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8 *Attorneys for Plaintiff*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 GABRIEL ESPINOSA,  
11  
12 Plaintiff,  
13 vs.  
14 PROTECTIVE INDUSTRIAL  
15 PRODUCTS, INC.,  
16 Defendant.

Case No. RG16827638

**CODE OF CIVIL PROCEDURE SECTION  
664.6 SETTLEMENT AS TO DEFENDANT  
PROTECTIVE INDUSTRIAL PRODUCTS,  
INC.**

Judge: Frank Roesch

Dept.: 24

Hearing Date: October 27, 2016

Hearing Time: 3:45 PM

Reservation #: R-1778270

1     **1.     Introduction**

2             **1.1     Gabriel Espinosa & Protective Industrial Products, Inc. t/a G-Tek**

3             This Settlement Agreement (the “Agreement”) pursuant to Section 664.6 C.C.P. is entered  
4 into by and between Plaintiff Gabriel Espinosa (“Espinosa”) and Defendant Protective Industrial  
5 Products, Inc. t/a G-Tek (“Protective Industrial”). Together, Espinosa and Protective Industrial are  
6 collectively referred to as the “Parties.” Espinosa is an individual who resides in the State of  
7 California, and seeks to promote awareness of exposures to toxic chemicals and to improve human  
8 health by reducing or eliminating hazardous substances contained in consumer products.

9             Protective Industrial is a person in the course of doing business for purposes of the Safe  
10 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.5, et seq.  
11 (“Proposition 65”).

12             **1.2     General Allegations**

13             Espinosa alleges that Protective Industrial has imported, distributed, and/or sold in the State  
14 of California *Go-To-Work-Kits*<sup>1</sup> (the “Product”) without requisite Proposition 65 warning that the  
15 Product’s G-Tek Gloves and Earplugs contain the chemicals Di(2-ethylhexyl) phthalate (DEHP)  
16 and/or Diisononyl phthalate (DINP). The terms “Other Kits” and “Work Kits”, as used herein,  
17 mean the sale as a group of two or more products of Protective Industrial.

18             On January 1, 1988, the State of California listed DEHP as a chemical known to the State to  
19 cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to  
20 cause reproductive toxicity. On December 20, 2013, the State of California listed DINP as a  
21 chemical known to cause cancer.

22             **1.3     Notice of Violation**

23             On January 18, 2016, Espinosa served Protective Industrial and various public enforcement  
24 agencies with a “Notice of Violation of California Health & Safety Code § 25249.5, et seq.” (the  
25 \_\_\_\_\_

26 <sup>1</sup> Protective Industrial *Go-To-Work-Kits* contain G-Tek Gloves and Earplugs, each of which  
27 allegedly contains either DEHP and/or DINP. The term “Product” as used herein, includes the G-  
28 Tek Gloves and Earplugs when sold as standalone items, and/or as part of other Protective Industrial  
Work Kits.

1 “Notice”). The Notice provided Protective Industrial and public enforcers with notice that Protective  
2 Industrial was alleged to be in violation of California Health & Safety Code § 25249.6, for failing to  
3 warn consumers that the Products exposed users in California to DEHP and/or DINP. No public  
4 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in  
5 the Notice.

#### 6 **1.4 Complaint**

7 On August 17, 2016, Espinosa filed a Complaint for Civil Penalties and Injunctive Relief  
8 (“Complaint”) in Alameda County Superior Court, Case No. RG16827638, against Protective  
9 Industrial alleging violations of Proposition 65

#### 10 **1.5 No Admission**

11 Protective Industrial does not admit any violation of Proposition 65 and specifically denies  
12 that it has committed any such violation or that any of its products, including the Products, require a  
13 Proposition 65 warning. Protective Industrial further denies the material, factual, and legal  
14 allegations contained in the Notice and in the Complaint and maintains that all of its products that  
15 are or have been sold and/or distributed in California, including the Products, have been and are in  
16 compliance with all laws, including but not limited to Proposition 65. Nothing in this Agreement  
17 shall be construed as an admission by Protective Industrial of any fact, finding, issue of law, or  
18 violation of law; nor shall compliance with this Agreement constitute or be construed as an  
19 admission by Protective Industrial of any fact, finding, conclusion, issue of law, or violation of law,  
20 such being specifically denied by Protective Industrial. However, this Section shall not diminish or  
21 otherwise affect the obligations, responsibilities, and duties under this Agreement.

22 Notwithstanding the allegations in the Notice or the Complaint, Protective Industrial  
23 maintains that it has not knowingly manufactured, or caused to be manufactured, any product for  
24 sale in California that is in violation of Proposition 65. Except as expressly set forth herein, nothing  
25 in this Agreement shall prejudice, waive, or impair any right, remedy, argument, complaint, or  
26 defense the Parties may have in any other or future legal proceeding unrelated to this specific  
27 proceeding.

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**1.6 Effective Date**

For purposes of this Agreement, the term "Effective Date" shall mean the date that the Agreement is entered by the Court.

**2. Injunctive Relief**

**2.1 Reformulation of the Product**

Commencing on the Effective Date, and continuing thereafter, Protective Industrial 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, a "Reformulated Product" is Product that meets the standard set forth in Section 2.2 below.

**2.2 Reformulation Standard**

"Reformulated Product" shall mean Product that contains less than or equal to 1,000 parts per million ("ppm") (0.1%) of DEHP, and less than or equal to 1,000 parts per million ("ppm") (0.1%) of DINP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A or 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining the DEHP and/or DINP content of a solid substance.

**2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date, Protective Industrial shall, for the Products it sells or distributes and which are intended for sale in California that are not Reformulated Products, or which Protective Industrial 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 Product the warning applies, so as to minimize the risk of consumer confusion.

1 In the event that the Office of Environmental Health Hazard Assessment promulgates one or  
2 more regulations requiring or permitting warning text and/or methods of transmission different than  
3 those set forth above, Protective Industrial shall be entitled to use, at its discretion, such other  
4 warning text and/or method of transmission without being deemed in breach of this Agreement.

5 **(a) Retail Store Sales**

6 **(i) Product Labeling.** Protective Industrial shall affix a warning to the  
7 packaging, labeling, or directly on each Product in California by Protective Industrial  
8 that states:

9 **[PROPOSITION 65] WARNING:**

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

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

12 **(ii) Point of Sale Warnings.** Alternatively, Protective

13 Industrial may provide warning signs in the form below to its customers in  
14 California with instructions to post the warnings in close proximity to the  
15 point of display of the Product. Such instruction sent to Protective Industrial  
16 retail vendors shall be sent by certified mail, return receipt requested.

17 **[PROPOSITION 65] WARNING:**

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

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

20 **(b) Mail Order Catalog Warning.** In the event that Protective Industrial

21 sells Product that is not a Reformulated Product via mail order catalog directly to consumers located  
22 in California after the Effective Date, Protective Industrial shall provide a warning for such Product  
23 sold via mail order catalog to such California residents. A warning that is given in a mail order  
24 catalog shall be in the same type size or larger than the Product description text within the catalog.  
25 The following warning shall be provided on the same page and in the same location as the display  
26 and/or description of the Product:

27 **[PROPOSITION 65] WARNING:**

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

1 The bracketed text may, but is not required to, be used. Where it is impracticable to provide the  
2 warning on the same page and in the same location as the display and/or description of the Product,  
3 Protective Industrial may utilize a designated symbol to cross reference the applicable warning and  
4 shall define the term “designated symbol” with the following language on the inside of the front  
5 cover of the catalog or on the same page as any order form for the Product:  
6

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

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

14 (c) **Internet Sales Warning.** In the event that Protective Industrial sells  
15 Product that is not a Reformulated Product via the internet directly to consumers located in  
16 California after the Effective Date, Protective Industrial shall provide a warning for such Product  
17 sold via the internet to such California residents. A warning that is given on the internet shall be in  
18 the same type size or larger than the Product description text and shall be given in conjunction with  
19 the direct sale of the Product. The warning shall appear either: (a) on the same web page on which  
20 the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same  
21 page as the price for the Product; or (d) on one or more web pages displayed to a purchaser during  
22 the checkout process. The following warning shall be provided:

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

26 **3. Settlement Payments**

27 **3.1** In settlement of all the claims referred to in this Agreement, and without any  
28 admission of liability therefore, Protective Industrial shall make the following monetary payments:

**3.1.1 Civil Penalty.** Within seven (7) business days of the Effective Date,  
Protective Industrial shall pay a total of \$2,000.00 in civil penalties in accordance with this

1 Section. Each penalty payment will be allocated in accordance with California Health & Safety  
2 Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
3 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
4 remitted to Espinosa. Within seven (7) business days of the Effective Date, Protective Industrial  
5 shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of  
6 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$500.00.  
7 Payment owed to Espinosa pursuant to this Section shall be delivered to the following payment  
8 address:

9  
10 Evan J. Smith, Esquire  
11 Brodsky & Smith, LLC  
12 Two Bala Plaza, Suite 510  
13 Bala Cynwyd, PA 19004

14 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered  
15 directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

16 For United States Postal Service Delivery:

17 Mike Gyurics  
18 Fiscal Operations Branch Chief  
19 Office of Environmental Health Hazard Assessment  
20 P.O. Box 4010  
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics  
24 Fiscal Operations Branch Chief  
25 Office of Environmental Health Hazard Assessment  
26 1001 I Street  
27 Sacramento, CA 95814

28 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the  
address set forth above as proof of payment to OEHHA.

**3.1.2 Attorney Fees and Costs.** In addition to the payment above, Protective  
Industrial shall pay \$23,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete  
reimbursement for Espinosa's attorneys' fees and costs, including any investigation and laboratory  
costs or expert fees, incurred in the course of bringing the Complaint and in enforcing Proposition  
65, including without limitation, preparation of the Notice letter and discussions with the office of

1 the Attorney General. Payment shall be made within seven (7) business days of the Effective Date  
2 and sent to the address for Brodsky & Smith set forth in Section 3.1.1, above

3 **5. Release of All Claims**

4 **5.1 Espinosa’s Public Release of Proposition 65 Claims.** Espinosa, suing in the public  
5 interest, hereby releases Protective Industrial; all entities that supplied or distributed the Products or  
6 ingredients therefor to Protective Industrial; all entities that manufactured the Products that were  
7 directly or indirectly supplied to Protective Industrial; all distributors and retailers of the Products;  
8 and, the affiliates and subsidiaries of each of these aforementioned entities; all entities served with a 60-  
9 day notice, and, the divisions, successors, subsidiaries, parent corporations, related entities, affiliates,  
10 agents, contractors, experts, consultants, counsel, service providers, officers, directors, and  
11 employees of Protective Industrial; and, the aforementioned entities described or named in this  
12 Section 5.1, of any liability whatsoever under Proposition 65 related to the Products and the alleged  
13 failure to warn California consumers of alleged exposure to DEHP and/or DINP in the Products sold  
14 in California on or before the Effective Date.

15 **5.2 Espinosa’s Private Release of Protective Industrial, and Downstream Customers**  
16 **and Entities**

17 As to Espinosa for and in his individual capacity only, this Agreement releases Protective  
18 Industrial, and its parents, subsidiaries, affiliated entities under common ownership, directors,  
19 officers, agents, employees, attorneys and each entity to whom Protective Industrial directly or  
20 indirectly distributes or sells the Products, including but not limited to, downstream distributors,  
21 wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the  
22 “Releasees”), from any and all rights and benefits which he now has, or in the future may have,  
23 conferred upon him with respect to any and all legal or equitable actions that arise from or are  
24 related to this litigation, the Products, or by virtue of the provisions of Section 1542 of the California  
25 Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
28 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.

1 Espinosa understands and acknowledges the significance and consequence of this waiver pursuant to  
2 California Civil Code Section 1542, and understands and acknowledges that the waiver applies to  
3 any and all legal or equitable actions that arise from or are related directly or indirectly, in whole or  
4 in part, to the Products, the litigation, statements made regarding Espinosa or the litigation, and the  
5 underlying facts of the lawsuit or claims made in the litigation. Furthermore, Espinosa  
6 acknowledges that he intends these consequences for any such claims related to the Products which  
7 may exist as of the date of this release but which Espinosa does not know exist, and which, if known,  
8 would materially affect his decision to enter into this Settlement Agreement, regardless of whether  
9 the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.  
10 Espinosa further waives all rights to institute any form of legal or equitable action or defense  
11 (including without limit contribution, indemnity, set-off, and by right of subrogation) against any  
12 entity released herein for any and all acts or omissions or statements made or activities directed to be  
13 undertaken or activities that were undertaken by Protective Industrial, or by any party released  
14 herein.

### 15 **5.3 Protective Industrial's Release of Espinosa**

16 Protective Industrial, on behalf of itself, its past and current agents, representatives, attorneys,  
17 successors and/or assignees, hereby waives any and all claims against Espinosa, his attorneys and  
18 other representatives, for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Espinosa and/or his attorneys and other representatives, whether in the course of  
20 investigating claims or otherwise seeking to enforce Proposition 65 against Protective Industrial in  
21 this matter or with respect to the Products.

### 22 **6. Severability**

23 If, subsequent to the execution of this Agreement, any of the provisions of this Agreement  
24 are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall  
25 not be adversely affected.

### 26 **7. Governing Law and Construction**

27 The terms of this Agreement shall be governed by the laws of the State of California and  
28 apply within the State of California. Compliance with the terms of this Agreement resolves any

1 issue, now or in the future, as to the requirements of Proposition 65 with respect to alleged exposures  
2 to DEHP and/or DINP arising from the Products. In the event that Proposition 65 is repealed or is  
3 otherwise rendered inapplicable by reason of law generally, or as to the Products, Protective  
4 Industrial may provide written notice to Espinosa of any asserted change in the law, and shall have  
5 no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that,  
6 the Product or Products are so affected.

7 **8. Notices**

8 Unless specified herein, all correspondence and notices required to be provided pursuant to  
9 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class  
10 registered or certified mail, return receipt requested; or (ii) overnight or second-day courier on any  
11 party by the other party to the following addresses:

12 For Protective Industrial:

13 Bridget Milot, V.P. Administration  
14 Protective Industrial Products, Inc.  
15 968 Albany Shaker Road  
16 Latham, NY 12110  
17 Fax: 518-795-1001

18 With a copy to:

19 Thomas H. Clarke, Jr.  
20 Attn.: Roxana Riedell  
21 RMKB  
22 1001 Marshall Street, Suite 500  
23 Redwood City 94063-2052  
24 Fax: 650-780-1701  
25 E-Mail: Thomas.Clarke@rmkb.com

26 For Espinosa:

27 Evan J. Smith  
28 Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
Fax: 610-667-9029  
E-Mail: esmith@brodsky-smith.com

For all notices and correspondence required to be provided pursuant to this Agreement in  
writing, the Parties shall also send a courtesy notice by electronic mail and/or facsimile to counsel  
with a copy of the correspondence or notice attached thereto. The provision of such courtesy notice

1 shall not lessen, diminish, or void the requirement noted herein regarding how actual notices and  
2 correspondence are to be sent. Any Party may, from time to time, specify in writing to the other a  
3 change of address or party to which all notices and other communications shall be sent.

4 Any party, from time to time, may specify in writing to the other party a change of address to  
5 which all notices and other communications shall be sent.

6 **9. Counterparts**

7 This Agreement may be executed in counterparts and by facsimile or .pdf signature, each of  
8 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
9 the same document.

10 **10. Compliance With Proposition 65**

11 **10.1** Espinosa agrees to comply with the reporting requirements referenced in Health &  
12 Safety Code section 25249.7(f).

13 **10.2** If the California Attorney General objects to any term in this Agreement, the Parties  
14 shall use their best efforts to resolve the concern in a timely manner, and if possible prior to the  
15 hearing on the motion.

16 **10.3** If this Agreement is not approved by the Court, it shall be void and have no force or  
17 effect. If the Agreement is not heard within nine (9) months from the date that a hearing is set to  
18 review the motion for approval of the settlement, the Agreement shall be deemed void and have no  
19 force or effect.

20 **11. Modification**

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

22 **12. Authorization**

23 **12.1** Each of the Parties acknowledges that they had the right and ability to consult with  
24 and seek the advice of counsel of their choice and each voluntarily has entered into this Agreement.

25 **12.2** The undersigned affirmatively represent that they are authorized to execute this  
26 Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the  
27 terms and conditions of this document, and further certifies that he or she is fully authorized by the  
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1 Party he or she represents to execute the Agreement on behalf of the Party represented and to legally  
2 bind said Party.

3 **12.3** Except to the extent otherwise noted, each of the Parties shall bear its own costs and  
4 fees.

5 **13, Drafting**

6 The terms of this Agreement have been reviewed by the respective counsel for each Party  
7 prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions  
8 with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this  
9 Agreement, no inference, assumption, or presumption shall be drawn, and no provision of this  
10 Agreement shall be construed against any Party, based on the fact that one of the Parties and/or one  
11 of the Parties' legal counsel prepared and/or drafted all or any portion of the Agreement. It is  
12 conclusively presumed that all of the Parties participated equally in the preparation and drafting of  
13 this Agreement.

14 **14. Good Faith Attempt to Resolve Disputes and Enforcement**

15 **14.1** If a dispute arises with respect to either Party's compliance with the terms of this  
16 Agreement, the Parties shall meet in person or by telephone and endeavor to resolve the dispute in an  
17 amicable manner prior to filing of any motion related to the terms and conditions of the Agreement.

18 **15.2** For purposes of this Agreement only, the Parties stipulate that in the event that  
19 enforcement of this Agreement is deemed necessary by one or both of the Parties, or a dispute  
20 between the Parties arises regarding this Agreement, the Superior Court of California, County of  
21 Alameda, has proper jurisdiction and venue over the Parties as to the terms and conditions of this  
22 Agreement, that venue is proper in the County of Alameda, and that this Court has jurisdiction to

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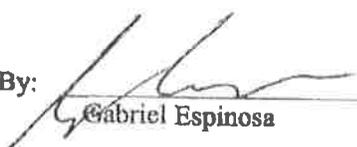
approve, enter, and oversee the enforcement of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 9/2/16

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

By:   
Gabriel Espinosa

By: \_\_\_\_\_  
Protective Industrial Products, Inc.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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approve, enter, and oversee the enforcement of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

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

Date: September 1, 2016

By: \_\_\_\_\_  
Gabriel Espinosa

By:   
For Protective Industrial Products, Inc.  
Its: Vice President of Administration

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court