

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement (“Settlement Agreement”) is entered into by and between Gabriel Espinoza (“Espinoza” or “Plaintiff”) and Boss Manufacturing Company (“Boss” or “Defendant”). Together, Espinoza and Boss are collectively referred to as the “Parties,” and individually sometimes as a “Party.” Espinoza alleges that he is an individual who resides in the State of California, and seeks to improve human health by reducing or eliminating hazardous substances contained in consumer products. Espinoza alleges that Boss is a person in the course of doing business 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 Boss manufactured, imported, distributed, and/or sold in California Boss Just For Kids leather palm gloves containing the chemical chromium (hexavalent compounds) (“Chromium (VI)”) without first providing California consumers of the product with a Proposition 65 warning. Chromium (VI) is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

**1.3 Product Description.** The products covered by this Settlement Agreement are leather gloves including but not limited to “Boss Just For Kids leather palm gloves” (the “Products”) containing Chromium VI that have been imported, distributed, offered for sale and/or sold in California by Boss (the “Products”).

**1.4 Notice of Violation.** On December 10, 2019, Espinoza served Boss, Anawalt Lumber Co., Inc., and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided Boss and such others, including public enforcers, with notice that alleged that Boss failed to warn California consumers and customers that use of the Products may expose them to Chromium (VI). To the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Boss enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, and to avoid prolonged and costly litigation. Boss denies the material factual and legal allegations contained in the

Notice, maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Boss of any fact, finding, issue of law, or violation of law including but not limited to any fact or conclusions of law suggesting or demonstrating that Boss has sold any products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Boss of any of the above, such being specifically denied by Boss. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Boss may have in this or any other future legal proceedings, including Boss's position that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by Boss solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

## **2. INJUNCTIVE RELIEF: WARNINGS**

**2.1 Clear and Reasonable Warning.** Boss maintains that it sold its glove business in December 2019 and has not since that time manufactured, distributed, or sold Products or gloves of any kind in California or elsewhere, and no longer manufactures, imports, distributes, or sells Products or gloves of any kind in California or elsewhere. In the event Boss reenters the glove business and engages in future sales of Products in California, within ninety (90) days of the Effective Date, and continuing thereafter, a clear and reasonable Proposition 65 warning as set forth in this §§ 2.1 and 2.2 shall be provided for all Products that Boss manufactures, imports, distributes, sells, or offers for sale in California that contain Chromium VI. There shall be no obligation for Boss to provide one of the Proposition 65 warnings below for Products that entered the stream of commerce prior to the Effective

Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.1(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including chromium (hexavalent compounds), which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Boss may, but is not required to, use the alternative short-form warning as set forth in this § 2.1(b) (“**Alternative Warning**”) as follows:

 [California Prop 65] **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Language in brackets is optional.

**2.2** The warning provided pursuant to §2.1 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Product itself, or the Products’ packaging, labeling, container, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Boss sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) “[California Prop 65] **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior

to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

**2.3 Compliance with Warning Regulations.** The Parties agree that Boss shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement Agreement, or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) effective on or after the Effective Date.

**2.4. Public Benefit.** It is Boss understanding that the commitments it has agreed to herein, and the actions to be taken by Boss under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Boss that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Boss’s alleged failure to provide a warning concerning actual or alleged exposure to Chromium VI prior to use of the Products it has manufactured but no longer distributes, sells, or offers 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 Boss is in material compliance with the terms of this Settlement Agreement.

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

In settlement of all claims for monetary relief of any kind related to the Notice or referred to in this Settlement Agreement (except for Plaintiff’s attorney’s fees and expenses set forth in Section 4 below), Boss shall pay \$500 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted

to Espinoza. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.1 Civil Penalty.** Within thirty (10) days of the Effective Date, Boss shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$375; and to (b) “Brodsky & Smith, LLC in Trust for Espinoza” in the amount of \$125. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

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

(i) All payments owed to Espinoza pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 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.** Boss agrees to provide Espinoza’s counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to

Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Boss or its counsel agrees to provide a completed IRS 1099 for its payments to, and Espinoza agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Gabriel Espinoza” 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 Espinoza and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of attorney’s fees and expenses to be reimbursed to them. The Parties thereafter 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, Boss shall reimburse Espinoza’s counsel the total amount of \$11,500 for any and all of Espinoza’s attorney’s fees and expenses, including but not limited to all investigative, expert, and testing expenses incurred as a result of investigating and bringing this matter to Boss’s attention, and negotiating this settlement in the public interest. Within ten (10) days of the Effective Date, Boss shall issue a check payable to “Brodsky & Smith, LLC” in the amount of \$11,500 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Boss and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and

Boss, of any violation of Proposition 65 that was or could have been asserted by Espinoza or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for actual or alleged failure to provide warnings for alleged exposures to Chromium (VI) contained in the Products, and Releasers hereby release any such claims against Boss and its suppliers, parents, subsidiaries, affiliated entities (including but not limited to Boss Holdings, Inc. and Boss Manufacturing Holdings, Inc.), shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Boss directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Anawalt Lumber Co. Inc.), and their respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensors, and licensees (collectively, the “Releasees”), from all claims for actual or alleged violations of Proposition 65 for products manufactured through the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Espinoza, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assigns, hereby covenants not to sue and waives any right to institute or 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, as well as all obligations, expenses (including without limitation all attorneys’ fees, expert fees, 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 Products.

**5.2 Boss’ Release of Espinoza.** Boss, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assigns, 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/or his attorneys and other representatives, whether in the course of investigating the subject claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties, including those arising out of the facts alleged in the Notice and relating to products manufactured by or for Boss and its affiliates through the Effective Date, will develop or be discovered. Espinoza on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees only, on one hand, and Boss and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims against the Releasees for products manufactured by or for Boss and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Boss expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Boss with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Chromium (VI) from use of the Products. The Parties agree that after the Effective Date, should compliance with Proposition 65 with respect to Chromium (VI) in the Products be governed by operation of law (*i.e.*, Court Order regarding Chromium (VI) in leather products, or other regulatory exemption and/or standard) Boss may choose to comply with such operation of law and such action will also be deemed to comply with Proposition 65 and shall not be a breach or violation of 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 this 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 laws 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, Boss 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 Products are 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 Boss:

Boss Manufacturing Company  
1221 Page Street  
Kewanee, IL 61443  
Attn: General Counsel

With Copy to:

J. Robert Maxwell  
Rogers Joseph O'Donnell, PC

311 California St., 10th Floor  
San Francisco, CA, 94104

For Espinoza:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

Either 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)**

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

**11. MODIFICATION**

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

**12. ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement.

**13. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement

Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

14. 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.

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained in this Settlement Agreement.

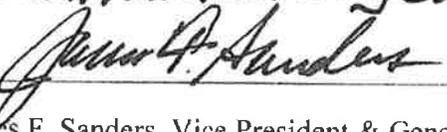
AGREED TO:

AGREED TO:

Date: 1/5/2021

Date: 12/30/2020  
Boss Manufacturing Company

By:   
Gabriel Espinoza

By:   
James F. Sanders, Vice President & General  
Counsel, Boss Manufacturing Company