to herein, and actions to be taken by Trademark under this Settlement Agreement, confer a significant benefit to the general public as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Trademark that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Trademark's

alleged failure to provide a warning concerning actual or alleged exposure to DEHP prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Trademark is in material compliance with this Settlement Agreement.

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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

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 or limited by reason of law generally, or as to the Products, Trademark 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 otherwise 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 Trademark:

Jeff Marshall, COO
Trademark Global, LLC
7951 West Erie Ave.
Lorain, OH 44053

With Copy to:

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

Either 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 § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties. Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement.

12. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. 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.

13. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed merged herein. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

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: 7/31/19

Date: 7/29/19

By: Anthony Ferrero
Anthony Ferrero

By: Anthony J. Mitchell
Trademark Global, LLC