

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Gabriel Espinosa & H.D. Hudson Manufacturing Company**

This Settlement Agreement is entered into by and between Gabriel Espinosa (“Espinosa”) and H.D. Hudson Manufacturing Company (“Hudson”). Together, Espinosa and Hudson 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. Hudson 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 Hudson has imported, distributed and/or sold in the State of California a Hudson Deck Sprayer bearing the UPC No. 0 2992567882 (the “Product”) without requisite Proposition 65 warning and that the Product has component parts which contain the chemicals Di-isodecyl phthalate (DIDP) and Diisononyl phthalate (DINP).

On April 20, 2007, the State of California listed DIDP as a chemical known to the state to cause reproductive toxicity.

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

1.3 **Notice of Violation**

On September 3, 2015 Espinosa served Anawalt Lumber Co., Inc. (“Anawalt”), Hudson, 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 Hudson and such others, including public enforcers, with notice that alleged that Hudson 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 DIDP and DINP. As of the date of the execution of this agreement and to the best of the knowledge of the parties, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 No Admission

Hudson 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 Hudson 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 Hudson of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Hudson. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Hudson 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 February 15, 2016.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Products

Commencing on the Effective Date, and continuing thereafter, Hudson 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. 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 less than or equal to 1,000 parts per million (“ppm”) of each of DINP and DIDP 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, Hudson shall provide a clear and reasonable warning for any Product that it ships, sells, or offers to ship or sell in California that is not a Reformulated Product. Hudson shall provide the warning affixed to the packaging or labeling with either of the following statements:

“CALIFORNIA PROPOSITION 65 WARNING:

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

or

“WARNING: This product contains one or more chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm. Wash hands after handling.”

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, Hudson 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, Hudson shall pay a total of \$1,900.00 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. Hudson 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 Effective Date.

3.1 Civil Penalty

Within ten (10) days of the Effective Date, Hudson shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,425.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$475.00. 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 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. Hudson 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. Hudson 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 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 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. Espinosa 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 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, Hudson shall reimburse Espinosa's counsel for fees and costs incurred as a result of investigating and bringing this matter to Hudson's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Hudson shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$17,100.00 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 Hudson and Downstream Customers and Entities

Espinosa acting on his own behalf, releases Hudson, and its respective parents, subsidiaries, affiliated entities, marketplaces directors, officers, agents, employees, attorneys and each entity to whom Hudson directly or indirectly distributes or sells the Products, 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 chemicals DIDP and/or DINP that are contained in the Product, and was distributed, sold and/or offered for sale by Hudson to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Hudson,

and/or the Releasees for failure to provide warnings for alleged exposures to DIDP and DINP contained in the Products.

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, Espinosa, on behalf of himself, 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 against Hudson 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 DIDP and/or DINP in the Products.

5.2 Hudson's Release of Espinosa

Hudson, 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 Product.

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 Hudson, 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 Hudson each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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 Products, Hudson 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 Hudson:

Rey S. Yang
Yang Professional Law Corporation

80 South Lake Avenue, Suite 820
Pasadena, CA 91101
T: 626.921.4301

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:

Date: _____

By: _____

Gabriel Espinosa

AGREED TO:

Date: 2/17/14

By: Robert C. Hudson, III

Hudson

80 South Lake Avenue, Suite 820
Pasadena, CA 91101
T: 626.921.4301

For Espinosa:

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

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11. **MODIFICATION**

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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: 2/26/15

By: 
Gabriel Espinosa

AGREED TO:

Date: _____

By: _____
Hudson