

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement is entered into by and between Gabriel Espinosa ("Espinosa") and Harry Fox & Associates, Inc. ("Harry Fox"). Together, Espinosa and Harry Fox 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.

Harry Fox 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 Harry Fox has imported, distributed and/or sold in the State of California passport/ID holders containing Di(2-ethylhexyl) phthalate (DEHP) 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.

#### 1.3 Product Description

The products covered by this Settlement Agreement are Mission Ready ID/Passport Holders, UPC No. 0 99598 56600 5 (the "Product" or "Products") manufactured, imported, distributed, and/or sold in California by Harry Fox, that contain DEHP.

#### 1.4 Notice of Violation

On February 16, 2017, Espinosa served Harry Fox, The Supply Sergeant, 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 Harry Fox and such others, including public enforcers, with notice that alleged that Harry Fox 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. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

Harry Fox 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, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Harry Fox 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 Harry Fox of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Harry Fox. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Harry Fox maintains that it has not knowingly manufactured, or caused to be manufactured, the Product for sale in California in violation of Proposition 65. Nothing in this settlement agreement, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Harry Fox, or its owners, officers, directors, employers, parents, subsidiaries, employees, shareholders, directors, insurers, attorneys, successors and assigns, past or present, affiliated entities or corporations, or entities absorbed by merger or acquisition, or by offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Agreement.

### **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, Harry Fox shall not manufacture or import for distribution or sale to California customers, or cause to be manufactured or imported for California sale any Product that isn't a Reformulated Product, as defined herein, or a Product for which a warning is provided pursuant to section 2.2 of this Settlement Agreement. "Reformulated Products" are Products that contain more than 0.1% DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or an equivalent methodology.

### 2.2 **Clear and Reasonable Warnings**

Commencing ninety (90) days after the Effective Date, Harry Fox shall provide a clear and reasonable warning for any Product that it manufactures, distributes, or purchases for sale in California that is not a Reformulated Product. Harry Fox shall provide the warning affixed to the packaging or labeling, or on the website on which the Product is offered for sale, 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 is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Or

[Triangle hazard symbol] **WARNING:** For California Residents Only – Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

The warning(s) 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.

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, Harry Fox 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, Harry Fox shall pay a total of \$500.00 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. Harry Fox 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, Harry Fox shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$375.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$125.00. 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.** Harry Fox 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.** Harry Fox agrees to provide a completed IRS 1099 for its payments to, and Espinosa agrees to provide IRS W-9 forms for, 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. 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, Harry Fox shall reimburse Espinosa's counsel for fees and costs incurred as a result of investigating and bringing this matter to Harry Fox attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Harry Fox shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$7,000.00 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 This Settlement Agreement is a full, final and binding resolution between Espinosa, acting on his own behalf, and (a) Harry Fox and its respective owners, officers, directors, insurers, attorneys, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, entities absorbed by merger and acquisition, their predecessor or successor entities, and their heirs, assigns and successors in interest, past or present and (b) any other person or entity who may directly or indirectly use, provide, maintain, distribute or sell product in the course of doing business, including but not limited to each of Harry Fox's supplier's customers, distributors, wholesalers, retailers, on the one hand, for all violations or claimed violations of Proposition 65 up through the Effective Date based on exposure of DEHP or the failure

to warn about exposure to DEHP arising in connect in with the Product manufactured, shipped and/or otherwise distributed for California sale on or before the Effective Date ("Released Claims"). Compliance by Harry Fox and by its Downstream Releasees with this Agreement shall constitute compliance with Proposition 65 with respect to DEHP contained in the Product.,

**5.2** Espinosa, acting on his own behalf, waives, releases, and forever discharges Harry Fox, its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Harry Fox directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to The Supply Sergeant, and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, (collectively, the "Downstream 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 Harry Fox 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 southern telecom and/or the Downstream Releasees for failure to provide a warning for alleged exposures to DEHP exposures in the Products.

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 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.

### **5.3 Harry Fox Release of Espinosa**

Harry Fox, 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.

### **5.4 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 Harry Fox, 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 Harry Fox each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

### **5.5 Deemed Compliance with Proposition 65**

Compliance by Harry Fox with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Product.



#### **5.6. Public Benefit**

It is the understanding of Harry Fox that the commitments it has agreed to herein, and actions to be taken by Harry Fox 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 Harry Fox that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Harry Fox failure to provide a warning concerning exposure to DEHP with respect to the Product 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 Product addressed in this Settlement Agreement, provided that Harry Fox 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 Product, Harry Fox 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 Harry Fox:

Greg Sperla  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA

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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. 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:

6/9/2017

By:

Gabriel Espinosa

Date:

6-9-17

By:

Harry Fox & Associates, Inc.