

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Gabriel Espinosa & Jones Stephens, Corp.**

This Settlement Agreement is entered into by and between Gabriel Espinosa ("Espinosa") and Jones Stephens, Corp. ("Jones Stephens"). Together, Espinosa and Jones Stephens are collectively referred to as the "Parties." Espinosa 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.

Jones Stephens 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**

Espinosa alleges that Jones Stephens has imported, distributed and/or sold in the State of California Toilet Seats containing Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate (DINP) without the requisite Proposition 65 warning.

On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause developmental male reproductive toxicity.

On December 20, 2013, the State of California listed DINP as a chemical known to cause cancer.

#### 1.3 **Product Description**

The products covered by this Settlement Agreement are Toilet Seats imported, distributed, and/or sold in California by Jones Stephens containing DEHP and/or DINP, including without limitation *Comfort Seats Deluxe Soft Seat, Round Toilet Seat*; Color: bone; UPC#8 17103 003957; C3B5R2-01 (referred to hereafter as "Product" or "Products").

#### **1.4 Notice of Violation**

On September 21, 2015 Espinosa served Jones Stephens, Anawalt Lumber & Materials Co. (“Anawalt”) and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*” (the “Notice”). The Notice provided Jones Stephens and such others, including public enforcers, with notice that alleged that Jones Stephens was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Product exposed users in California to DEHP and DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

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

#### **1.6 Effective Date**

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

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation of the Products**

Commencing on February 15, 2016, and continuing thereafter, Jones Stephens agrees to manufacture or purchase for sale in California only (a) reformulated Products pursuant to Section 2.2, or (b) Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, a “Reformulated Product” is Product that meets the standard set forth in Section 2.2 below.

### **2.2 Reformulation Standard**

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

### **2.3 Clear and Reasonable Warnings**

With regard to any warning required hereunder, Jones Stephens shall provide the warning affixed to the packaging or labeling with the following statement:

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

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 is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Jones Stephens shall be entitled to

use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Jones Stephens shall pay a total of \$1,500 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 Espinosa. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. Jones Stephens 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 the payment times set forth below.

**3.1 Civil Penalty**

Within ten (10) business days of the Effective Date, Jones Stephens shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,125; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$375. 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 Espinosa, 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.** Jones Stephens agrees to provide Espinosa's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Espinosa, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

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

(i) "Gabriel Espinosa" 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 Espinosa and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them, such resolution of the material terms subject to resolution of the fee and cost issue. The Parties thereafter reached an accord on the compensation due to Espinosa 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, Jones Stephens shall reimburse Espinosa's counsel for fees and costs incurred as a result of investigating and bringing this matter to Jones Stephens' attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Jones Stephens shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$15,000 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 Jones Stephens, and Downstream Customers and Entities**

This Settlement Agreement is a full, final and binding resolution between Espinosa, acting on his own behalf, and Jones Stephens, of any violation of Proposition 65 that was or could have been asserted by Espinosa or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP and DINP contained in the Products, and Releasers hereby release any such claims against Jones Stephens and its parents, subsidiaries, affiliated entities, shareholders, marketplaces directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Jones Stephens

directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including without limitation Anawalt, and their respective parents, subsidiaries, affiliated entities, shareholders, marketplaces directors, officers, agents, employees, successors and assignees, and attorneys (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 chemicals DEHP and/or DINP that are contained in the Products, and were distributed, sold and/or offered for sale by Jones Stephens 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 Sections 3 and 4 above, Espinosa, 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 Jones Stephens and/or any of 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 chemicals DEHP and/or DINP in the Products.

## **5.2 Jones Stephens’ Release of Espinosa**

Jones Stephens, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinosa, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Espinosa 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 Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Espinosa on behalf of himself only, on one hand, and Jones Stephens, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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.**

Espinosa and Jones Stephens each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

### **5.4 Deemed Compliance with Proposition 65**

Compliance by Jones Stephens with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP and DINP in the Products.

### **5.5. Public Benefit**

It is Jones Stephens' understanding that the commitments it has agreed to herein, and actions to be taken by Jones Stephens under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section

1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of Jones Stephens that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Jones Stephens' failure to provide a warning concerning exposure to DEHP and/or DINP with respect to the Products it has distributed, sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, such distribution or sale within the scope of this Agreement, 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 Jones Stephens 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, Jones Stephens shall provide written notice to Espinosa 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 Jones Stephens:

Joshua A. Bloom  
Meyers Nave  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607  
T: (510) 808-2000

For Espinosa:

Evan J. Smith  
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)**

Espinosa 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.

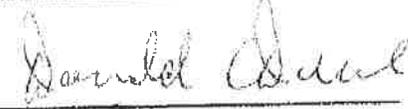
**AGREED TO:**

**AGREED TO:**

Date: 1/8/16

Date: 1/8/2016

By:   
Gabriel Espinosa

By:   
Jones Stephens