

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement is entered into by and between Gabriel Espinosa ("Espinosa") and WordLock, Inc. ("WordLock"). Together, Espinosa and WordLock 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. WordLock 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 WordLock has imported, distributed and/or sold in the State of California Flexible Steel Chain Locks 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 WordLock Flexible Steel Chain Locks, including without limitation, UPC No. 8 13113 01372 6 (the "Product" or "Products") that have been imported, distributed, and/or sold in California by WordLock, and that contain DEHP.

#### 1.4 Notice of Violation

On March 21, 2017, Espinosa served WordLock 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 WordLock and such others, including public enforcers, with notice that alleged that WordLock 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**

WordLock 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 WordLock 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 WordLock of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by WordLock. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, WordLock 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 ninety (90) days after the Effective Date, and continuing thereafter, WordLock agrees to manufacture, distribute, 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. The requirements of this Section 2 shall not apply to any Product that as of the Compliance Date, defined below, is in the stream of commerce or is otherwise in Wordlock inventory as of that date.

## **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 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 (the “Compliance Date”), WordLock 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. WordLock shall provide the warning affixed to the packaging or labeling with the following statement:

**WARNING:** This product contains a chemical 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, WordLock 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, WordLock shall pay a total of \$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. WordLock 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, WordLock shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$675.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$225.00. All penalty payments shall be delivered to the address listed in Section 3.2(a) below.

### **3.2 Payment Procedures**

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed pursuant to Section 3.1 shall be delivered within ten (10) business days after the Effective Date to the following payment address:

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

(ii) (b) **Copy of Payments to OEHHA.** Espinosa shall transmit to OEHHA WordLock's checks payable to OEHHA within five (5) business days of Espinosa's receipt of the check made out to OEHHA from Wordlock, and shall provide to Wordlock a copy of Espinosa's transmittal letter to OEHHA concurrent with the transmittal to OEHHA.

(C) **Tax Documentation.** WordLock 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" (EIN: 68-0284486) 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 fees and costs. 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, WordLock shall reimburse Espinosa's counsel for fees and costs incurred as a result of investigating and bringing this matter to Howard Berger's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, WordLock shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$8,100.00 for delivery to the address identified in Section 3.2(a)(i), above.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of WordLock and Downstream Customers and Entities**

This Settlement Agreement is a full, final and binding resolution between Espinosa, acting on his own behalf, and WordLock, 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 contained in the Products, and Releasers hereby release any such claims against (i) WordLock and its parents, including but not limited to World & Main (Cranbury), LLC, subsidiaries, affiliated entities, shareholders, marketplaces directors, officers, agents, employees, attorneys, successors and assignees, and (ii) each entity to whom WordLock directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including Ross Stores, Inc., and their respective parents, subsidiaries, affiliated entities, shareholders, marketplaces directors, officers, agents, employees, attorneys, successors and assignees,, 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 Products, and were manufactured, distributed, sold and/or offered for sale by WordLock 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 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 WordLock's Release of Espinosa**

WordLock, 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 WordLock, 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 WordLock 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**

Material compliance by WordLock with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

#### **5.5. Public Benefit**

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

Joshua A. Bloom  
Meyers Nave  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

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: \_\_\_\_\_

Date: 5/19/17

By: \_\_\_\_\_

Gabriel Espinosa

By: Don Garrety  
WordLock, Inc.

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**AGREED TO:**

**AGREED TO:**

Date: 5/17/2017

Date: \_\_\_\_\_

By: Gabriel Espinosa  
Gabriel Espinosa

By: \_\_\_\_\_

WordLock, Inc.