

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Premier Specialty Brands, LLC (“Premier”). Together, Ferreiro and Premier are collectively referred to as the “Parties,” and sometimes individually as a “Party.” Ferreiro is an individual who resides in the State of California, who 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 alleges that Premier 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 Premier manufactured, distributed, and/or sold in California certain Kamado Joe and/or other fire starters that emit carbon dioxide without first providing California consumers with a Proposition 65 warning. Carbon monoxide is listed pursuant to Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are all fire starters, including but not limited to Kamado Joe fire starters that have been manufactured, imported, distributed, offered for sale and/or sold in California by Premier (the “Products”).

1.4 Notice of Violation. On January 12, 2021, Ferreiro served Premier, 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 Premier and such others, including public enforcers, with notice that alleged that Premier failed to warn California consumers that use of the Products may expose them to carbon monoxide. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Premier 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. Premier 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 Premier of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusions of law suggesting or demonstrating that Premier 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 Premier of any or the above, such being specifically denied by Premier. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Premier may have in this or any other future legal proceedings. This Settlement Agreement is the product of negotiation and compromise and is accepted by Premier 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 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for all Products that Premier manufacturers, imports, distributes, sells, and/or offers for sale in California. There shall be no obligation for Premier to provide a warning hereunder for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.1(a) or (b), respectively:

(a) **Warning.** The "Warning" shall consist of the statement:

⚠ [California Prop 65] **WARNING:** This product can expose you to chemicals including carbon monoxide and other combustion byproducts known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

⚠ (b) **Alternative Warning:** Premier may, but is not required to, use the alternative short-form warning as set forth in this § 2.1(b) ("**Alternative Warning**") as follows:


 [California Prop 65] **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets is optional.¹

2.2 The warning provided pursuant to § 2.1 must print 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 sign 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 Product itself, or on the Product’s packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process. The warning shall be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, 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 Premier 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 Prop 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 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

¹ If Premier has reason to believe that other chemicals listed under Proposition 65 as carcinogens may be contained or emitted by the Products, Premier may use either of the following two warnings in place of those set forth in Section 2.1:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including carbon monoxide and other combustion byproducts known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or

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

Language in brackets optional.

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.

2.3 Compliance with Warning Regulations. The Parties agree that Premier shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 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.

2.4 Public Benefit. It is Premier's understanding that the commitments it has agreed to herein, and actions to be taken by Premier 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 Premier 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 Premier's alleged failure to provide a warning concerning actual or alleged exposure to carbon monoxide 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 Premier is in material compliance with this Settlement Agreement.

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), Premier shall pay \$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 Ferreira. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.1 Civil Penalty. Within ten (10) business days of the Effective Date, Premier shall issue two separate checks for the Civil Penalty payment to: (a) "OEHHA" in the amount of \$375; and to (b)

“Brodsky Smith in Trust for Ferreiro” in the amount of \$125. 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
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (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 OEHHHA. Premier agrees to provide Ferreiro’s counsel with a copy of the check payable to OEHHHA, simultaneous with its penalty payments to Ferreiro, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

(c) Tax Documentation. Premier agrees 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” (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 agreement. Under these legal principles, Premier shall reimburse Ferreiro’s counsel the total amount of \$12,000 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 Premier’s attention, and negotiating this settlement in the public interest. Within ten (10) days of the Effective Date, Premier shall issue a check payable to “Brodsky & Smith, LLC” in the amount of \$12,000 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Premier and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Premier, of any 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 (“Releasers”) for any actual or alleged failure to provide warnings for alleged exposures to carbon monoxide from use of the Products, and Releasers hereby release any such claims against Premier

and its suppliers, parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Premier directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to True Value, Scheels All Sports, Inc.), and all of their respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensors and licensees (collectively, the “Releasees”), from all claims for actual or alleged violations of Proposition 65 for Products manufactured, distributed, and/or sold through the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 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, and 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 the alleged or actual exposure to the chemical carbon monoxide from use of the Products.

5.2 Premier’s Release of Ferreiro. Premier, 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 arising out of the facts alleged in the Notice and/or relating to other products manufactured by or for Premier and its affiliates through the Effective Date will develop or be discovered. Ferreiro on behalf of himself, his past and current agents, representatives, attorneys,

successors and/or assignees only, on the one hand, and Premier and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims against the Releasees for all such products manufactured by or for Premier and its affiliates up through the Effective Date, 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 Premier 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. The Parties agree that compliance by Premier with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposure to carbon monoxide from use of 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 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 laws 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, Premier 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, a Product is 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 Premier:

General Counsel
Premier Specialty Brands, LLC
5367 New Peachtree Road, Suite 150
Chamblee, GA 30341

With copy too:

J. Robert Maxwell
ROGERS JOSEPH O'DONNEL
311 California Street, 10th Fl.
San Francisco, CA 94104

For Ferreiro:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
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.

12. ENFORCEMENT

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.

13. 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.

14. 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 to have been merged within it. 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.

15. 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.

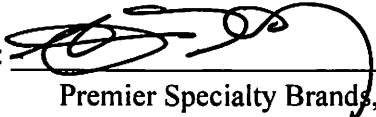
AGREED TO:

AGREED TO:

Date: _____

Date: July 27, 2022

By: _____
Anthony Ferreiro

By: 
Premier Specialty Brands, LLC

15. **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:

7/29/22

Date:

July 27, 2022

By:

Anthony Ferreira
Anthony Ferreira

By:

Premier Specialty Brands, LLC