



SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Gabriel Espinoza and Mechanix Wear, Inc.

This Settlement Agreement is entered into by and between Gabriel Espinoza ("Espinoza"), and Mechanix Wear, Inc. ("Mechanix Wear") acting on behalf of AutoZone, Inc., The Best Parts, Inc., and AutoZone Parts, Inc. (collectively "AutoZone"). Espinoza, Mechanix Wear and AutoZone will be collectively referred to as the "Parties=" hereinafter.

Espinoza is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Mechanix Wear is a company doing business in California that employs ten or more persons for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1.2 General Allegations

Espinoza alleges that Mechanix Wear has manufactured, imported, distributed and/or sold in the State of California Impact Gloves containing Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to cause reproductive toxicity for the developmental and male reproductive endpoints.

1.3 Product Description

Espinoza alleges that Mechanix Wear Duralast gloves (the "Subject Products") manufactured, imported, distributed, sold and/or offered for sale in the State of California contain Bis (2-ethylhexyl) phthalate, or "DEHP".

1.4 Notice of Violation

On December 1, 2014, Espinoza served AutoZone and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the



"Notice") that provided AutoZone, and such others, including public enforcers, with notice that AutoZone was allegedly in violation of Proposition 65 for failing to warn consumers and customers that the Products contain DEHP. As the manufacturer of the Subject Products, Mechanix Wear assumed the defense of AutoZone and related entities identified in the Notice Letter, pursuant to the terms of its Vendor Agreement.

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

1.5 No Admission

Mechanix Wear denies the material factual and legal allegations contained in Espinoza's Notice, and maintain that to the best of Mechanix Wear's knowledge the Subject Products sold and distributed in California, have been and are in compliance with all applicable laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Mechanix Wear 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 Mechanix Wear of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Mechanix Wear. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding Espinoza's allegations in the Notice, Mechanix Wear maintains that it has not knowingly manufactured, or caused to be manufactured, product 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 of complete execution by all parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation or Labeling of Products

Commencing within 60 days after the Effective Date as defined above, , and continuing thereafter, Mechanix Wear 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, “Reformulated Product” is Impact Gloves, as set forth in Section 1.3, that meet the Reformulation Standard set forth below in Section 2.2.

2.2 Reformulation Standard

“Reformulated Product” shall meet or exceed the standards outlined in this section. Acceptable formulated and “Reformulated Product” is defined as Product which yield less than or equal to 1,000 parts per million DEHP content by weight in any accessible component (i.e. any component that may be touched during a reasonably foreseeable use), when analyzed pursuant to U.S. Consumer Product Safety Commission Test Method Standard Operating Procedure for Determination of Phthalates CPSC-CH-C1001-09.3 or any other acceptable mythology used by any state or federal agency for determining DEPH content in a solid substance.

2.3 Clear and Reasonable Warnings

Mechanix Wear shall provide a clear and reasonable warning for any Subject Product that it ships, sells, or offers to ship or sell in California that is not a Reformulated Product. Mechanix Wear 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 of purchase or use.

2.4 Formulated / Reformulation Commitment

As of the Effective Date, Mechanix Wear shall not knowingly manufacture, import, distribute, sell or offer the Subject Products for sale in the State of California unless it is a Reformulated Product pursuant to Section 2.2 or unless it contains a clear and reasonable warning pursuant to Section 2.3.



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

In settlement of all the claims referred to in this Settlement Agreement, Mechanix Wear shall pay a total of \$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 Espinoza. Each penalty payment shall be delivered to the addresses listed in Section 3.3 below. Mechanix Wear 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 fourteen business days of the date they are due.

3.1 Initial Civil Penalty

On or before the Effective Date, Mechanix Wear shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Espinoza" in the amount of \$500.00. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Payment Procedures

3.2.1 Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Espinoza, 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

(b) 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

3.2.2 Copy of Payments to OEHHA. Mechanix Wear agrees to provide Espinoza's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Espinoza, to be delivered to the address provided in Section 3.2.1(a), as proof of payment to OEHHA.

3.2.3 Tax Documentation. Mechanix Wear agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(a) "Gabriel Espinoza" whose address and tax identification number shall be provided within five business days after this Settlement Agreement is fully executed by the Parties;

(b) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2.1(a); and

(c) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Espinoza 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. Espinoza 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 Espinoza 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, Mechanix Wear shall reimburse Espinoza's counsel for fees and costs incurred as a result of investigating and bringing this matter to Mechanix Wear's attention, and negotiating a settlement in the public interest. Within five business days after the Effective Date, Mechanix Wear shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$18,000.00 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 Mechanix Wear, AutoZone and Downstream Customers and Entities

Espinoza acting in his own behalf and in the public interest, releases Mechanix Wear, AutoZone and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Mechanix Wear directly or indirectly distributes or sells the Product including, but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims alleging violations of Proposition 65 through the Effective Date based on a failure to warn about alleged exposures to phthalates contained in the Product that was manufactured, distributed, sold and/or offered for sale by Mechanix Wear and/or AutoZone. Compliance with this Agreement constitutes compliance with Proposition 65.



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, Espinoza, 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 Mechanix Wear and AutoZone or the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising under Proposition 65 with respect to the alleged or actual exposure to DEHP from the Subject Products.

5.2 Mechanix Wear's Release of Espinoza

Mechanix Wear, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Espinoza and 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.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve (12) months of the execution of this Settlement Agreement, Mechanix Wear may request in writing that Espinoza draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Espinoza and Mechanix Wear and AutoZone agree to reasonably cooperate and use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.



Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, if so requested, Mechanix Wear agrees to reimburse Espinoza and his counsel for the reasonable fees and costs incurred in connection with the work performed pursuant to this section in an amount not to exceed \$12,000.00, exclusive of fees and cost on appeal if any. Within ten days of receiving an invoice for work performed under this section, Mechanix Wear will remit payment to the address provided in Section 3.2.1(a).

7. 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.

8. 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 Product, then Mechanix Wear shall provide written notice to Espinoza 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 Product is so affected.

9. 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 Mechanix Wear:

Caitlin Blanche
1 Park Plaza, Suite 1200
Irvine, CA 92614

For Espinoza:

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.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Espinoza agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

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: _____

Date: 4.24.15 _____

By: _____

Gabriel Espinoza

By:  _____

Michael Hale, Brand Manager
Mechanix Wear

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.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Espinoza agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

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: 4/23/2015

Date: _____

By: 
Gabriel Espinoza

By: _____
Michael Hale, Brand Manager
Mechanix Wear