

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Guadalupe Cuevas & Plasticolor Molded Products, Inc.**

This Settlement Agreement is entered into by and between Guadalupe Cuevas ("Cuevas") and Plasticolor Molded Products, Inc. ("Plasticolor"). Together, Cuevas and Plasticolor are collectively referred to as the "Parties." Cuevas 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.

Plasticolor employs ten or more persons and 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**

Cuevas alleges that Plasticolor has imported, distributed and/or sold in the State of California the Sideless Seat Cover (Chevrolet Emblem), GM Official Licensed Product (#PM1199), UPC# 0 81134 18602 0, Item# 008602 (the "Product") without requisite Proposition 65 warning that the Product contains the chemical Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 **Notice of Violation(s)**

On December 2, 2014 Cuevas served Plasticolor, AutoZone, Inc., AutoZone Parts, Inc., and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*" Cuevas amended the Notice and, on June 10, 2015 served Plasticolor, AutoZone, Inc., AutoZone Parts, Inc., and various public enforcement agencies with the amended "Notice of Violation" (the "Notice"). The Notice provided Plasticolor and such others, including public enforcers, with notice that alleged that Plasticolor was in violation of California Health & Safety

Code § 25249.6, for failing to warn consumers and customers that the Product exposed users in California to phthalates. No public enforcer has diligently prosecuted the allegations set forth in these Notices.

1.4 No Admission

Plasticolor 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, has been and is in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Plasticolor 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 Plasticolor of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Plasticolor. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Plasticolor maintains that it has not knowingly manufactured, or caused to be manufactured, the Product for sale in California which is in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 8, 2015.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Product

Commencing on the Effective Date, and continuing thereafter, Plasticolor shall only ship, sell, or offer for sale in California, reformulated Product pursuant to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulation Standard

“Reformulated Product” shall mean Product that contains less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Plasticolor shall, for all Product it sells or distributes and which is intended for sale in California that is not a Reformulated Product, or which Plasticolor has reason to believe will be shipped or sold in California, provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) below. The warning 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales

(i) Product Labeling. Plasticolor shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by Plasticolor or any person selling the Product that states:

WARNING:

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

(ii) Point of Sale Warnings. Alternatively, Plasticolor may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Product. Such instruction sent to Plasticolor customers shall be sent by certified mail, return receipt requested.

WARNING:

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

(b) **Internet Sales Warning.** In the event Plasticolor directly sells Product via the internet directly to consumers located in California after six months from the Effective Date and that is not a Reformulated Product, Plasticolor shall provide a warning for such Product sold via the internet to such California residents. A warning that is given on the internet shall be in the same type size or larger than the Product description text and shall be given in conjunction with the direct sale of the Product. The warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for the Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning shall be provided:

WARNING:

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

2.4 Exception to Warning Requirement

The warning requirements set forth in Section 2.3 shall not apply to any Reformulated Product.

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

In settlement of all the claims referred to in this Settlement Agreement, Plasticolor shall pay a total of \$1,000 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 Cuevas. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. Plasticolor shall be liable for payment of interest, at a rate of

10% simple interest, for all amounts due and owing that are not received within two business days of the date they are due.

3.1 Initial Civil Penalty

On or before the Effective Date, Plasticolor shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Cuevas" in the amount of \$250.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Cuevas, 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 3.1 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.** Plasticolor agrees to provide Cuevas's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Cuevas, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Plasticolor agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(i) "Guadalupe Cuevas" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(ii) "Brotsky & 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 Cuevas 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. Cuevas 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 Cuevas 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, Plasticolor shall reimburse Cuevas's counsel for fees and costs incurred as a result of investigating and bringing this matter to Plasticolor's attention, and negotiating a settlement in the public interest. On or before the Effective

Date, Plasticolor shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$7,750.00 for delivery to the following address:

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

5. RELEASE OF ALL CLAIMS

5.1 Release of Plasticolor, AutoZone, Inc., AutoZone Parts, Inc., and Downstream Customers and Entities

Cuevas acting on his own behalf, and in the public interest, releases Plasticolor, AutoZone, Inc., AutoZone Parts, Inc., and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Plasticolor directly or indirectly distributes or sells the Product, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "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 that is contained in the Product, and were distributed, sold and/or offered for sale by Plasticolor to customers and consumers in the State of California.

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, Cuevas, on behalf of herself, 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 of Plasticolor or the 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 the chemical DEHP in the Product.

5.2 Plasticolor's Release of Cuevas

Plasticolor, on behalf of itself, AutoZone, Inc., AutoZone Parts, Inc., its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Cuevas, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Cuevas 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 the Product, Plasticolor shall provide written notice to Cuevas 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 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 Plasticolor:

Anthony Cortez, Esquire
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

For Cuevas:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
877-534-2590

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)

Cuevas 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 of this Settlement Agreement.

AGREED TO:

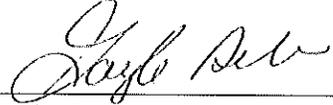
Date: _____

By: _____

Guadalupe Cuevas

AGREED TO:

Date: 7/8/2015

By: 

Plasticolor Molded Products, Inc.

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AGREED TO:

AGREED TO:

Date: 7-9-15

Date: _____

By: *Guadalupe Cuevas*
Guadalupe Cuevas

By: _____
Plasticolor Molded Products, Inc.