

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Gabriel Espinosa (“Espinosa”), Donny Macias (“Macias”) and Eppco Enterprises, Inc. (“Eppco”). Together, Espinosa, Macias and Eppco are collectively referred to as the “Parties.” Espinosa and Macias are individuals that reside in the State of California, and that seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Eppco 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 Eppco has imported, distributed, sold and/or offered for sale in the State of California drawer liners containing Di(2-ethylhexyl) phthalate (DEHP) without the requisite Proposition 65 warning.

Macias alleges that Eppco has imported, distributed, sold and/or offered for sale in the State of California fender covers containing DEHP without the requisite Proposition 65 warning.

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

1.3 Product Description

The products covered by this Settlement Agreement are (a) Drawer Liners, including but not limited to *UPC No. 029458018511*; and (b) Fender Covers, including but not limited to *UPC No. 029458054359* (collectively, the “Products”) that have been manufactured, imported, distributed, sold and/or offered for sale in California by Eppco.

1.4 Notice of Violation(s)

On April 27, 2016, Espinosa served Eppco, O'Reilly Automotive, Inc. ("O'Reilly Automotive"), and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "April Notice"). The April Notice provided Eppco and such others, including public enforcers, with notice that alleged that Eppco was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that Eppco *Premium Drawer Liners* exposed users in California to DEHP.

On May 31, 2016, Macias served Sears Brands LLC ("Sears"), Ace Hardware Corporation ("Ace"), and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "May Notice"). The May Notice provided Eppco and such others, including public enforcers, with notice that alleged that Eppco was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that *Craftsman Fender Covers* manufactured and distributed for sale in California by Eppco exposed users in California to DEHP.

No public enforcer has diligently prosecuted the allegations set forth in the Notices¹.

1.5 No Admission

Eppco denies the material factual and legal allegations contained in the Notices 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 Eppco 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 Eppco of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Eppco. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Eppco maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

¹ The April Notice and the May Notice are collectively referred to in this Settlement Agreement as, the "Notices".

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 ninety (90) days after the Effective Date, and continuing thereafter, Eppco agrees to manufacture, distribute, and/or offer 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. Eppco and its downstream retailers shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date. For purposes of this Settlement Agreement, a "Reformulated Product" are Products that meet the standard set forth in Section 2.2 below.

2.2 Reformulation Standard

"Reformulated Products" shall mean Products that contain in any accessible component 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 ninety (90) days after the Effective Date, Eppco shall provide a clear and reasonable warning for any Products that it manufactures, distributes, and/or offers for sale in California that is not a Reformulated Product. Eppco shall provide the warning affixed to the packaging or labeling using language similar to the warning(s) below:

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

Or

WARNING: This product can expose you to chemicals, including 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.

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, Eppco 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, Eppco shall pay a total of two thousand dollars (\$2,000.00) 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 Macias and Espinosa. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. Eppco 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, Eppco shall issue three separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$250.00; and (c) (b) "Brodsky & Smith, LLC in Trust for Macias" 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 Macias and 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. Eppco agrees to provide Macias and 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. Eppco 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) "Donny Macias" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(iii) “Brodsky & Smith, LLC” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iv) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Espinosa, Macias and their 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. The Parties thereafter reached an accord on the compensation due to Espinosa, Macias and their 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, Eppco shall reimburse Maicas and Espinosa’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Eppco attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Eppco shall issue a check payable to “Brodsky & Smith, LLC” in the amount of \$23,000.00 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 Eppco and Downstream Customers and Entities

This Settlement Agreement is a full, final and binding resolution between Macias and Espinosa, each acting on his own behalf, and Eppco, of any violation of Proposition 65 that was or could have been asserted by them or on behalf of their past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby release any such claims against Eppco and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Eppco directly or indirectly distributes or sells the Products, including but not limited to, O’Reilly Automotive and its

affiliated companies, Sears and its affiliated companies, Sears Holdings Management Corporation and its affiliated companies, Ace and its affiliated companies, downstream distributors, wholesalers, customers, retailers (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 Products, and were manufactured, distributed, sold and/or offered for sale by Eppco 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 and Macias, each on behalf of themselves, their 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, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Products.

5.2 Eppco's Release of Espinosa and Macias

Eppco, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinosa, Macias, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by them and/or their 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 and Macias, each on behalf of themselves only, on one hand, and Eppco, 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, Macias and Eppco 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 Eppco with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

5.5. Public Benefit

It is Eppco's understanding that the commitments it has agreed to herein, and actions to be taken by Eppco 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 Eppco that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Eppco failure to provide a warning concerning exposure to DEHP with respect to 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 Eppco 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, Eppco 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 Eppco:

Scott E. Rogers
Ulmer & Berne LLP
500 W. Madison Street
Suite 3600
Chicago, Illinois 60661-4587

For Espinosa or Macias:

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

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

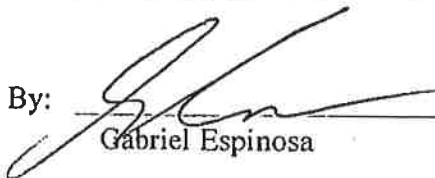
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 1/9/17

Date: 1/11/17

By: 
Gabriel Espinosa

By: 
Donny Macias

Date: _____

By: _____
Eppco Enterprises, Inc.

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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: _____

Date: _____

By: _____

Gabriel Espinosa

By: _____

Donny Macias

Date: 1/10/17

By: [Signature]

Eppco Enterprises, Inc.

V.P.