

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Asian World of Martial Arts, Inc. (“AWMA”) on the other hand, with EHA and AWMA each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that AWMA employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

EHA alleges that AWMA sells, offers for sale, and/or distributes for sale in California boxing gloves containing Di(2-ethylhexyl) phthalate (DEHP) and that it does so without first providing the health hazard warning required by Proposition 65. Di(2-ethylhexyl) phthalate (DEHP) is listed pursuant to Proposition 65 as a chemical known by the state of California to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to, Pro Force Leatherette Boxing Gloves and that are sold, offered for sale, or distributed for sale in California by AWMA (“Products”).

#### **1.4 Notices of Violation**

On October 30, 2020, EHA served Asian World of Martial Arts, Inc., Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation, alleging that the noticed parties violated Proposition 65 when they failed to warn consumers in California of the health risks associated with exposures to Di(2-ethylhexyl) phthalate (DEHP) from

Pro Force Leatherette Boxing Gloves (“Notice”).

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

**1.5 No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Products’ compliance with Proposition 65. AWMA denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold, offered for sale, and/or distributed for sale 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 AWMA of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by AWMA of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by AWMA. This Section shall not, however, diminish or otherwise affect AWMA’s obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice and/or its compliance with this Settlement Agreement, AWMA maintains that it has not knowingly or intentionally caused exposures to chemicals in violation of Proposition 65. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations contained in the Notice or with respect to any other future legal proceedings, except as otherwise provided herein.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean one hundred and twenty (120) days following the execution of this Settlement Agreement by the Parties.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation.**

Commencing on the Effective Date, and continuing thereafter, Products that AWMA sells, offers for sale, or, distributes for sale in California shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP if the Products

meet the standard of “Reformulated Products.” “Reformulated Products” shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance (“Reformulation Standard”). The term “Accessible Component” shall mean any component of the Covered Product that could be touched by a person during reasonably foreseeable use.

## **2.2 Clear and Reasonable Warnings**

Commencing on the Effective Date, and continuing thereafter, AWMA shall not distribute for sale in California any Products that do not meet the Reformulation Standard set forth in Section 2.1 above unless the label, as defined by Cal. Code Regs. tit. 27, § 25600.1, contains a clear and reasonable warning that complies with Proposition 65 warning regulations, including Cal. Code Regs. tit. 27, § 25600 *et seq.*

## **2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of this Section 2, including the warning and reformulation requirements set forth in Sections 2.1 and 2.2, shall not apply to Products that are already in the stream of commerce as of the Effective Date., which Products are expressly subject to the releases provided in Section 4.1.

## **2.4 Compliance with Proposition 65**

The Parties agree that AWMA shall be deemed to be in compliance with this Settlement Agreement, and with Proposition 65, by either of the following options: (1) reformulating pursuant to § 2.1 of this Settlement Agreement; or (2) warning pursuant to § 2.2 of this Settlement Agreement.

# **3. MONETARY SETTLEMENT TERMS**

## **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, AWMA agrees to pay \$500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§

25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within twenty-one (21) days of the date this Settlement Agreement is executed by the Parties, AWMA shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of \$375 and (b) Environmental Health Advocates, Inc., in the amount of \$125.

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section 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

All penalty payments owed to EHA shall be sent to:

Samantha Dice  
Environmental Health Advocates  
225 Broadway, Suite 2100  
San Diego, CA 92101

### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within twenty-one (21) days of the date this Settlement Agreement is executed by the Parties, AWMA agrees to pay \$7,000 to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of AWMA, and negotiating a settlement. AWMA's payment shall be delivered

in the form of two checks: (1) one check for \$3,500 payable to “Glick Law Group”; and (2) one check for \$3,500 payable to Nicholas & Tomasevic LLP.”

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

Noam Glick  
Glick Law Group  
225 Broadway, Suite 1900  
San Diego, CA 92101

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

AWMA agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that AWMA cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after AWMA receives the requisite W-9 forms from EHA’s counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA’s Release of AWMA**

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and AWMA of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against AWMA and each of its respective parents, subsidiaries, owners, affiliated entities under common ownership, directors, officers, shareholders, marketplaces, members, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensees, licensors, and each upstream entity from whom the Products were purchased by or supplied to AWMA, and each entity to or through whom AWMA directly or indirectly distributes, ships, offers for sale, or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, and their respective parents, subsidiaries, owners,

affiliated entities under common ownership, directors, officers, shareholders, marketplaces, members, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensees and licensors (“Releasees”), based on the actual or alleged failure to warn about exposures to Di(2-ethylhexyl) phthalate (DEHP) in the Products manufactured, sold, offered for sale, or distributed for sale in California by AWMA or the Releasees before the Effective Date, as alleged in the Notices. This Release shall also cover any Products that were in the stream of commerce prior to the Effective Date as provided in Section 2.3.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against AWMA and Releasees that it or they may have, of any nature, character, or kind, whether known or unknown, suspected or unsuspected, including, without limitation, all actions and causes of action in law and equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Di(2-ethylhexyl) phthalate (DEHP) in the Products manufactured, sold, offered for sale, or distributed for sale by AWMA or the Releasees before the Effective Date, including any Products that were in the stream of commerce prior to the Effective Date as provided in Section 2.3.

EHA and EHA's counsel represent and warrant that they have not filed and are not contemplating filing, that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against AWMA.

#### **4.2 AWMA’s Release of EHA**

AWMA, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys

and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

#### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. EHA on behalf of itself only, on the one hand, and AWMA on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 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 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.**

EHA and AWMA each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

#### **4.4 Public Benefit**

It is AWMA's understanding that the commitments it has agreed to herein, and actions to be taken by AWMA under this Settlement 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 AWMA that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to AWMA and/or the Releasees relating to the Products they have manufactured, sold, offered for sale, or distributed for sale in California, or will manufacture, sell, offer for sale, or distribute 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 AWMA is in material compliance with this Settlement Agreement.

### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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.

**6. 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.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Asian World of Martial Arts, Inc.:

Cheryl Chang  
Blank Rome LLP  
2029 Century Park East, 6<sup>th</sup> Floor  
Los Angeles, CA 90067

Erika Schulz  
Blank Rome LLP  
2029 Century Park East, 6<sup>th</sup> Floor  
Los Angeles, CA 90067

For EHA:

Noam Glick  
Glick Law Group  
225 Broadway, Suite 1900  
San Diego, CA 92101

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



**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**12. 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.

**AGREED TO:**

Date: 2/23/2021

By: 

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO:**

Date: 2/24/21

By: 

ASIAN WORLD OF MARTIAL ARTS, INC.