

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Gabriel Espinosa & Carrand Companies, Inc.**

This Settlement Agreement is entered into by and between Gabriel Espinosa ("Espinosa") and Carrand Companies, Inc. ("Carrand"), a subsidiary of Hopkins Manufacturing Corporation ("Hopkins Manufacturing"). Together, Espinosa and Carrand 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.

#### 1.2 **General Allegations**

Espinosa alleges that Carrand has imported, distributed and/or sold in the State of California car dusters and related storage bags including, but not limited to *Pacific Coast Car Dusters, UPC, No. 048374930073* ("Covered Products") without requisite Proposition 65 warning that the Covered Products contain the chemical Di(2-ethylhexyl) phthalate (DEHP). 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 reproductive toxicity.

#### 1.3 **Notice of Violation(s)**

On April 28, 2016, Espinosa served O'Reilly Automotive, Inc. ("O'Reilly Automotive"), Carrand, 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 Carrand and such others, including public enforcers, with notice that alleged that Carrand was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Covered Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.4 No Admission**

Carrand 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 Covered Products, has been and are in compliance with all laws. Nothing in this Settlement Agreement is or shall be construed as an admission by Carrand of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Carrand of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Carrand. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Carrand maintains that it has not knowingly manufactured, or caused to be manufactured, the Covered Products for sale in California in violation of Proposition 65.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 29, 2016.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation of Covered Products**

Commencing on the Effective Date, and continuing thereafter, Carrand shall only ship, sell, or offer for sale in California, reformulated Covered Products pursuant to Section 2.2 or Covered Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, a "Reformulated Covered Product" is Covered Product that meets the standard set forth in Section 2.2 below.

## **2.2 Reformulation Standard**

"Reformulated Covered Products" shall mean Covered Products that contain less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

## **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date, Carrand shall, for all Covered Products it sells or distributes and which is intended for sale in California that are not Reformulated Covered Products, or which Carrand 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 is reasonably likely to understand to which specific Covered 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, Carrand 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.

### **(a) Retail Store Sales**

(i) **Covered Product Labeling.** Carrand shall affix a warning to the packaging, labeling or directly on each Covered Product sold in California by Carrand that states:

**[PROPOSITION 65] WARNING:**

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

The bracketed text may, but is not required to, be used.

(ii) **Point of Sale Warnings.** Alternatively, Carrand 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 Carrand customers shall be sent by certified mail, return receipt requested.

**[PROPOSITION 65] WARNING:**

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

The bracketed text may, but is not required to, be used.

(b) **Mail Order Catalog Warning.** In the event that Carrand sells Covered Products via mail order catalog directly to consumers located in California after the Effective Date that are not Reformulated Covered Products, Carrand shall provide a warning for such Covered Products sold via mail order catalog to such California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Covered Product:

**[PROPOSITION 65] WARNING:**

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

The bracketed text may, but is not required to, be used. Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, Carrand may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the

following language on the inside of the front cover of the catalog or on the same page as any order form for the Covered Product:

**[PROPOSITION 65] WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used. The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Carrand must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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

**[PROPOSITION 65] WARNING:**  
This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

## **2.4 Sell-Through Period**

Notwithstanding anything else in this Settlement Agreement, Covered Products that were manufactured prior to the Effective Date shall be subject to the release of liability pursuant to Section 5 of this Settlement Agreement, without regard to when such Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations of Carrand, or any of its parents, subsidiaries, affiliates, or downstream retailers as set forth in this Settlement Agreement, including but not limited to Section 2, do not apply to these products manufactured prior to the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Carrand shall pay a total of \$3,000.00 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 Espinosa. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below.

### **3.1 Civil Penalty**

On or before the Effective Date, Carrand shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$750.00. 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.** Carrand 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.** Carrand 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, Carrand shall reimburse Espinosa's counsel for fees and costs incurred as a result of investigating and bringing this matter to Carrand's attention, and negotiating a settlement in the public interest. On or before the Effective Date, Carrand shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$31,000.00 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 Carrand, Hopkins Manufacturing, O'Reilly Automotive, and Downstream Customers and Entities**

Espinosa acting on his own behalf, releases Carrand, Hopkins Manufacturing, O'Reilly Automotive, and each of their respective affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom Carrand, Hopkins Manufacturing and/or O'Reilly Automotive directly or indirectly distributes or sells the Covered Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, marketplace 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 Covered Products, and was distributed, sold and/or offered for sale by Carrand, and/or O’Reilly Automotive 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 Carrand, Hopkins Manufacturing, O’Reilly Automotive and/or the Releasees for failure to provide warnings for alleged exposures to DEHP contained in the Covered 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 of Carrand, Hopkins Manufacturing, O’Reilly Automotive and/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 Covered Products.

## **5.2 Carrand’s Release of Espinosa**

Carrand, 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 Covered 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 Covered Products will develop or be discovered.

Espinosa on behalf of himself only, on one hand, and Carrand, 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 Carrand 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 Covered Product, Carrand 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, the Covered 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 Carrand or Hopkins, to:

Brad Kraft, President  
Hopkins Manufacturing Corporation  
Carrand Companies, Inc.  
428 Peyton Street PO Box 1157  
Emporia KS 66801-1157

With copy to their counsel at:

George Gigounas  
Shelby Miller  
DLA Piper LLP (US)  
555 Mission Street, Suite 2400  
San Francisco, CA 94105-2933

For Espinosa:

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: 8/29/16

Date: 8/29/16

By:   
Gabriel Espinosa

By:   
Carrand Companies, Inc. PRESIDENT