

SETTLEMENT AND RELEASE AGREEMENT BETWEEN GABRIEL ESPINOZA AND MARUCCI SPORTS, LLC

1. INTRODUCTION

1.1 The Parties. This Settlement and Release Agreement (“Agreement”) is entered into by and between Gabriel Espinoza (“Espinoza”) and Marucci Sports, LLC (“Marucci Sports”). Together, Espinoza and Marucci Sports are collectively referred to as the “Parties.” Espinoza is an individual who 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. Espinoza alleges that Marucci Sports 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 Marucci Sports has exposed individuals to the chemical di(2-ethylhexyl) phthalate (DEHP) from its sales of Marucci bat quivers/bags without first providing California consumers of the products with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 Product Description. The products covered by this Agreement are Marucci bat quivers/bags and substantially similar products, including but not limited to SKU 849817085134 (the “Products”), that have been imported, distributed, offered for sale, and/or sold in California by Marucci Sports.

1.4 Notice of Violation. On January 7, 2020, Espinoza served Marucci Sports 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 Marucci Sports and such others, including public enforcers, with notice that alleged that Marucci Sports was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers that use of the Products will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. The Parties enter into this Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Marucci Sports's compliance with Proposition 65. Marucci Sports denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that it has manufactured for distribution and sale in California, including the Products, have been and are in compliance with Proposition 65 and all other applicable laws. Nothing in this Agreement shall be construed as an admission by Marucci Sports of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Marucci Sports of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Marucci Sports. However, nothing in this section shall not diminish or otherwise affect the Parties' obligations, responsibilities, and duties under this Agreement. Notwithstanding the allegations in the Notice, Marucci Sports 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 Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Agreement is delivered to each Parties' counsel.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS


2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Marucci Sports agrees to manufacture, import, distribute, sell, or offer for sale Products to California consumers that either: (a) contain less than or equal to 1,000 parts per million (ppm) by weight of DEHP ; or (b) bear a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, or as provided by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600), as those regulations may be amended from time to time. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. "Reformulated Products" shall mean Products that contain concentrations less than or equal to 1,000 ppm of DEHP. To determine whether a Product is a Reformulated Product, it is to be analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, and the testing sample shall be


prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other scientifically valid methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.

2.3 Clear and Reasonable Warning. For all Products that are not Reformulated Products, which are manufactured after the Effective Date, Marucci Sports shall provide a clear and reasonable exposure warning as set forth herein or as defined by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600). There shall be no obligation for Marucci Sports to provide an exposure warning 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 §§ 2.3(a) or (b), respectively:

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

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which is 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.

(b) **Alternative Warning:** Marucci Sports may alternatively use the short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 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 Products’ packaging, labeling, or hangtag 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 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 have at least the same size font as those other safety warnings.

In addition, for any Products sold over the internet to a California address, the warning shall appear on the Product's primary display page or checkout page. If the warning is provided on the checkout page, it must be clearly linked to the Product by use of an asterisk or other identifying method. If the warning is provided on the Product's primary display page, it must be inserted either directly onto the Product's primary display page or with a conspicuous hyperlink stating "**WARNING**" in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the warning. Given Marucci Sports's lack of control over third-party websites, the online warning requirements expressed in this Section apply only to Products sold through Marucci Sports's website so long as Marucci Sports complies with the requirements of 27 CCR 25600.2 (in effect on the date of execution of this Agreement.)

2.5 Compliance with Warning Regulations. The Parties agree that Marucci Sports shall be deemed to be in compliance with the this Agreement by either adhering to §§ 2.3 and 2.4 of this Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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

In settlement of all the claims referred to in this Agreement, Marucci Sports shall pay \$1,000.00 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. For all amounts due and owing that are not received within the payment times set forth below, Marucci Sports shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. Within ten (10) business days of Effective Date, Marucci Sports shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b) “Brodsky & Smith, LLC in Trust for Espinoza” in the amount of \$250.00. 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 5103.
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. Marucci Sports 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 § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Marucci Sports 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 Agreement:

- (i) “Gabriel Espinoza” whose address and tax identification number shall be provided within five (5) days after this 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 have 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, Marucci Sports shall reimburse Espinoza’s counsel \$13,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Marucci Sports’ attention, and negotiating a settlement in the public interest. Payment pursuant to this Section shall be as follows: (a) Within ten (10) business days of the Effective Date, Marucci Sports shall deliver a check payable to “Brodsky & Smith, LLC” in the amount of \$6,000 to the address identified in § 3.2(a)(i) above, and (b) Within forty-five (45) business days of the Effective Date, Marucci Sports shall deliver a check payable to “Brodsky & Smith, LLC” in the amount of \$7,000 to the address identified in § 3.2(a)(i) above. For all amounts due and owing pursuant to this Section that are not received, or able to be deposited on the date the payment is due, Marucci Sports shall pay a late fee payment equal to \$100/day for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

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

(“Releasors”) for failure to provide Proposition 65 warnings relating to the Products, and Releasors hereby release any such claims against Marucci Sports including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against Marucci Sports and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Marucci Sports directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to MonkeySports, Inc. and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for 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 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, related to the Products.

5.2 Marucci Sports’ Release of Espinoza. Marucci Sports, 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/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 § 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. Espinoza on behalf of himself only, on one hand, and Marucci Sports, 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 §§ 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 Marucci Sports each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Marucci Sports with this Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

5.5. Public Benefit. The Parties understanding that the commitments Marucci Sports has agreed to herein, and actions to be taken by Marucci Sports under this Agreement, would 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 the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Marucci Sports failure to provide a warning concerning exposure to DEHP prior to use of 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 Agreement, provided that Marucci Sports is in material compliance with this Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this 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 Agreement being contrary to the intent of the Parties in entering into this Agreement.

7. GOVERNING LAW

The terms of this 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, Marucci Sports shall have no further obligations pursuant to this Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 Marucci Sports:

Will Wagner
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

For Espinoza:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
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 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 Agreement may be modified only by a written agreement of the Parties.

12. **ENTIRE AGREEMENT**

This 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 agreed to all of the terms and conditions contained of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligations that will or might prevent or interfere with the execution of performance of this Agreement by said Party.

AGREED TO:

AGREED TO:

Date: 7/31/2020

Date: July 31, 2020

By: [Signature]

Gabriel Espinoza

By: [Signature]

Kurt Ainsworth, Marucci Sports, LLC